

THE EASTERN CARIBBEAN SUPREME COURT  
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO.: ANUHCV2020/0300

BETWEEN:

CRAIG STEVEN WRIGHT

Claimant/Respondent

AND

ROGER KEITH VER

Defendant/Applicant

**Appearances:**

Mr. Anthony Astaphan SC, with him, Dr. Errol Cort for the Claimant/Respondent

Mr. Dane Hamilton KC, with him, Mr. Victor Elliott-Hamilton for the Defendant/Applicant

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2022: July 22<sup>nd</sup>

2023: February 27<sup>th</sup>  
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**JUDGMENT**

- [1] **ROBERTSON, J.:** The substantive proceedings are defamation proceedings in which the Claimant seeks damages and injunctive relief restraining the Defendant from further publication of what the Claimant contends are defamatory publications and the Claimant also seeks a correction order pursuant to section 32 of the Defamation Act 2015.
- [2] The Defendant contends that the claim ought to be dismissed as the Defendant does not reside in the jurisdiction; that the claim ought to be struck out as an abuse of the process of the Court under the provisions of CPR 26.3 (1) (c) or alternatively that the claim be stayed on the ground of *forum non conveniens* as the claim has no real and substantial connection to Antigua and Barbuda.

[3] The grounds of the Defendant's Application are:

- (1) The alleged defamatory publication was made online.
- (2) The Defendant does not reside in Antigua and Barbuda nor does the Defendant carry on any business operations within Antigua and Barbuda.
- (3) The Defendant is the holder of a passport from the State of St. Kitts and Nevis. The Defendant maintains a residence in that state, but resides principally in Japan.
- (4) None of the alleged postings were made in Antigua and Barbuda nor does the statement of claim allege that citizens of Antigua and Barbuda were specifically targeted.
- (5) Neither party has a substantial reputation within the state of Antigua and Barbuda.
- (6) At the time of the publication of the statements the parties' social and business ties were outside of the jurisdiction of Antigua and Barbuda.
- (7) The viewership of the alleged publication largely consists of persons residing within the United States of America.
- (8) Many potential witnesses who would be required to attend the trial reside outside of Antigua and Barbuda.
- (9) Publication within the jurisdiction was minimal and as such did not amount to a real and substantial tort within the jurisdiction.
- (10) The Defendant provided evidence in support of the Defendant's position. The application was strongly opposed, and the Claimant also provided evidence in opposition to the application.

## **An Overview**

[4] The Claimant indicates that he is a computer scientist and entrepreneur. The Claimant also indicates that he is the person behind the pseudonym "Satoshi Nakamoto" and that he is a highly active member of the Bitcoin industry. The Claimant contends that he is the original creator of Bitcoin.

[5] The Defendant's evidence is that he is an angel investor and commentator within the Bitcoin and cryptocurrency industries. He states that he has invested in Bitcoin start-up companies since 2011 and that he is currently involved in various Bitcoin related projects including Blockchain.info, Bitpay.com, Kraken.com, Shapeshift.io, Luxstack.com and Safello.com.

[6] The Parties to this action have worked together. Throughout the time that the Defendant was working with the Claimant the Defendant was residing in Japan. The Defendant contends that his country of residence is widely known amongst the Bitcoin community and that reference to the country of his residence has been made in various online articles. The Defendant also states that the place of residence of the Defendant is also known to the Claimant.

[7] The Defendant explained that since its creation, Bitcoin has been constrained by the fact that the size of the blocks on the Bitcoin Blockchain, a system in which a record of transaction made in Bitcoin

are maintained, was only one megabyte. This has meant that only a small number of transactions (roughly three to ten) could be processed across the globe each second. This is substantially less than other payment systems, such as Visa. This issue was commonly referred to in the industry as the 'Bitcoin scalability problem'.

