

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
) *Marcos Cervantes and Daniel Ebady for the*
) **DIEGO FERNANDO ROMERO**) **Plaintiff**
) **RAMIREZ**)
) **Plaintiff**)
)
) **- and -**)
)
) **LEDN INC., LEDN (CANADA) INC.,**)
) **LEDN CAPITAL INC., LEDN HODL I**) *Brian Chung and Anisha Bhardwaj for the*
) **(GP) INC., MAURICIO DI**) **Defendants Ledn Inc., Ledn (Canada) Inc.,**
) **BARTOLOMEO, SEP ALAVI,**) **Ledn Capital Inc., Ledn Hodl I (GP) Inc.,**
) **MANUEL STOTZ, ADAM JONATHON**) **Mauricio Di Bartolomeo, Manuel Stotz and**
) **REEDS, and JOHN DOE**) **Adam Jonathon Reeds**
) **CRYPTOCURRENCY EXCHANGE**)
)
) **Defendants**) **HEARD: June 1, 2023**
)

PERELL, J.

REASONS FOR DECISION

Contents

| | | |
|----|---|----|
| A. | Introduction..... | 2 |
| B. | Methodology and Overview | 3 |
| C. | Procedural and Evidentiary Background | 4 |
| D. | Pleadings Motions..... | 6 |
| E. | The Fictional Statement of Claim | 8 |
| F. | Facts as Pleaded | 8 |
| G. | Causes of Action as Pleaded | 11 |
| H. | The Claims against Messrs. Di Bartolomeo, Reeds, and Stotz..... | 14 |

| | | |
|----|--|----|
| I. | Breach of Contract, Breach of a Duty in Good Faith in Contract Performance, Misrepresentation, Negligent Misrepresentation, Rescission, Relief from Forfeiture and Breach of Fiduciary Duty..... | 14 |
| J. | Negligence <i>Simpliciter</i> | 15 |
| K. | Breach of the <i>Consumer Protection Act, 2002</i> | 15 |
| L. | Breach of the <i>Competition Act</i> | 15 |
| M. | Conversion | 16 |
| N. | Intentional Infliction of Mental Distress..... | 16 |
| O. | Breach of the Law of Colombia..... | 16 |
| P. | Conclusion | 17 |

A. Introduction

[1] This is an action for damages arising from an internet contract for an investment in bitcoin. The Defendants that sold the bitcoin move to have the Plaintiff's Statement of Claim, which pleads thirteen causes of action, struck pursuant to Rule 21 of the *Rules of Civil Procedure*.¹ For the reasons that follow, I strike out the Statement of Claim with leave to deliver a Fresh as Amended Statement of Claim. The principal reason for striking the Plaintiff's Statement of Claim is that it is plain and obvious that the pleaded material facts are fiction.

[2] I strike the current Statement of Claim subject to the following directions:

- a. The Plaintiff, Mr. Ramirez, shall deliver a Fresh as Amended Statement of Claim in which he deletes (a) the names of Messrs. Di Bartolomeo, Reeds, and Stotz, and Mr. Alavi from the style of cause and (b) the claims against them from the pleading.
- b. The claims against Messrs. Di Bartolomeo, Reeds, and Stotz and Mr. Alavi are struck out without leave to amend.
- c. The claim for conversion shall be struck out and shall not be included in the Fresh as Amended Statement of Claim.
- d. The claim for breach of the *Competition Act*² shall be struck out and shall not be included in the Fresh as Amended Statement of Claim.
- e. The claim for intentional infliction of mental harm shall be struck out and shall not be included in the Fresh as Amended Statement of Claim.
- f. The claim(s) pursuant to the laws of Colombia shall be struck out with leave to amend to properly plead foreign law.
- g. Mr. Ramirez shall have twenty days to deliver a Fresh as Amended Statement of Claim, failing which his Statement of Claim shall be struck in its entirety and his action

¹ R.R.O. 1990, Reg. 194.

² R.S.C. 1985, c C-34.

shall be dismissed with costs.

B. Methodology and Overview

[3] Diego Fernando Romero Ramirez, who is a resident of Colombia, sues Ledn Inc., Ledn (Canada) Inc., Ledn Capital Inc., Ledn Hodl I (GP) Inc., Mauricio Di Bartolomeo, Adam Jonathon Reeds, Manuel Stotz, Sep Alavi, and John Doe Cryptocurrency Exchange. The action has been discontinued against Mr. Alavi.

[4] Mr. Ramirez advances the following thirteen causes of action or remedies against all of the Defendants save for John Doe Cryptocurrency, which is allegedly joined as a necessary party: (a) breach of contract; (b) breach of a duty of good faith in contract performance; (c) misrepresentation; (d) negligent misrepresentation; (e) rescission; (f) relief from forfeiture; (g) breach of fiduciary duty; (h) negligence *simpliciter*; (i) breach of the *Consumer Protection Act, 2002*³; (j) breach of the *Competition Act*, (k) conversion; (l) intentional infliction of mental distress; and (m) breach of the laws of Colombia.

[5] Mr. Ramirez sues for the return of 10 bitcoin, or he sues for damages of \$1.0 million for the loss of the 10 bitcoins.⁴

[6] The Defendants, with the exceptions of Ledn Inc., Mr. Alavi, and John Doe Cryptocurrency Exchange, move for an Order striking out the Amended Statement of Claim without leave to amend as against them. Thus, the moving parties are Ledn (Canada) Inc., Ledn Capital Inc., Ledn Hodl I (GP) Inc., (collectively “Ledn”) and Messrs. Di Bartolomeo, Stotz, and Reeds.

[7] By way of the methodology to decide these Defendants’ motion to strike, I shall proceed as follows.

[8] First, I shall describe the procedural and evidentiary background. From that description, it will emerge how it is that it is plain and obvious that Mr. Ramirez’s Statement of Claim is an imagined fiction about contracting on the Internet.

[9] Second, I will set out the normative law of procedure that will support my conclusion that Mr. Ramirez’s Statement of Claim should be struck out in its entirety with leave to amend.

