IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Nguyen v. Tambosso,*
2024 BCSC 1551

Date: 20240826
Docket: S221616
Registry: Vancouver

Between:

Cao Hung Nguyen also known as Hung Nguyen

Plaintiff

And

Daniel Tambosso and DTKS Enterprises Ltd.

Defendants

Before: The Honourable Madam Justice Fitzpatrick

Reasons for Judgment

Counsel for the Plaintiff:	M.E. Abdelkader A. Crabtree
The Defendant, appearing in person on his own behalf, and as representative for DTKS Enterprises Ltd.:	D. Tambosso
Place and Date of Summary Trial:	Vancouver, B.C. July 25, 2024
Place and Date of Judgment:	Vancouver, B.C. August 26, 2024

INTRODUCTION

[1] This case involves an old-fashioned cause of action and remedy – enforcement of written contracts, said to record the loaning of "something", which was to be repaid in kind within a certain timeframe. However, this case also involves a modern twist, in that the "something" said to have been loaned and which was to be repaid was cryptocurrency, namely, Bitcoin.

[2] The plaintiff, Cao Hung Nguyen**,** alleges that he loaned a certain amount of Bitcoin to the defendants, which was to be repaid in Bitcoin only days later. He says that, in addition to repayment of the initial Bitcoin he advanced, he was to be repaid further Bitcoin based on a certain condition, which did not materialize.

[3] Mr. Nguyen seeks a judgment against the defendants in excess of $1.2 million, as equivalent to the value of the Bitcoin he was to receive back, but did not. He also seeks interest and costs.

[4] The defendant, Daniel Tambosso, is the shareholder and principal of the defendant, DTKS Enterprises Ltd. ("DTKS"). Both present the same arguments and defence at this application.

[5] Although there is some confusion in the defendants' positions and evidence, they now argue that no contract arose between them and Mr. Nguyen. They say that Mr. Nguyen advanced his Bitcoin to third parties in a high-risk investment that, unfortunately, was not successful. Alternatively, the defendants say that, if there were contracts, various defences arise such that they are relieved of any obligation to repay the Bitcoin.

SUITABILITY OF SUMMARY TRIAL

[6] There is disagreement between the parties as to whether this application is suitable as a summary trial, as brought by Mr. Nguyen. After considering that matter, I agree with Mr. Nguyen's counsel that this matter is suitable for summary trial.

[7] In their application response, the defendants oppose a summary trial determination, but only because they wish the matter referred to mediation for disposition.

[8] During his submissions, Mr. Tambosso also expressed his objection to a summary trial, but he only then vaguely referred to the need for other evidence and pre-trial procedures. For example, he referred to the need for expert evidence and that he wished to conclude examinations for discovery.

[9] I do not place any credence on these arguments. The notice of civil claim ("NOCC") was filed in February 2022; the response to civil claim ("RTCC") was filed in May 2022. Both parties have disclosed their documents. No party took steps to examine the other at discovery. In particular, Mr. Tambosso has taken no steps to obtain expert evidence or complete examinations for discovery of Mr. Nguyen over that time. This is so despite Mr. Nguyen's application being filed and served in early February 2024. I conclude that the defendants' arguments are driven more toward delay than any real or intended need to flesh out further facts and evidence.

[10] Contrary to Mr. Tambosso's submission that this case features a complex factual matrix, the key facts of this case are not particularly controversial. The documents between the parties that are said to comprise the contracts are in evidence, in addition to email communications between the parties that are relevant. The issues are whether the parties entered into binding agreements and, if so, what were their terms. In fact, in the RTCC, Mr. Tambosso concedes that he had an "agreement" with Mr. Nguyen and that Mr. Nguyen provided the Bitcoin to him, as agreed.

[11] In particular, while the amounts involved are large, the facts and issues are not complex. The fact that Bitcoin, an admittedly complex currency, is involved, does not alter the fundamental nature of the matter. Further, none of the parties have raised any, let alone significant, credibility issues that would render this matter unsuitable for summary judgment: *Dahl v. Royal Bank of Canada,* 2005 BCSC 1263 at para. 12.

[12] I conclude that all of the usual factors point to this matter being appropriately disposed of by summary trial: *Dahl* at paras. 11–12, affirming the factors established in *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd*. (1989), 36 B.C.L.R. (2d) 202 (CA).