- [8] As Bitcoin grew in popularity, certain developers, miners, and investors recognised the need to address the 'Bitcoin scalability problem'. The Defendant indicates that he and the Claimant were part of this group and shared the view that the block size of Bitcoin needed to be increased to allow for more transactions per second.
- [9] In the summer of 2017, a group of developers, backed by the Defendant and the Claimant, prepared a code change to the Bitcoin in order to increase the block size, thereby allowing it to process more transactions per second. The change, known as a 'hard fork', took effect on August 1, 2017. As a result, the existing Bitcoin Blockchain and the new currency, called Bitcoin Cash, split into two.
- [10] The Defendant states that he and the Claimant were proponents of Bitcoin Cash. The Defendant further indicates that he is of the view that Bitcoin Cash is the real Bitcoin and will have the bigger market cap, trade volume and user base in the future. He says that at that time he and the Claimant were closely aligned in their views, and spoke at events together, such as the "Shape the Future" Blockchain Global Summit in Hong Kong on September 20, 2017.
- [11] In 2018, two competing versions of updates for Bitcoin Cash emerged. One version was Bitcoin ABC (Adjustable Blocksize Cap) which has, as one of its key features, moving Bitcoin Cash beyond money transfers to support smart contracts (digital agreements that are executed automatically when certain conditions are satisfied). Bitcoin ABC limits the block size of Bitcoin Cash to 32MB, but there is an intention of removing the size limit.
- [12] The alternate version is called Bitcoin SV, which stands for "Satoshi's Vision". Proponents of this upgrade argue that Bitcoin Cash should be used exclusively as a form of "stable global money", and that this is a true reflection of the ideals behind Bitcoin's foundation. It currently has a default maximum block size of 128MB. The Claimant is one of the principal advocates of Bitcoin SV.
- [13] The Defendant states that tension between the parties arose on November 2, 2018, when the Defendant declared his support for Bitcoin ABC. The Defendant contends that the Claimant took issue with the Defendant's position and on November 3, 2018, the Claimant sent a disparaging email to the Defendant.
- [14] The Claimant says at the time of his email to the Defendant when he called the Defendant "my enemy", the Defendant had recently declared his support for a rival digital currency and that he was

angry and felt betrayed by the Defendant. The Claimant contends that he felt angry and betrayed as in a very short space of time, a man who had been a trusted colleague became a commercial rival and competitor. He says that anything he has said to the Defendant which he has taken to be a threat was only ever directed, and intended to be directed, towards his business, Bitcoin Cash.

[15] The substantive litigation on defamation arose because of several publications which the Claimant contends were made by the Defendant. The publications in question are:

- (1) A publication and/or broadcast made by the Defendant on or around April 15, 2019, on the official Bitcoin.com YouTube channel titled "Special Message to Craig Wright," in which the Defendant stated the following: "*Craig Wright is a liar and a fraud.*" ("**Video**").
- (2) A publication and/or broadcast made by the Defendant on or around May 3, 2019, on the Defendant's twitter account titled "*My response to CSW's 100,000 GBP lawsuit*" in which the Defendant stated "*Craig Wright is a liar and a fraud. So sue me. Again.*" ("**Twitter Video**").
- (3) A publication made by the Defendant on or around May 3, 2019, which stated the following: "*Faketoshi, claiming to be Satoshi Nakamoto when you are not. Craig Wright is a cockwombling bunglecunt Faketoshi*" ("**BKK Shadow Reply**").

[16] The Claimant also referred to the following publication:

- (1) A publication made by the Defendant on or around June 11, 2019, on the Defendant's twitter account with the words "*Unpopular but true opinion: BSV is more than just CSW, Popular and true opinion: CSW is a liar and a fraud.*" ("**Tweet dated June 11, 2019**").

## The Law and Analysis

### A Viable Claim

[17] The matter of whether the claim ought to be dismissed or struck out as an abuse of the process can be quickly addressed. The Claimant and the Defendant are citizens of Antigua and Barbuda with interests, business or otherwise in the jurisdiction. The Claimant contended that there have been publications in Antigua and Barbuda and that the Claimant is known in the jurisdiction. The matter of whether there was actual publication and whether such publication is defamatory in the circumstance are triable issues and are matters which are best left to be decided at the trial. It is noted that a single download could create a new publication and cause of action.