[10] Third, I will explain why I am striking out the Statement of Claim with leave to amend because the Statement of Claim is fiction.

[11] Fourth, I will describe the facts as they have been pleaded in the Statement of Claim. I need to do this to explain the proper subject matter of the Fresh as Amended Statement of Claim.

[12] Fifth, I will describe the causes of action as they have been pleaded in the fiction of the Statement of Claim. I need to do this to explain the proper subject matter of the Fresh as Amended Statement of Claim.

[13] Sixth, I will explain why the claims against Messrs. Di Bartolomeo, Reeds, and Stotz must be struck without leave to amend.

[14] Seventh, I shall discuss the claims for breach of contract, breach of duty of good faith in

³ S.O. 2002, c 30, Sch A.

⁴ In the last five years the value of one bitcoin in Canadian dollars ranged from approximately \$8,000 to approximately \$80,000. On June 1, 2023, one bitcoin was worth \$36,304.11.

contract performance, misrepresentation, negligent misrepresentations, rescission, relief from forfeiture, and breach of fiduciary duty.

[15] Eighth, I shall discuss the claim in negligence *simpliciter*.

[16] Ninth, I shall discuss the claim for breach of the *Consumer Protection Act, 2002*.

[17] Tenth, eleventh, and twelfth, I shall explain why the claims for breach of the *Competition Act*, conversion, and intentional infliction of mental distress, respectively should be struck without leave to amend.

[18] Thirteenth, I shall discuss the claim about a breach of foreign law.

[19] Fourteenth, I shall conclude without a summary.

C. Procedural and Evidentiary Background

[20] As may already be gathered from my foreshadowed conclusion that Mr. Ramirez has pleaded a work of fiction, the procedural and evidentiary background to this pleadings motion was most peculiar.

[21] During the course of the argument of the motion, the lawyers for the parties as officers of the court advised me of the facts from which I have concluded that Mr. Ramirez's Statement of Claim is a work of fiction.

[22] With those additional facts that I first learned about during the course of the argument in mind, the procedural and evidentiary background to the pleadings motion now before the court is as follows.

[23] In **late 2019** and **early 2020**, Mr. Ramirez, who lives in Colombia in South America, using the Internet, made an investment in ten bitcoin. The investment was financed by a loan secured by the bitcoin. He made his investment pursuant to an electronic contract on the Internet, but he did not print a copy of the contract.

[24] In **March 2020**, Mr. Ramirez was advised that because he did not honour a call to put his loan into good standing, he forfeited the bitcoin.

[25] In **June 2021**, Mr. Ramirez retained Cervantes Law Firm to recover his ten bitcoin. When he gave the law firm instructions about his legal predicament, he did not have a copy of his bitcoin loan contract.

[26] In **July 2021**, the Cervantes Law Firm wrote the in-house lawyer of the Defendants and asked for "a copy of the actual clickwrap Loan Agreement LEDN takes the position [Mr. Ramirez] agreed to."

[27] On **August 3, 2021**, the Cervantes Law Firm was provided with a copy of the clickwrap Loan Agreement that the Defendants asserted was entered into by Mr. Ramirez.

[28] Mr. Ramirez could not affirm or deny that this was the Loan Agreement that he had agreed to, but he does not assert that it is a fabricated document.

[29] On **February 25, 2022**, Mr. Ramirez commenced this action by Statement of Claim.

[30] Because he could not affirm or deny the Loan Agreement that had been provided to him and because he did not assert that the loan agreement was a fabricated document, he instructed his

lawyers to draft the Statement of Claim based on his memory of having entered into an Internet contract based on representations that allegedly had been made to him around the time that he made an electronic acceptance of some unauthenticated loan agreement.

[31] In other words, Mr. Ramirez's Statement of Claim is based on his memory of what he favours the agreement with the Defendants to be.

[32] A Statement of Claim is intended to be non-fiction. Mr. Ramirez's Statement of Claim is fiction posing as non-fiction. In other words, he is honestly making his claim up based on what he wants or is able to remember about his cyberworld contracting.

[33] When they received Mr. Ramirez's Statement of Claim, Ledn (Canada) Inc., Ledn Capital Inc., and Ledn Hodl I (GP) Inc. and Messrs. Di Bartolomeo, Stotz, and Reeds were not aware that Mr. Ramirez's position was that he had entered into a contract with the Defendants but not necessarily the written contract that Mr. Ramirez had in his possession but was not prepared to admit, deny, or vitiate.

[34] On **November 14, 2022**, ignorant of this state of affairs, Ledn (Canada) Inc., Ledn Capital Inc., and Ledn Hodl I (GP) Inc. and Messrs. Di Bartolomeo, Stotz, and Reeds brought a motion to strike Mr. Ramirez's Statement of Claim. They thought the action was about their standard loan agreement.

[35] Sometime after the notice of motion was issued, Mr. Ramirez delivered a draft amended Statement of Claim as part of settlement discussions. Then, on **December 23, 2022**, Mr. Ramirez delivered the Amended Statement of Claim that is the subject of this motion to strike.

[36] Then, for the purposes of the motion to strike, the Defendants filed the Bitcoin-Backed Loan and Security Agreement – Loan Terms and Conditions. They did so because it appeared that their contract was referred to in the Amended Statement of Claim and therefore would and could and should be before the court on a motion to strike a pleading.

[37] The Defendants' motion to strike was argued on **June 1, 2023**.

[38] At the commencement of the motion, I told the parties' counsel that:

- a. unless persuaded to the contrary by Mr. Ramirez, my inclination was to strike (a) the claims against Messrs. Di Bartolomeo, Reeds, and Stotz, (b) the claim for conversion, (c) the claim for infliction of mental harm, and (d) the claim under the *Competition Act*; and,
- b. unless persuaded to the contrary by the Defendants' counsel, to otherwise dismiss the Defendants' motion to strike.

[39] The Defendants' argument proceeded, but the Defendants' counsel did not persuade me to the contrary, and so I called on Mr. Ramirez's lawyer to address the matter of whether I should not strike the claims against the personal Defendants and the claims for conversion, infliction of mental harm and under the *Competition Act*.