[13] In essence, the parties' positions diverge only with respect to the interpretation of the contracts, which is a perfectly suitable matter for this Court to determine summarily, on a balance of probabilities, based on the documentary evidence before it and the relevant surrounding circumstances. This Court is able to find the necessary facts to decide the issues raised: Rule 9-7(15) of the *Supreme Court Civil Rules*.

BACKGROUND FACTS

[14] The background facts are relatively straightforward.

[15] In 2017, Mr. Nguyen became interested in cryptocurrencies ("crypto" in the vernacular of the industry). He began with small investments in a variety of different cryptocurrencies. Between 2018–2020, the crypto market declined, in what was known as a "crypto winter". Mr. Nguyen used that opportunity to invest more heavily in the crypto market, using whatever savings he had and also, drawing on his personal line of credit.

[16] The market recovered and, by September 2021, the value of Mr. Nguyen's crypto portfolio had grown to over $1.1 million dollars. At that time, each Bitcoin was worth over CAD$53,000.

[17] In early September 2021, Mr. Nguyen was introduced to Mr. Tambosso through a mutual friend. Mr. Nguyen understood that Mr. Tambosso needed to borrow some Bitcoin from him for an opportunity he was pursuing.

ISSUES

[18] The issues for determination are:

a) Were binding contracts formed between Mr. Nguyen and the defendants and if so, what are their terms?

b) If binding contracts arose, was there a breach and if so, did the defendants have a legal defence to avoid the contracts?

c) If bindings contracts were breached, and no defences arise, what are Mr. Nguyen's damages?

[19] The following are my findings of facts, followed by my conclusions on the issues.

WERE CONTRACTS FORMED AND IF SO, WHAT ARE THEIR TERMS?

[20] After their introduction, at a meeting on September 6, 2021, Mr. Tambosso explained to Mr. Nguyen and others that he had substantial cryptocurrency holdings and that, in the past, hackers and other "bad actors" had tried to scam him. He explained that, to protect his digital wallet, he was in the process of obtaining security software (the "Security Software"), which he advised was designed by a man named Satoshi Nakamoto, who is famously rumoured to have founded Bitcoin (a rumour which Mr. Nakamoto apparently denies).

[21] Mr. Tambosso explained that the Security Software required its customers to undergo a rigorous security protocol (the "Bypass Procedure"). Each stage of the Bypass Procedure cost several Bitcoins.

[22] Mr. Tambosso advised that he was currently in the last stage of the Bypass Procedure, which cost 18 Bitcoins. He needed a loan of that Bitcoin to complete this last stage. Mr. Tambosso was also seeking Bitcoin amounts to "reset" the timer on the procedure (failing which it would time out and more Bitcoin would be required).

[23] Mr. Tambosso also indicated that he needed the Bitcoin loan quickly. He said that, as time elapsed, the cost of each stage of the Bypass Procedure increased.

[24] Mr. Tambosso told Mr. Nguyen that the payoff could be huge: if the Bypass Procedure was successful, Mr. Nguyen would receive 1,750 Bitcoins as compensation for the loan. Mr. Tambosso also indicated that the loan would be short term, in that this phase of the Bypass Procedure would last 48 hours, and that he would repay the loan to Mr. Nguyen following that 48-hour period.

[25] Despite his own experience and knowledge in the crypto market, Mr. Nguyen gained some confidence about the substance of the proposed transaction because Mr. Tambosso spoke eloquently and competently about crypto. In addition, Mr. Tambosso's mention of Mr. Nakamoto, who apparently has achieved cult-like status in the crypto world, gave Mr. Tambosso's proposition additional credibility. Finally, Mr. Tambosso proposed a formal written agreement for the loan and recommended that Mr. Nguyen obtain independent legal advice ("ILA"), all of which gave Mr. Nguyen further comfort.

[26] On September 8, 2021, Mr. Nguyen received documents from friends that included documentation that Mr. Tambosso had sent them regarding the opportunity and the needed loans. Mr. Tambosso's documents included his driver's license and a screenshot of a blockchain wallet (presumably that of Mr. Tambosso) showing a balance in excess of $5.2 billion in Bitcoin.