### ***Forum Non Conveniens***

[18] A Defendant who wishes to dispute the jurisdiction of the Court may do so by making an application<sup>1</sup>. The Defendant in these proceedings has raised that another jurisdiction, the United States of America generally and the State of California, is a more appropriate forum.

[19] On the matter of the more appropriate forum, *forum non conveniens*, this Court will refer to the often-quoted case of **Spiliada Maritime Corporation v Cansulex**<sup>2</sup>. In that case Lord Goff noted that:

“The basic principle is that a stay will only be granted on the ground of *forum non conveniens* where the court is satisfied that there is some other available forum, having competent jurisdiction, which is the appropriate forum for the trial of the action, i.e. in which the case may be tried more suitably for the interests of all the parties and the ends of justice.

[20] On the matter of the more appropriate forum the burden of proof falls upon the Defendant to discharge and where the Court finds that there is no clear forum which is appropriate a Court would generally refuse to grant the stay. In assessing the forum, the Court would consider where the real and substantial connection rests, in this regard the Court considers where the cause of action arose, the availability of the witnesses, the law governing the relevant proceedings, the places where the parties reside and/or where the parties conduct business operations. The Court would also consider the administration of justice, legitimate personal and jurisdictional advantages of the parties.

[21] In circumstances where a Court has determined that the foreign forum is a more appropriate forum the burden shifts to the Claimant to show that, notwithstanding the substantial connections, the Court should, in the interest of justice, decline the application for the stay.

### **The Claimant’s Claim and Presence in the Jurisdiction**

[22] In the circumstances of this case the Claimant contends that the Defendant has caused publications via the Bitcoin.com, YouTube channel and Twitter accounts which have defamed the Claimant to have been published in the jurisdiction. The Claimant contends that he has several interests and ties to the jurisdiction of Antigua and Barbuda and indicates that there are consequential reputational harm arising from the publications. As it relates to the Claimant’s connection within the jurisdiction the Claimant contends that:

(1) The Claimant is a citizen of Antigua and Barbuda and rents a villa in Antigua where he resides when he visits the jurisdiction. The Claimant intends to build a house in Antigua.

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<sup>1</sup> CPR 9.7 (1) to (3).

<sup>2</sup> [1987] A.C. 460.

- (2) The Claimant travels to the jurisdiction mainly for business purposes and is the Chief Science Officer at nChain, which the Claimant describes as a global leader in research and development of blockchain technologies. Additionally, the Claimant contends that he has committed to the provision of support and advice, in the jurisdiction, to new ventures in his field.
- (3) The Claimant intends to continue to be involved in blockchain technology and development of bitcoin in Antigua and Barbuda. The Claimant referred to comments made on a programme in the media in which there was appreciation for the work done by the Claimant in the areas of digital assets.
- (4) The Claimant was, in May 2019, invited to review and comment on the proposed draft Digital Assets legislation in the jurisdiction and was put in direct contact with the legislators.
- (5) The Claimant has had discussion on investing in the construction in real estate development projects in Antigua.
- (6) The Claimant visits Antigua with his family for leisure and intends to have his children obtain citizenship for Antigua and Barbuda.

[23] It is accepted that where the publication in question is an internet posting such an item is deemed to be published when the item is downloaded<sup>3</sup>. The Claimant contends that publication occurred in Antigua and Barbuda. In the case of defamation, the proof of publication rests with the Claimant.

[24] The Defendant has provided its data on the publications.

### ***YouTube Publication***

[25] The Defendant has provided data that the viewers of, the Bitcoin.com YouTube channel are predominantly based in the United States and that the geographical locations of viewers of the Bitcoin YouTube channel between February 25, 2012, and September 28, 2020 show approximately 26.2% of the total number of views were from viewers based in the United States, 16% of the total number of views were from internet users based in India and 5.7% of the total number of views, were from internet users based in the United Kingdom. The statistics provided by the Defendant also show that the metrics from the YouTube channel shows that 21 views originated from Antigua and Barbuda throughout the lifetime of the channel. It is noted that this refers to the views on the channel not necessarily the specific video.