[40] However, Mr. Ramirez's counsel began his argument by addressing the claims that I was not going to strike. When I asked him why, I was told that the contract that the Defendants' counsel and I had thought was the subject matter of Mr. Ramirez's action should not have been included in the record for the motion to strike because it was inadmissible unauthenticated documentary evidence. I was further told that the contract that was the subject matter of Mr. Ramirez's action

was not the contract put into the Record by the Defendants. I was told that Mr. Ramirez's action was about the contract that had been pleaded in the Statement of Claim, which written contract did not include the contract put forward by the Defendants, which contract Mr. Ramirez was not prepared to admit or deny or to ask the court to vitiate. Moreover, I was told that until the Statement of Defence had been pleaded, it was premature to decide what was the Internet contract in this case that Mr. Ramirez was describing in his Statement of Claim.

[41] As they were officers of the court, I was informed by the lawyers from both sides without affidavits about the communications that had taken place between the parties in the summer of 2021.

[42] I told Mr. Ramirez's counsel that in light of his client's position, which was a surprise to both Defendants' counsel and me, I would revisit the Defendants' challenges to the cause of action for breach of contract and the related causes of action.

[43] Mr. Ramirez's counsel (both his lawyers made submissions) completed their argument about the claims and causes of action.

[44] I heard reply submissions. I reserved judgment.

D. Pleadings Motions

[45] The Defendants' motion is brought pursuant to rule 21.01 (1)(b) of the *Rules of Civil Procedure*, which states:

WHERE AVAILABLE

To any Party on Question of Law

21.01 (1) A party may move before a judge,

(a) [...]

(b) to strike out a pleading on the ground that it discloses no reasonable cause of action or defence, and the judge may make an order or grant judgment accordingly.

(2) No evidence is admissible on a motion, ...

(b) under clause (1)(b).

[46] Where pursuant to rule 21.01 (1)(b), a defendant submits that the plaintiff's pleading does not disclose a reasonable cause of action, to succeed in having the action dismissed, the defendant must show that it is plain, obvious, and beyond doubt that the plaintiff cannot succeed in the claim.⁵ Matters of law that are not fully settled should not be disposed of on a motion to strike, and the court's power to strike a claim is exercised only in the clearest cases.⁶

[47] In *R. v. Imperial Tobacco Canada Ltd.*,⁷ the Supreme Court of Canada noted that although the tool of a motion to strike for failure to disclose a reasonable cause of action must be used with

⁵ *Dawson v. Rexcraft Storage & Warehouse Inc.* (1998), 164 D.L.R. (4th) 257 (Ont. C.A.); *Hunt v. Carey Canada Inc.* (1990), 74 D.L.R. (4th) 321 (S.C.C.).

⁶ *Dawson v. Rexcraft Storage & Warehouse Inc.* (1998), 164 D.L.R. (4th) 257 (Ont. C.A.); *Temelini v. Ontario Provincial Police (Commissioner)* (1990), 73 O.R. (2d) 664 (C.A.).

⁷ 2011 SCC 42 at paras. 17-25.

considerable care, it is a valuable tool because it promotes judicial efficiency by removing claims that have no reasonable prospect of success, and it promotes correct results by allowing judges to focus their attention on claims with a reasonable chance of success. Chief Justice McLachlin stated:

Valuable as it is, the motion to strike is a tool that must be used with care. The law is not static and unchanging. Actions that yesterday were deemed hopeless may tomorrow succeed. Before *McAlister (Donoghue) v. Stevenson*, [1932] A.C. 562 (U.K. H.L.) introduced a general duty of care to one's neighbour premised on foreseeability, few would have predicted that, absent a contractual relationship, a bottling company could be held liable for physical injury and emotional trauma resulting from a snail in a bottle of ginger beer. Before *Hedley Byrne & Co. v. Heller & Partners Ltd.*, [1963] 2 All E.R. 575 (U.K. H.L.), a tort action for negligent misstatement would have been regarded as incapable of success. The history of our law reveals that often new developments in the law first surface on motions to strike or similar preliminary motions, like the one at issue in *McAlister (Donoghue) v. Stevenson*. Therefore, on a motion to strike, it is not determinative that the law has not yet recognized the particular claim. The court must rather ask whether, assuming the facts pleaded are true, there is a reasonable prospect that the claim will succeed. The approach must be generous and err on the side of permitting a novel but arguable claim to proceed to trial.

[48] In *Atlantic Lottery Corp. Inc. v. Babstock*,⁸ the Supreme Court of Canada stated that the test applicable on a motion to strike is a high standard that calls on courts to read the claim as generously as possible because cases should, if possible, be disposed of on their merits based on the concrete evidence presented before judges at trial.

[49] On a pleadings motion, the court accepts the pleaded allegations of material fact as proven, unless they are patently ridiculous or incapable of proof.⁹

[50] Bare allegations and conclusory legal statements based on assumption or speculation are not material facts; they are incapable of proof and, therefore, they are not assumed to be true for the purposes of a pleadings motion.¹⁰

[51] Documents referred to in a pleading are incorporated by reference into the pleading, and on a motion to determine whether the plaintiff has pleaded a legally viable cause of action, the court is entitled to consider any documents specifically referred to and relied on in a pleading.¹¹

[52] In making findings of fact and in applying the law to those facts the court is not obliged to accept as necessarily true allegations of fact that are rhetorical conclusions or that are inconsistent with the documents incorporated by reference.¹²

⁸ 2020 SCC 19 at para. 87-88.

⁹ *Arora v. Whirlpool Canada LP*, 2012 ONSC 4642 at para. 12, aff'd 2013 ONCA 657, leave to appeal ref'd [2013] S.C.C.A. No. 498; *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para. 22; *Folland v. Ontario* (2003), 64 O.R. (3d) 89 (CA); *Nash v. Ontario* (1995), 27 O.R. (3d) 1 (CA); *Canada v. Operation Dismantle Inc.*, [1985] 1 S.C.R. 441; *A-G. Canada v. Inuit Tapirisat of Canada*, [1980] 2 S.C.R. 735.