[27] In mid-September 2021, Mr. Nguyen agreed to provide a short-term loan of 18 Bitcoins.

[28] Consistent with his earlier comment, Mr. Tambosso offered to have his counsel draw up a contract between the parties that reflected their agreement. Mr. Tambosso's counsel drew up the original draft of the contract. Mr. Nguyen sought ILA on that draft, and his own lawyer prepared another draft. Despite the involvement of lawyers on both sides, it appears that Mr. Tambosso and Mr. Nguyen took over the drafting exercise themselves and arrived at a final draft agreement.

[29] On September 21, 2021, Mr. Nguyen executed an agreement to loan 18 Bitcoins (the "First Contract").

[30] There is a preliminary issue as to which defendant or whether both of the defendants are parties to the First Contract. The First Contract refers to Mr. Tambosso as being the owner of the blockchain wallet. There is a statement that it is a binding agreement "between two parties". The body of the First Contract, in terms of the representations and other positive covenants, refers to Mr. Tambosso only. The only reference to DTKS is in the "Re" line, which refers to a "licensed agreement" between DTKS (Owner Mr. Tambosso) and Mr. Nguyen. No other references to DTKS are found. Mr. Tambosso executed the First Contract only in his personal capacity, and there is no indication he signed on behalf of DTKS.

[31] I find that, in the circumstances, and reading the First Contract as a whole, the only parties to the First Contract are Mr. Tambosso and Mr. Nguyen.

[32] At the beginning of the First Contract, there is a description of the Bypass Procedure, which Mr. Tambosso represents and warrants is true and correct, without any material omissions.

[33] The First Contract then provides the following key terms and conditions (I have underlined various definitions used that I have continued to use in these reasons):

> Upon completion of the Bypass Procedure, [Mr. Nguyen] has been advised that he will have access to more than 1,750 Bitcoin (the "BTC Carry").
>
> ….
>
> … Mr. Nguyen will directly satisfy the Required BTC [18 Bitcoins] on [Mr. Tambosso's] behalf by delivering the Bitcoin Pool [Mr. Nguyen's 18 Bitcoins] to the Satoshi address. Once the bitcoin is sent to the Bypass Procedure, it will complete after the Waiting Period [48 hours], where Mr. Tambosso will return the Bitcoin Pool (or an equivalent amount of Bitcoin) and deliver payment to Mr. Nguyen of the License Fee.
>
> …
>
> … Mr. Tambosso agrees that Mr. Nguyen will not be responsible for any act or omission of the Satoshi System, the Brokers, or any other third party whatsoever.
>
> Mr. Tambosso agrees to indemnify [Mr. Nguyen] and hold him harmless [of] non-compliance with any obligations or warranties under this Agreement. (Basically return the Bitcoin Pool if it fails, but more importantly return the pool plus the 1750 when the project timer completes in 48hrs).

> …
>
> [Mr. Tambosso] agrees that this agreement sets out the entire agreement between the two on the subject matter of this Agreement. …
>
> [Emphasis added.]

[34] On September 21, 2021, Mr. Nguyen transferred the Required BTC of 18 Bitcoins (in one instalment of 0.5 Bitcoin and a second installment of 17.5 Bitcoins) to the address provided by the Bypass Procedure.

[35] Almost immediately after the transfer, Mr. Tambosso contacted Mr. Nguyen requesting further Bitcoins. Mr. Nguyen was told that the Bypass Procedure demanded additional 7.5 Bitcoins.

[36] On September 22, 2021, Mr. Nguyen agreed to loan Mr. Tambosso additional 4 Bitcoins, being a portion of the amount demanded by the Bypass Procedure.

[37] Again, Mr. Tambosso agreed to execute an agreement to record the second loan.