### **Defendant's Twitter Account**

[26] In relation to the second publication the Defendant noted that the audience dashboard on Twitter provide information which assists in determining where the Defendant's Twitter followers are based. The Defendant produced a screenshot of this webpage as it appeared on June 23, 2019, which

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<sup>3</sup> *Al Amoudi v Brisard* [2007] 1 W.L.R. 113.

shows that 29% of the audience is based in the United States while only 7% is based in the United Kingdom. The Defendant admits that it is not possible to tell from these statistics who actually read the relevant Tweet, but the Defendant is of the view that it could be inferred that the United States would have been where the highest number of readers of the second publication of interest.

### **BKKShadow Reply**

[27] As it relates to BKK Shadow Reply, the third publication, the Defendant indicates that he does not know whether the Twitter user with the handle @BKKShadow, is the author of the third publication. The Defendant states that it is his belief that the user of this handle is one of his 582,000 followers on Twitter. The Defendant also indicates that the Twitter profile suggests that the user is based in Bangkok, Thailand. The Defendant says he only became aware of this third publication when it was drawn to his attention in the proceedings previously brought by the Claimant in the United Kingdom.

[28] It is noted that in these proceedings a relevant matter for consideration is whether there has been publication within the jurisdiction. In this regard evidence may be required from and about these platforms. The business headquarters of platforms for YouTube and Twitter are in the United States of America and that persons associated with the companies or persons with knowledge of data relevant to the access of publications on the platforms are likely to be required to provide evidence in the proceedings.

### **Subject of the Litigation**

[29] A relevant issue for determination in defamation suit is the veracity of the Claimant's representation that he is Satoshi Nakamota. Satoshi Nakamota being the pseudonym used by the inventor(s) of Bitcoin. In the examination of the veracity of the Claimant's representation evidence by persons involved in the development of bitcoin, cryptocurrency, and cryptographic is likely to be required. The consensus is that this expertise reside outside of this jurisdiction.

### **Matters Relating to Reputation**

[30] The evidence before the Court suggests that the Claimant has a presence in both this jurisdiction and the United States of America which can be subject to reputational harm. The Claimant raises that publication and reputational harm ought to be considered in the context of the population size. Thus, a few publications in a small country may have as equal impact as more frequent publications in a bigger country.

[31] The Claimant's position is that the size and population of Antigua vis-à-vis the size and population of the other countries such as the United States or United Kingdom is a relevant factor when comparing viewership numbers. The Claimant contends that one ought not to only compare the number of online viewers in the United States with the smaller population of Antigua. The Claimant

argues that in a smaller country such as Antigua and Barbuda, the risk of damage is likely to be higher as it only takes one or two downloads to establish harm caused.

[32] The Claimant contends that he has been told by several people in Antigua, including his attorney at law and personnel associates of the Claimant's business interests that they have seen the defamatory material and the Claimant indicates further that the defamatory material is currently still accessible in the jurisdiction and therefore the material is therefore susceptible to be further disseminated.

[33] The Defendant has presented evidence that the Claimant is known within the United States of America and has been prominently featured in the media. The Claimant, for example, has been featured in articles in the New York Times, The New York Post, Wired Magazine, Bloomberg News and on an online article by CNBC. These are publications based in the United States of America.

[34] However, the Counsel for the Claimant reminds that the matter is not a "numbers' game" and that "even publication to a single individual can be highly damaging" and notes that the Claimant is entitled to protect his reputation in Antigua and Barbuda particularly since the Claimant advises the Government of Antigua and Barbuda on crypto legislation and advises a major corporation and intends to invest in the jurisdiction.