¹⁰ *Price v. Smith & Wesson Corp.*, 2021 ONSC 1114 at para. 51; *Das v. George Weston Ltd.*, 2017 ONSC 4129 at paras. 14-29, aff'd 2018 ONCA 1053, leave to appeal refused [2019] S.C.C.A. No. 69; *Losier v. Mackay, Mackay & Peters Ltd.*, [2009] O.J. No. 3463 at paras. 39-40 (SCJ), aff'd 2010 ONCA 613, leave to appeal refused [2010] S.C.C.A. No. 438.

¹¹ *Das v. George Weston Limited*, 2018 ONCA 1053 at paras. 31, 71, 74 and 78; *McCreight v. Canada (Attorney General)*, 2013 ONCA 483 at para. 32; *Tender Choice Foods Inc. v. Versacold Logistics Canada Inc.*, 2013 ONSC 80 at para. 31, aff'd 2013 ONCA 474; *Martin v. Astrazeneca Pharmaceuticals PLC*, 2012 ONSC 2744 at paras. 160-162, aff'd 2013 ONSC 1169 (Div. Ct.); *Web Offset Publications Ltd. v. Vickery* (1999), 43 O.R. (3d) 802 (CA), leave to appeal dismissed, [1999] S.C.C.A. No. 460.

¹² *Das v. George Weston Limited*, 2017 ONSC 4129 at paras. 27, 79-80, aff'd 2018 ONCA 1053.

[53] Where a pleading is struck as defective, leave to amend should only be denied in the clearest cases when it is plain and obvious that no tenable cause of action is possible on the facts as alleged.¹³ The usual practice is to grant the plaintiff leave to amend unless it is clear that the plaintiff cannot improve its case by any further and proper amendment.¹⁴

E. The Fictional Statement of Claim

[54] If a contract is in whole or in part in writing, it is a regular and a normative incident of a pleadings motion involving the contract to place the written portion of the contract before the court. It is a routine matter that has occurred on thousands if not hundreds of thousands of Rule 21 pleadings motions to challenge the legal viability of a cause of action.¹⁵

[55] In the immediate case, given that contracts can be in writing or oral or both oral and in writing and that conduct can be relevant to the content of a contract, it is as plain and obvious as plain and obvious can be that: (a) a written contract with the text stored and retrievable in cyberspace is at least a part of the subject matter of Mr. Ramirez's cause of action about bitcoin; (b) the written contract that is at least a part of the subject matter of Mr. Ramirez's cause of action about bitcoin has properly been put before the court; and (c) Mr. Ramirez's position that he entered into a contract but not one based on the written contract properly placed before the court is paradoxically ridiculous.

[56] As a work of writing, a pleading is non-fiction. It is inevitable that a party will rhetorically spin the real facts, but a party cannot ignore the real facts and create a reality of his or her own, which is to make the pleading a work of fiction.

[57] It did not become apparent until the argument of the motion when Mr. Ramirez's counsel snatched defeat from the jaws of victory that his pleading was based on material facts that had been fictionalized from Mr. Ramirez's memory and his failure to make a copy of the contract he had entered into over the Internet.

[58] Mr. Ramirez may have genuine causes of action based on having entered into a contract based on oral and written terms and the conduct of the parties; however, he cannot advance those causes of action in a pleading and paradoxically simultaneously allude to a contract formed over the Internet and at the same time ignore what is real knowledge of the written part of the contract formed over the Internet.

[59] It is plain and obvious that Mr. Ramirez's Amended Statement of Claim is a work of fiction.

[60] I strike it and provide him with the opportunity to face the facts, which he may or may not be able to do and plead a Statement of Claim that is capable of proof.

F. Facts as Plead

[61] For the above reasons, Mr. Ramirez's Amended Statement of Claim is struck in its entirety with leave to amend. However, that does not fully resolve the pleadings motion before the court

¹³ *Mitchell v. Lewis*, 2016 ONCA 903; *Conway v. Law Society of Upper Canada*, 2016 ONCA 72; *Piedra v. Copper Mesa Mining Corp.*, 2011 ONCA 191; *Heydary Hamilton Professional Corp. v. Hanuka*, 2010 ONCA 881.

¹⁴ *Fournier Leasing Co. v. Mercedes-Benz Canada Inc.*, 2012 ONSC 2752; *AGF Canadian Equity Fund v. Transamerica Commercial Finance Corp. Canada* (1993), 14 O.R. (3d) 161 (Gen. Div.).

¹⁵ *Del Giudice v. Thompson*, 2021 ONSC 5379.

because Ledn Inc. argues that based on the current pleading, it is plain and obvious that Mr. Ramirez does not have legally viable claims against Messrs. Di Bartolomeo, Reeds, and Stotz and that there are problems with the legal viability of all of the causes of action pleaded. It is therefore necessary to describe and then analyze the facts as pleaded and the causes of action as pleaded. In this section of my Reasons for Decision, I shall describe the facts as pleaded and in the next section, I shall describe the causes of action as pleaded.

[62] The following material facts, which for the purposes of this motion to strike, must be taken to be true and capable of proof, are taken from the Amended Statement of Claim. I have added some commentary in light of the defendants' attack on the sufficiency of the Amended Statement of Claim as it has been pleaded.

[63] Mr. Ramirez is a resident of Colombia. He pleads that he is an unsophisticated consumer and that he relied on the defendants' expertise in the field of financial services. He pleads that the defendants owed him a duty of care and that there was a fiduciary relationship between him and the defendants.

[64] Ledn Inc., Ledn (Canada) Inc., Ledn Capital Inc., and Ledn Hodl I (GP) Inc. (collectively "Ledn") are related corporations incorporated under the laws of Ontario. The directors of Ledn Inc. include Messrs. Di Bartolomeo and Reeds. Mr. Reeds is the director of Ledn (Canada) Inc. and Ledn Capital Inc.