[38] On September 22, 2021, Mr. Tambosso executed another contract, which adopted the same terms and conditions as the First Contract (the "Supplementary Contract") (collectively, the "Contracts"). Again, the Supplementary Contract referred to Mr. Tambosso as the owner of the blockchain wallet and stated that it was a binding agreement between the two parties. The Supplementary Contract provided (again underlined with the definitions):

> [Mr. Nguyen] holds a pool of Bitcoin in an amount equal to the Required BTC of 4 BTC (the "Bitcoin Pool") in consideration of a license fee equal to the BTC Carry – 533 BTC (the "License Fee"). Mr. Nguyen will grant to [Mr. Tambosso] a limited, license to use his Bitcoin Pool for the sole purpose of completing the Harvest Procedure, under the terms and conditions outlined in the previous executed agreement between the two parties (the "Limited License"). In connection with the Limited License, Mr. Nguyen will directly satisfy the Required BTC on [Mr. Tambosso's] behalf by delivering the Bitcoin Pool to Mr. Tambosso's Wallet Address (ID). One the bitcoin is sent to the Wallet, it will compete the final process, which at that time Mr. Tambosso will return the Bitcoin Pool (or an equivalent amount of Bitcoin) and deliver payment to Mr. Nguyen of the License Fee.
>
> [Emphasis added.]

[39] On September 22, 2021, Mr. Nguyen transferred the additional 4 Bitcoins to the Bypass Procedure wallet, pursuant to the Supplementary Contract.

[40] The Waiting Period (i.e. 48 hours) referenced in the First and Supplementary Contracts expired sometime on September 23 or 24, 2021.

[41] In their application responses (filed March 6, 2024 and April 2, 2024 respectively), the defendants do not deny that they (or Mr. Tambosso) entered into the Contracts. Rather, in the main, they say that there are justifiable reasons for their non-compliance. For example, in the initial response filed March 6, 2024, they state at para. 20:

> … While both parties may agree on certain factual elements, such as the existence of contracts and the non-return of principal amounts, the interpretation and ramifications of these facts remain subject to dispute.

[42] At this hearing, Mr. Tambosso advanced two main arguments.

[43] Firstly, he suggested that no binding contracts had been formed because he had made two deletions to the First Contract that had not been initialled by Mr. Nguyen. He also suggested that the Supplementary Contract was not binding because Mr. Nguyen had not signed it; only he had.

[44] These arguments are unpersuasive. The two deletions in the First Contract only refer to minor matters and do not alter the substance of it. Indeed, one of the deletions was to only cross off a duplicated word. Further, the fact that Mr. Nguyen did not sign the Supplementary Contract is of no moment, much the same as the signature of a creditor is not needed on a promissory note. To a large degree, the Supplementary Contract simply adopts the First Contract. In any event, Mr. Nguyen's agreement to the terms of the Supplementary Contract are established by his later sending of 4 Bitcoins in accordance with its provisions.

[45] Secondly, Mr. Tambosso suggested that Mr. Nguyen was simply an investor in a high-risk venture that involved sending Bitcoin to others. Mr. Tambosso emphasizes that he never received any of Mr. Nguyen's Bitcoin.

[46] This second argument must also fail. The import of the Contracts is that Mr. Tambosso, not others, was seeking an advance of Bitcoin from Mr. Nguyen. The fact that Mr. Tambosso did not directly receive the Bitcoin does not alter the fact that Mr. Nguyen sent it elsewhere, as directed by Mr. Tambosso, and for Mr. Tambosso's benefit – hence, the phrase in both Contracts that Mr. Nguyen was to "satisfy the Required BTC on [Mr. Tambosso's] behalf".

[47] In my view, looking at the Contracts themselves, the plain meaning is clear when considering them as a whole and giving the words their ordinary meaning: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 [*Sattva*] at para. 47. There is no ambiguity that might have required a further consideration of surrounding circumstances: *Sattva* at para. 57.

[48] By their clear terms, the Contracts provided that Mr. Nguyen agreed to provide Mr. Tambosso with a total of 22 Bitcoins (18 and 4) on the condition that Mr. Tambosso would repay these Bitcoins within 48 hours. Mr. Tambosso also agreed that, if the Bypass Procedure succeeded, Mr. Nguyen would be paid further Bitcoin, essentially as compensation for the loan (the BTC Carry of 1,750 and 533 Bitcoins).

[49] In other words, regardless of whether or not the Bypass Procedure succeeded, Mr. Tambosso was required by the terms of the Contracts to return the original 22 Bitcoins to Mr. Nguyen.