[65] Ledn (the collective) carries on business as a non-business financial service company. Ledn provides savings accounts for digital assets like bitcoin. Ledn makes loans to purchase bitcoin with bitcoin as the collateral security for the loan.

[66] Pausing here in the description of the material facts, the defendants submit Ledn Inc., Ledn (Canada) Inc., Ledn Capital Inc., and Ledn Hodl I (GP) Inc. are not related companies and should not be joined as parties to this litigation, which should only be against Ledn Inc. That submission is a matter to be raised by way of defence and that submission does not impugn the allegations of the Amended Statement of Claim.

[67] Continuing with the narrative, Ledn (the collective or the individual Ledn companies) markets and promotes bitcoin financial services by videos posted on YouTube. The videos are in the Spanish language. Ledn markets bitcoin to Latin American countries including Mexico, Colombia, Panama, Venezuela, Argentina, Peru, and Costa Rica. Ledn's services are particularly attractive to the citizens of countries like Colombia, which have unstable, fluctuating currencies.

[68] On **September 9, 2019**, Ledn posted on YouTube a video in Spanish. The video was entitled "How Bitcoin-Fiat Loans Work with Ledn". In the video, Mr. Di Bartolomeo is interviewed. He explains that if the value of the bitcoin that is security for a loan to purchase bitcoin falls below the value of the loan, Ledn provides twenty-four hours for the borrower to make up the difference in cash or bitcoin. He explains that if this margin call is not honoured, then Ledn sells bitcoin to the extent necessary to balance the loan account. In the video Mr. Di Bartolomeo said:

When we launched this product, we wanted this product to be like a mortgage for your BITCOIN. We didn't want people to think of it as a trade like what you have to look out for like when you take out a mortgage on your house you don't know, you don't spend the day looking at the price of the properties because they are going to call you on the day and you can... it's a process that... "set it and forget it" as they say here. I mean, it is a long-term process. We wanted to make a level that A. would protect as I told you to our investors from volatility to be able to be sure that we would always be able to at least recover the value of the credit that was put in and secondly we wanted to give our

users the peace of mind that they are going to be able to enjoy their credit for a certain amount of time without having to call them tomorrow saying that the market has dropped and that the credit has to be closed.

[69] Mr. Ramirez relied on the statements made in the YouTube video, and beginning on **December 10, 2019**, he deposited bitcoin with Ledn.

[70] Around this time, LEDN launched a promotion waiving administration fees to all consumers applying for a bitcoin (B2X) Loan before February 3, 2020.

[71] On **January 10, 2020**, Ledn posted a second promotional video on YouTube, titled: "How to DOUBLE your BITCOIN with a BUYING LOAN + #BTC". Mr Di Bartolomeo is interviewed. In the interview, he stated:

[...] To give an example, let's say you bought BITCOIN at 10,000 and you got a credit at 10,000 when BITCOIN reaches 7,250 we call you and tell you John has to deposit \$2,750 in addition to your collateral to rebalance the credit. In other words, you must deposit more than under BITCOIN in additional so that we can maintain the initial balance. When that happens, we contact you, send you an email, call you and tell you. John you entered margin call please deposit X amount to wallet X and we give you 24 hours to make that transaction. [...]

[72] Mr. Ramirez saw the videos on YouTube and was induced by the false representations of Ledn to enter into a bitcoin-back loan with Ledn.

[73] Pausing here in the description of the material facts, the defendants submit that the bitcoin-backed loan was only a loan with Ledn Inc. and not the associated Ledn corporations. While this ultimately may be found to be the case, and recalling that contracts may be oral and/or in writing and contracts may be formed by principals of agency, it is not plain and obvious that the contract in the immediate case was only with Ledn Inc. What, however, is clear is that Messrs. Di Bartolomeo, Stotz, and Reeds are not privies to the Ledn Inc. agreements.

[74] Returning to the narrative taken from the Amended Statement of Claim, on or about January 27, 2020, relying on the YouTube videos, Mr. Ramirez applied for a B2X loan. He deposited five bitcoins as collateral and received a loan of \$44,858.43 USD for the purpose of purchasing five additional Bitcoins. At the time, the market price of bitcoin was approximately \$8,909.82 per bitcoin.

[75] Mr. Ramirez pleads that the B2X loan was an unconscionable contract of adhesion. He submits that the defendants had significant bargaining power and that they imposed onerous legal terms in English while he had limited knowledge and was not well-versed to understand the terms of the agreement.

[76] Mr. Ramirez alleges that the ten bitcoins were stored by the Defendants, in electronic "Wallets" or physical/electronic store mechanisms yet to be identified.

[77] Pausing here in the description of the material facts taken from the Amended Statement of Claim, there are no material facts pleaded that Messrs. Di Bartolomeo, Reeds, and Stotz in their personal capacity stored the bitcoin.

[78] Returning to the narrative, on **March 12, 2020**, the price of bitcoin decreased to approximately \$4,970.79 per coin.

[79] On March 12, 2020 at or about 4:39 p.m. (Colombian time) Mr. Ramirez received the following email message:

For loans above 70% LTV but less than 80%, 24 hours is provided to add additional bitcoin collateral, however, if LTV reaches 80% at any point in time, Ledn will take the necessary steps to rebalance the loan LTV. Please send the additional bitcoin directly to each individual loan bitcoin address. You can view each bitcoin address and the top up amount required for each loan on the Ledn at platform.edn.io For loans above 80% LTV, Ledn will do its best to provide the opportunity for clients to add additional collateral, but for loans exceeding 80% LTV for over an hour (subject to market conditions), immediate steps will be required to sell bitcoin and repay loan(s) outstanding.

[80] Mr. Ramirez pleads that contrary to the representations made in the YouTube Videos, this email message indicated that consumers would not be given 24 hours to balance the loan account.

[81] He also pleads that the email was sent after regular banking hours in Colombia, and it was impossible for Mr. Ramirez to transfer funds to Ledn. Further, Ledn's website was overloaded with customers trying to log into the platform during the evening and night of March 12, 2020. As a result, Ledn's website/platform became unstable and/or unavailable. It was impossible to make arrangements for the time extensions mentioned in the YouTube Videos.

[82] Approximately seven hours later, on **March 13, 2020** at 12:01 a.m., Mr. Ramirez was advised by email that his account had been closed. His ten bitcoins had been sold to repay the loan indebtedness.

[83] On **June 29, 2021**, pursuant to sections 18 and 52 of the *Consumer Protection Act, 2002*, Mr. Ramirez gave notice of rescission.

G. Causes of Action as Pleaded

[84] Mr. Ramirez pleads that the defendants are liable for misrepresentation in contract and in tort.

[85] Mr. Ramirez pleads that the defendants have breached a duty of good faith in contract performance. In paragraphs 67 of his Amended Statement of Claim, he pleads:

67. The Plaintiff states the Defendants are under a duty of good faith to honestly perform the contract. The Defendants, by arbitrarily removing the Plaintiff's entitlement to twenty-four (24) hours' notice before liquidating his Bitcoin, breached the duty of good faith and the duty of honest performance of the contract. It further states that the Defendants used discretionary rights provided contract in a manner that violates the overarching obligation of good faith in contractual relations.

[86] Mr. Ramirez pleads that he is entitled to the remedy of rescission for misrepresentation. In paragraphs 70-75, he pleads:

70. Given the Defendants' misrepresentation, the Plaintiff is entitled to a rescission of the contract it had with the Defendants.

71. The Plaintiff states that he be put in the situation he would have been in had the promissory representations made in the promotional videos been honoured. Had such promissory representations been honoured, the Plaintiff would currently have in his possession ten (10) Bitcoins.

72. Based on the foregoing, the Plaintiff is entitled to the return of the ten (10) Bitcoins or an equivalent present day market value of ten (10) Bitcoins.

73. In the alternative, the Plaintiff states that he be put in the position he was in had the misrepresentation not been made. Had the misrepresentation not been made, the Plaintiff would not have engaged the services of the Defendants and would not have provided the Defendants with the five (5) Bitcoin the Plaintiff had prior to the engagement.

74. Based on the foregoing, the Plaintiff is entitled to the return of the five (5) Bitcoin or an equivalent present day market value of five (5) Bitcoins.

75. The Plaintiff states that there are special circumstances involving a special type of property and therefore that the presumption of assessment of damages at the date of the breach is rebutted.

[87] Mr. Ramirez pleads that the defendants are liable for misrepresentations (apparently made deceitfully). In paragraphs 49 and 50 of his Amended Statement of Claim, he pleads as follows:

49. Bitcoin's value quickly returned to and subsequently exceeded its pre-March 12, 2020 valuation. Accordingly, the Directors benefitted from taking a decision to liquidate clients' Bitcoins before the 24-hours of notice period, which constitutes a dishonest act and misrepresentation.

50. Further, the Defendants and the Directors individually profited from liquidating clients' Bitcoins prior to waiting 24 hours as advertised, falling below the requisite standard of care or fiduciary duties required by a company holding cryptocurrency for members of the public. The profits gained in this deceitful manner should be regarded as being held in trust on behalf of affected clients, which includes Mr. Ramirez, and returned thereto. The Plaintiff pleads that the Directors or persons related or affiliated with them personally profited from the decision to prematurely liquidate clients' Bitcoins, and on this basis each Director should be held personally liable.

[88] Mr. Ramirez pleads that the defendants were negligent. At paragraph 68 of his Amended Statement of Claim, he pleads a claim of negligence *simpliciter*:

68. The Plaintiff further states that the Defendants were negligent in that they failed to put in place a system:

- (a) to edge risks of Bitcoin devaluation;
- (b) that keeps sufficient reserves to withstand Bitcoin drops in prices;
- (c) that minimizes risks of having to liquidate Bitcoin;
- (d) that ensures consumers are contacted sufficiently in advance of a liquidation, are given enough time to send further Bitcoin or funds, and are able to contact the Defendants and ask questions regarding their options;
- (e) that ensures consumers can make decisions regarding replenishing their account within regular business hours; and
- (f) that takes into account regular business hours in countries where the Defendant Corporations carry on business.

[89] Related to his pleading of a duty of care in negligence, Mr. Ramirez pleads breach of fiduciary duty in paragraphs 46 and 50 as follows:

46. Further, the Plaintiff pleads that the Defendants are in a special relationship with him, and therefore owed him a duty of care to provide representations that were true and accurate. The Defendants are experts in the field of financial services for digital assets. The Plaintiff is an unsophisticated consumer that relied on the Defendants' expertise and educational videos. The Plaintiff pleads the Defendants owed him fiduciary duties.

[...]

50. Further, the Defendants and the Directors individually profited from liquidating clients' Bitcoins prior to waiting 24 hours as advertised, falling below the requisite standard of care or fiduciary duties required by a company holding cryptocurrency for members of the public. The profits gained in this deceitful manner should be regarded as being held in trust on behalf of affected clients, which

includes Mr. Ramirez, and returned thereto. The Plaintiff pleads that the Directors or persons related or affiliated with them personally profited from the decision to prematurely liquidate clients' Bitcoins, and on this basis each Director should be held personally liable.

[90] Mr. Ramirez pleads that the defendants have breached the *Consumer Protection Act, 2002* and the *Competition Act*. In paragraphs 57-60, he pleads:

57. The Plaintiff states that he retained the services of Defendant Corporations for personal, family or household purposes, which are consumers for the purposes of the *Consumer Protection Act*. The Plaintiff pleads that the statutory exceptions for financial services contained in the *Consumer Protection Act* do not apply to the type of services provided by the Defendants or, in the alternative, to the type of services provided to the Plaintiff in this case.

58. The Plaintiff states that the Defendants' misrepresentations constitute unfair, unconscionable and/or otherwise prohibited practices under the *Consumer Protection Act* given that, among other things, the Defendants knew, or ought to have known the representations were false, misleading and deceptive.

59. The Plaintiff also states that the misrepresentations were made before the Plaintiff entered into an agreement with the Defendants.