[50] There is no merit in Mr. Tambosso's suggestion that repayment to Mr. Nguyen of any Bitcoin was subject to the Bypass Procedure being successful. Such an interpretation of the Contracts is manifestly contrary to the clear import of he Contracts, including the First Contract which provides that "Mr. Tambosso would "return the Bitcoin Pool if it fails" – "it" being the Bypass Procedure.

[51] Essentially, by executing the Contracts, Mr. Tambosso assumed the risks associated with the Bypass Procedure, in that he was required to return Mr. Nguyen's Bitcoin whether it succeeded or not (but if it did, then pay the further amounts of the "BTC Carry").

PERFORMANCE OF THE CONTRACTS / DEFENCES

[52] After the 48-hour waiting periods under the Contracts elapsed, Mr. Nguyen demanded several updates from Mr. Tambosso about the status of the Bypass Procedure and repayment of the Bitcoin loans he provided to Mr. Tambosso.

[53] Mr. Tambosso indicated that the Bypass Procedure was again demanding more Bitcoins and that he was trying to negotiate further loans to cover those amounts.

[54] Over the next few months, Mr. Nguyen continued to demand updates from Mr. Tambosso. Mr. Tambosso provided occasional updates but no Bitcoin emerged to repay the loans. Mr. Nguyen last heard from Mr. Tambosso in April 2022.

[55] The evidence is uncontroverted that Mr. Nguyen fulfilled his side of the bargain by providing Mr. Tambosso with the 22 Bitcoins. The evidence is also uncontroverted that Mr. Tambosso has failed to abide by the terms of the Contracts and repay Mr. Nguyen his 22 Bitcoins. Mr. Tambosso admits as much in his RTCC.

[56] Assuming the Contracts are binding on Mr. Tambosso, he advances various other arguments that he says relieves him of performance of the Contracts, principally based on his contention that he was unable to do so given dispute with other persons (which he did plead in the RTCC).

[57] Consistent with my comments above, while these disputes that Mr. Tambosso faced or faces are unfortunate, the clear terms of the Contracts are such that they are irrelevant. Again, Mr. Tambosso clearly understood the Bypass Procedure, and he either did or should have realized the risks inherent in it. By the terms of the Contracts, Mr. Tambosso assumed any risks in the Bypass Procedure, particularly from his warranty as to the facts relating to the Bypass Procedure (without any omission) and that Mr. Nguyen was expressly not responsible for any “act or omission” of the Satoshi System or any other third party.

[58] Assuming the Contracts are valid and binding on him, Mr. Tambosso then seeks to be relieved of his obligations under the Contracts under the doctrines of mistake, frustration, and impossibility of performance. None of these defences, and others that I will discuss below, are pleaded in the RTCC. In any event, I conclude that these doctrines and other defences do not apply to the present circumstances so as to relieve Mr. Tambosso under the Contracts. They can be addressed and dismissed easily, as follows.

Mistake

[59] Mr. Tambosso alleges that he and Mr. Nguyen entered into the Contracts under a mistake of fact regarding the accessibility of the Bitcoin (presumably the original ones advanced by Mr. Nguyen).

[60] However, while a contract is void if it is concluded based on a common and mistaken assumption as to the existing facts, the doctrine of mistake does not apply where the parties have allocated the risk of a particular eventuality: *Le Soleil Hotel & Suites Ltd. v. Le Soleil Management Inc.,* 2009 BCSC 1303 [*Le Soleil*] at paras. 360–361.

[61] As discussed above, Mr. Tambosso and Mr. Nguyen allocated any risks in the Bypass Procedure in the First Contract, either under his warranty or by the express clause that stated that Mr. Tambosso's obligation was to "return the Bitcoin Pool if it [the Bypass Procedure] fails". In other words, the risk was all on Mr. Tambosso.

Frustration / Impossibility of Performance

[62] Mr. Tambosso argues that the doctrine of frustration applies due to his inability to access the Bitcoins due to "technological limitations". He suggests that this is an unforeseen event, rendering performance of the Contracts impossible.

[63] Frustration is a legal mechanism that recognizes that, where it is not reasonable to place the risk of a particular event on either party to a contract, the contract and the responsibilities under it should be discharged: *Folia v. Trelinski*, 1997 CanLII 469 (B.C.S.C.) at para. 17.