60. The Plaintiff is entitled to damages pursuant to section 18 of the *Consumer Protection Act*. Notice of rescission under section 52 was provided to the Defendants on or about June 29, 2021.

61. The Plaintiff further pleads that the Defendants breached s. 36 and 52 of the *Competition Act* and that the Defendants made false or misleading representations and used deceptive marketing practices.

[91] Mr. Ramirez pleads the tort of conversion. At paragraphs 76-80 of his Amended Statement of Claim he pleads:

76. The Defendants without due authorization and through misrepresentation wrongfully sold the Plaintiff's Bitcoins to a third-party.

77. The Defendants unlawfully converted the Plaintiff's property for their own benefit without due regard to the Plaintiff's property rights in the Bitcoins.

78. The Defendants took the proceeds of the Plaintiff's property for their own benefit and were unjustly enriched by the sale.

79. At no point did the Plaintiff authorize such a sale.

80. The Plaintiff pleads that he is entitled to the return of the Bitcoins, or in the alternative, to the market value of the Bitcoins in damages.

[92] Mr. Ramirez seeks damages of \$50,000 for mental distress.

[93] Mr. Ramirez pleads that Colombian law applies to some or all aspects of his causes of action. In paragraphs 62-66, he pleads:

62. The Plaintiff pleads that Colombian law applies to all or some aspects of the causes of action pleaded herein.

63. The Plaintiff pleads that the principle of comity requires an Ontario court to apply rules of Colombian law that are of "public order" or apply compulsorily to anyone carrying on business in Colombia.

64. The Plaintiff pleads that Colombian law and its consumer protection regulatory framework apply by operation of law to all or part of this claim. The Defendants, although carrying on business in Colombia and under an obligation to register their enterprise in Colombia pursuant to local laws, have neglected or failed to do so.

65. The Plaintiff further pleads that Colombian law prohibits the use of consumer agreements in a foreign language.

66. In the alternative, the Plaintiff pleads that the Ontario choice of law clause is unenforceable.

H. The Claims against Messrs. Di Bartolomeo, Reeds, and Stotz

[94] At common law, the owners, managers, and employees of a corporation are not liable for what they do within their authority and on behalf of their corporation, but they are liable if there is some conduct on their part that is either tortious in itself or is independent misconduct from that of the corporation.¹⁶

[95] A pleading against the owners, managers or employees must address specifically the cause of action asserted against the personal defendant and why he or she is being sued separately from the corporation.¹⁷

[96] In the immediate case, there are no material facts pleaded or that could be pleaded to assert an independent misconduct by Messrs. Di Bartolomeo, Reeds, and Stotz whose conduct was on behalf of Ledn Inc. There is no misconduct by the personal defendants that is independent from the alleged misconduct of the defendant corporations.

[97] Therefore, the claims against the personal defendants should be struck without leave to amend.

I. Breach of Contract, Breach of a Duty in Good Faith in Contract Performance, Misrepresentation, Negligent Misrepresentation, Rescission, Relief from Forfeiture and Breach of Fiduciary Duty

[98] Once the claims against Messrs. Di Bartolomeo, Stotz, and Reeds are removed, the claims against Ledn Inc., Ledn (Canada) Inc., Ledn Capital Inc., Ledn Hodl I (GP) Inc., (collectively “Ledn”) are quite poorly pleaded, but they are conventional pleadings in a breach of contract case in the consumer setting.

[99] For decades, consumers and purchasers of property have brought breach of contract proceedings with collateral claims in tort. Numerous individual actions and numerous class actions for consumers of goods or services have advanced collateral claims in contract, tort, property law, and breach of statutory causes of action. The accompanying remedies are typically damages, rescission, and/or relief from forfeiture. Breach of duty of good faith in contract performance is just another type of breach of contract claim. The immediate case is in company with these

¹⁶ *Fasteners & Fittings Inc. v. Wang*, 2020 ONSC 1649; *Lobo v. Carleton University*, 2012 ONCA 498; *Normart Management Ltd. v. West Hill Redevelopment Co.* (1998), 37 O.R. (3d) 97 (C.A.); *ScotiaMcLeod Inc. v. Peoples Jewellers Ltd.* (1995), 26 O.R. (3d) 481 (C.A.), leave to appeal refused [1996] S.C.C.A. No. 40; *Schembri v. Way*, 2012 ONCA 620; *McDowell v. Fortress Real Capital Inc.*, 2017 ONSC 4792; *ADGA Systems International Ltd. v. Valcom Ltd.* (1999), 43 O.R. (3d) 101 (C.A.).

¹⁷ *Fasteners & Fittings Inc. v. Wang*, 2020 ONSC 1649; *Immocreek Corp. v. Pretiosa Enterprises Ltd.*, [2000] O.J. No. 1405 at para. 35 (C.A.); *460635 Ontario Ltd. v. 1002953 Ontario Inc.*, [1999] O.J. No. 4071 at para. 8 (C.A.).

conventional claims against the sellers of goods and services.

[100] In short, it is not plain and obvious that in the immediate case, the breach of contract, breach of a duty in good faith contract performance, misrepresentation, negligent misrepresentation, rescission, relief from forfeiture, and breach of fiduciary duty claims are bound to fail as against some or all of Ledn Inc., Ledn (Canada) Inc., Ledn Capital Inc., and Ledn Hodl I (GP) Inc.

[101] For the reasons expressed above, the current Statement of Claim has been struck but the Fresh as Amended Statement of Claim may include these causes of action and claims for remedies.

J. Negligence *Simpliciter*

[102] In consumer breach of contract cases where there is already a claim for negligent misrepresentation, as is the situation in Mr. Ramirez’s case, plaintiffs sometimes add a negligence *simpliciter* claim.

[103] In the immediate case, once again while the pleading is poorly drafted, it is not plain and obvious that the claim in negligence *simpliciter* will fail as against some or all of Ledn Inc., Ledn (Canada) Inc., Ledn Capital Inc., and Ledn Hodl I (GP) Inc.

K. Breach of the *Consumer Protection Act, 2002*

[104] Mr. Ramirez advances a claim, essentially a rescission claim, for breach of the *Consumer Protection Act, 2002*.

[105] Section 18 of the *Consumer Protection Act, 2002* allows a consumer to claim damages for breach of a consumer agreement with a company within one year of entering into the breached consumer agreement. In so far as Mr. Ramirez is claiming damages, while he can rely on his common law causes of action, he cannot rely on a statutory claim.

[106] Insofar as Mr. Ramirez is claiming rescission, section 18 (3) of the *Consumer Protection Act, 2002* requires a notice of rescission to be given by the consumer within one year of the entering into of the consumer agreement – unless the consumer obtains leave from the court to proceed without having given this notice.

[107] In the immediate case, Mr. Ramirez entered into the bitcoin loan agreement on January 27, 2020 and he gave his notice on June 29, 2021, which is late notice. However, it is not plain and obvious that a court would not grant leave and, in any event, once again, Mr. Ramirez’s common law claims support the remedy of rescission as against some or all of Ledn Inc., Ledn (Canada) Inc., Ledn Capital Inc., Ledn Hodl I (GP) Inc.

[108] I, therefore, conclude that it is not plain and obvious that Mr. Ramirez should be foreclosed from pleading in his Fresh as Amended Statement of Claim a claim for breach of the *Consumer Protection Act, 2002*.

L. Breach of the *Competition Act*

[109] Section 36 (4) of the *Competition Act* requires that any claim under the *Competition Act* must be brought within two years of the “day on which the conduct was engaged in.” This is an absolute limitation period. It is not a presumptive limitation period based on when the claim for

damages is discovered. Thus, Mr. Ramirez's redundant claim, under the *Competition Act*, is statute-barred and has no reasonable prospect of success. This claim should be struck without leave to amend.

M. Conversion

[110] Conversion is a tort associated with the right of physical possession of tangible property. The tort of conversion does not apply to intangible property because such property does not entail a right of possession.¹⁸ Bitcoins are intangible property. It follows that the tort of conversion does not apply to Mr. Ramirez's property rights in bitcoins. This claim should be struck without leave to amend.

N. Intentional Infliction of Mental Distress

[111] The elements of a claim of intentional infliction of mental suffering are: (1) the defendant's actions are flagrant and outrageous; (2) the defendant intends to harm the plaintiff or the defendant knows that his or her conduct will cause harm; and, (3) the plaintiff suffers a visible and provable illness.¹⁹

[112] It is not enough to plead that the conduct is extreme, flagrant, and outrageous, there must be material facts pleaded that show that the conduct is extreme, flagrant, and outrageous. Tort law does not provide compensation for all stress-causing and nasty conduct that individuals may suffer at the hands of another, and the elements of the tort of intentional infliction of mental distress that the conduct must be extreme, flagrant, outrageous and calculated to cause harm are the law's ways of narrowing the ambit of the tort.

[113] In the immediate case, Mr. Ramirez has not pleaded nor could he plead in the circumstances of the immediate case any or all of the constituent elements of this tort.

[114] Accordingly, this claim should be struck without leave to amend.

O. Breach of the Law of Colombia

[115] Foreign law is a matter of fact to be proven through the testimony of a properly qualified expert, and foreign law must be pleaded as a fact and the party relying on the foreign law must describe the effect to that law in his or her pleading.²⁰

[116] It is plain and obvious that Mr. Ramirez has not properly pleaded a claim in foreign law with respect to the law of Colombia. His pleading essentially asserts that the law of Colombia may apply to the facts of the case without setting out the material facts of the Colombian law and the

¹⁸ *Del Giudice v. Thompson*, [2021 ONSC 5379](#) at para 169-181.

¹⁹ *Piresferreira v. Ayote*, 2010 ONCA 384; *Correia v. Canac Kitchens, a division of Kohler Ltd.*, 2008 ONCA 506; *Parklane Consulting Inc. v. Royal Group Technologies Ltd.*, [2007] O.J. No. 107 (S.C.J.); *Prinzo v. Baycrest Centre for Geriatric Care* (2002), 60 O.R. (3d) 474 (C.A.); *High Guay v. Sun Publishing Co.*, [1953] 2 S.C.R. 216; *Wilkinson v. Downton*, [1897] 2 Q.B.D. 57.

²⁰ *Centerra Gold Inc. v. Bolturuk*, 2022 ONSC 1040; *U.S.A. v. Mgbolu*, 2015 ONSC 1273; *Peng v. Zhu* (2009), 97 O.R. (3d) 277 (S.C.J.); *Yordanes v. Bank of Nova Scotia* (2006), 78 O.R. (3d) 590 (S.C.J.); *Ontario Stone Corp. v. R.E. Law Crushed Stone Ltd.*, [1964] 1 O.R. 303 (S.C.); *Bryant Press Ltd. v. Acme Fast Freight Inc.*, [1951] O.W.N. 665 (S.C.).

effect of that law.

[117] Accordingly, the claim should be struck with leave to amend.

P. Conclusion

[118] For the above reasons, the moving parties' motion to strike is granted subject to the directions set out in the Introduction to these Reasons for Decision.

[119] If the parties cannot agree about the matter of costs, they may make submissions in writing beginning with the Defendants' submissions within thirty days of the release of these Reasons for Decision followed by Mr. Ramirez's submissions within a further thirty days.

Perell, J.

Released: June 20, 2023

CITATION: Ramirez v. Ledn Inc., 2023 ONSC 3716
COURT FILE NO.: CV-22-00677509-0000
DATE: 20230620

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

DIEGO FERNANDO ROMERO RAMIREZ

Plaintiff

- and -

**LEDN INC., LEDN (CANADA) INC., LEDN
CAPITAL INC., LEDN HODL I (GP) INC.,
MAURICIO DI BARTOLOMEO, SEP ALAVI,
MANUEL STOTZ, ADAM JONATHON REEDS,
and JOHN DOE CRYPTOCURRENCY
EXCHANGE**

Defendants

REASONS FOR DECISION

PERELL J.

Released: June 20, 2023