[64] A contract is frustrated when a situation arises for which the parties have made no provision, and its performance becomes something radically different from that which was undertaken in the contract. The supervening event must have been unforeseeable, not simply unexpected. A contract will not be frustrated simply because the future did not unfold as the parties hoped that it would: *Le Soleil* at paras. 362–364.

[65] The doctrine of frustration is inapplicable where parties have made specific provision for supervening circumstances: *Naylor Group Inc. v. Ellis-Don Construction Ltd.,* 2001 SCC 58 at paras. 53–55.

[66] The application of the above principles makes clear that the doctrine of frustration does not apply here. The possibility of the Bypass Procedure failing was clearly contemplated in the First Contract in the clause that read “return the Bitcoin Pool if it [the Bypass Procedure] fails”. Before he embarked on this venture, Mr. Tambosso was well aware of the “technological limitations” regarding his inability to access the Bitcoins that became within the control the Satoshi System.

[67] Although it appears to be, in hindsight, that Mr. Tambosso was either scammed or has otherwise become involved in some kind of broader nefarious scheme, neither absolve him of his obligations to repay Mr. Nguyen the original Bitcoin under and in accordance with the Contracts.

[68] The basis of the doctrine of frustration is impossibility, not difficulty in performance: *Folia* at paras. 15–16, citing Gerald Fridman, *The Law of Contract*, 3rd ed. (Toronto: Carswell, 1994) at p. 639.

[69] Mr. Tambosso cites *Taylor v. Caldwell,* [1863] EWHC QB J1, where a music hall was destroyed by fire. The music hall owners had a contract to rent the hall to the other party. The hall unexpectedly burned to the ground. The court held that both parties were excused from their obligations under the contract because it became impossible to perform it, and neither party was at fault for the fire.

[70] Unlike *Taylor*, Mr. Tambosso clearly made choices concerning the involvement of third parties who were outside of Mr. Nguyen's (or his) control. By Mr. Tambosso's account, it was these third parties who did not perform under the Bypass Procedure, an event that he says caused him to be unable to fulfill his obligations under the Contracts.

[71] Under the First Contract, Mr. Nguyen assumed no liability or risk concerning the actions of third parties. Mr. Tambosso agreed in the First Contract that Mr. Nguyen was not be responsible for any act or omission of the Satoshi System, the Brokers, or any other third party whatsoever.

[72] Mr. Tambosso also claims that he cannot perform his obligations under the Contracts because he does not have the funds to do so. However, a lack of money that affects a party's ability to perform an obligation is not a frustrating event, as it does not alter the nature or purpose of the obligation itself: *Wilkie v. Jeong*, 2017 BCSC 2131 at paras. 36–38.

[73] The First Contract clearly states, in plain language, that Mr. Tambosso was to return Mr. Nguyen's original 22 Bitcoins, even if the Bypass Procedure failed. Mr. Tambosso's inability to access funds to secure those Bitcoins does not alter or relieve him of his obligations under the Contracts.

[74] The risk of the Bypass Procedure failing was foreseeable by Mr. Tambosso and was clearly contemplated in the Contracts.

Other Defences

[75] Mr. Tambosso's amended application response raises a number of other issues upon which he opposes this summary trial.

[76] Citing an UK case, *Derry v. Peek*, [1889] UKHL 1, Mr. Tambosso claims he was the victim of fraudulent deception by a third party. As previously discussed, this is another attempt to assert that Mr. Tambosso's dispute with third parties is a defence to his breach of the Contracts. There is no merit in this argument. Such

disputes do not alter Mr. Tambosso's contractual obligations. If Mr. Tambosso has been fraudulently deceived by others, he may have legal recourse to address that matter.

[77] Mr. Tambosso also asserts that Mr. Nguyen was negligent and failed to exercise due diligence in this investment scheme. He therefore suggests that Mr. Nguyen should bear responsibility for his loss, citing *Blyth v. Birmingham Waterworks Co.*, [1856] EWHC Exch J65.

[78] The negligence argument has no merit. Mr. Tambosso does not refer to any evidence that Mr. Nguyen owed the defendants (or anyone else) a duty of care, and/or that he breached a corresponding standard of care. At its core, this argument seem to boil to down to Mr. Tambosso contending that it was Mr. Nguyen's fault if he unwisely relied on Mr. Tambosso to comply with his contractual obligations, including by "reinvesting again despite knowing the outcome failed previously". This is nonsensical. Further, the Contracts, in the context of the surrounding circumstances, are such that Mr. Tambosso represented that he had substantial expertise in the crypto market, and that he fully understood and had voluntarily and unilaterally decided to engage the Security Software and the Bypass Procedure, a representation that Mr. Nguyen relied on.

[79] Mr. Tambosso also argues that Mr. Nguyen breached the confidentiality provisions of the Contracts, and that Mr. Nguyen's lawsuit and the disclosed evidence on this application constitutes a breach of his rights under s. 8 of the *Canadian Charter of Rights and Freedoms* [*Charter*].

[80] This arguments also fails. The *Charter* does not apply to disputes between private individuals. Mr. Nguyen's exercise of his right to bring this action does not violate any *Charter* rights. Any privacy concerns of Mr. Tambosso can be raised in this proceeding. In fact, Mr. Tambosso applied at the outset of this hearing for sealing orders and to close the courtroom for this hearing, which application was denied based on his evidence and arguments.

[81] Further, Mr. Tambosso has not adduced any evidence to prove a breach of confidentiality on Mr. Nguyen's part; nor does this represent a defence to a breach of contract in any event. The evidence indicates that there was regular disclosure of information between Mr. Tambosso, Mr. Nguyen and other persons.

[82] Finally, Mr. Tambosso claims that he entered into the Contracts under duress, which renders the Contracts voidable, citing *Barton v. Armstrong*, (1976) AC 104. There is no evidence to substantiate a claim that Mr. Nguyen coerced Mr. Tambosso into entering into the Contracts, nor has Mr. Tambosso satisfied the evidentiary foundation for a claim of duress.

[83] I agree with Mr. Nguyen's counsel that Mr. Tambosso appears to conflate duress as a result of pressure from third parties with duress imposed by Mr. Nguyen. The simple truth is that it was Mr. Tambosso who sought loans from Mr. Nguyen. Mr. Nguyen set out the conditions upon which he would advance the Bitcoin. Mr. Tambosso had the choice of accepting those conditions or walking away from the deal. He chose the former. No duress is evident in what became a very straightforward *quid pro quo* arrangement among fairly sophisticated adults.

[84] In summary, none of the defences asserted by Mr. Tambosso apply to these facts. None of them are supported by the evidence.

MR. NGUYEN'S DAMAGES

[85] The usual measure of damages for breach of contract is what is required to put the innocent party in the same position as though the contract had been carried out: *Nelson v. Gokturk*, 2021 BCSC 813 at paras. 28 and 32. As here, the plaintiff in *Nelson* also claimed breach of contract relating to his sale and delivery of Bitcoins to the defendant.

[86] Damages for breach of contract are to be assessed on the date of the breach: *Nelson* at para. 29, citing *De Cotiis v. Viam Holdings Ltd.,* 2009 BCSC 692 [aff'd 2010 BCCA 368], citing *Mavretic v. Bowman* (1993), 76 B.C.L.R. (2d) 61 (C.A.).

[87] That approach is appropriate here, in that the value of the Bitcoins which were to be returned to Mr. Nguyen should be as at the date of the breach.

[88] Mr. Nguyen has provided historical data indicating that the value of a Bitcoin on the date of the breach of the First Contract (September 23, 2021) was $56,849.67. This translates into a value of the 18 Bitcoins due under the First Contract at $1,023,294.06.

[89] On the date of the breach of the Supplementary Agreement (September 24, 2021), the value of a Bitcoin was $54,203.04. This translates into a value of the 4 Bitcoins due under the Supplementary Agreement at $216,812.16.

[90] In total, the value of the 22 Bitcoins which Mr. Tambosso was required to deliver to Mr. Nguyen under the Contracts, as of the date of the breaches, is $1,240,106.22.

ORDERS

[91] Mr. Nguyen is awarded damages against Mr. Tambosso for $1,240,106.22.

[92] Mr. Nguyen is also awarded court order interest on the above amount from September 24, 2021.

[93] Finally, as he has been successful, Mr. Nguyen is awarded his costs of this action.

"Fitzpatrick J."