### **Whether a Court in the United States of America can exercise Jurisdiction**

[35] The Claimant and the Defendant presented evidence from persons, experts, which speak to the ability of the court in United States of America to exercise jurisdiction. The Claimant presented evidence from Gregory Morvillo and the Defendant provided a report from John J. O'Brien. Both experts provided detailed perspectives on whether a court in the State of California, United States of America, could exercise jurisdiction. Gregory Morvillo also provided a report on the access to the courts in New York.

[36] A summary of each report on the forum of the State of California is stated hereunder.

[37] As it relates to California, Mr. Morvillo states that its courts require personal jurisdiction over the defendant. He says that there are two methods of establishing personal jurisdiction over a defendant in California. First an individual defendant may be subject to "general" personal jurisdiction in California if he maintains "substantial, continuous and systematic contacts" in California."<sup>4</sup> "For an individual, the paradigm forum for the exercise of general jurisdiction is in the individual's domicile."<sup>5</sup>

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<sup>4</sup> *Strasner v. Touchstone Wireless Repair and Logistics, LP* (2016) 5 Cal.App.5th 215, 222; *Core-Vent Corp. v. Nobel Industries AB* (9th Cir. 1993) 11 F.3d 1482, 1484-85.

<sup>5</sup> *Williams v. Kula* (S.D. Cal. Dec. 29, 2020) 20-CV- 1 120 TWR (AHO), 2020 WL 7770915, at \*2 (quoting *Bristol-Myers Squibb v. Superior Court* (2017) 137 S.Ct. 1773, 1780).

[38] The second manner of establishing personal jurisdiction over a defendant in California is “specific” personal jurisdiction pursuant to California Code of Civil Procedure Section 410.10, California’s “long-arm statute.” California’s long-arm statute permits a court to exercise personal jurisdiction over a non-resident defendant to the full extent permitted by the due process clause of the U.S. Constitution.<sup>6</sup> In order to satisfy due process requirements, the non-resident defendant must have “minimum contacts” with California such that the exercise of personal jurisdiction over that defendant does not offend the traditional notions of fair play and substantial justice.<sup>7</sup>

[39] A non-resident defendant may be subject to “specific” personal jurisdiction in California if (1) he “performs an act or consummates a transaction within California, purposefully [directing activities at the forum state or] availing himself of the privilege of conducting activities in California and invoking the benefits and protections of its laws, [2] the claim at issue arise out of or result from the defendant’s forum-related activities; and [3] exercise of jurisdiction is reasonable.”<sup>8</sup>

[40] Additionally, a non-resident defendant will be found to have purposefully directed activities at the forum state only if he “(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.”<sup>9</sup>

[41] For a Californian court to exercise personal jurisdiction over a non-resident defendant in a defamation case, the defendant must have intentionally aimed, targeted, or directed purportedly defamatory statements at or to California.<sup>10</sup>

[42] Mr. Morvillo states that based on the foregoing there are no facts of which he is aware that demonstrate that a court in Californian would have personal jurisdiction over the Defendant with respect to Claimant’s defamation claim. Mr. Morvillo notes that the Defendant does not live in California and has renounced his U.S. citizenship.

[43] He says that he is unaware that the Defendant purposefully directed any activity, conduct, or statements toward California in relation to the claims pending in Antigua sufficient to satisfy the requirements of California’s “long-arm statute” with respect to the Claimant’s defamation claim.

[44] Mr. Morvillo states that fundamentally even before issue of personal jurisdiction is considered, the forum must also bear some legitimate relationship to the parties or their dispute. If a court in California finds that “in the interest of substantial justice” an action filed in California should be adjudicated

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<sup>6</sup> Code Civ. Proc. § 410.10.

<sup>7</sup> *F. Hoffman-La Roche, Ltd. v. Superior Court* (2005) 130 Cal.App.4th 782, 795 (quoting *Int’l Shoe Co. v. Washington* (1945) 326 U.S. 310, 316).

<sup>8</sup> *Siddiqui v. Schneider* (C.D. Cal. Sept. 10, 2019) CV 10-0706-DOC (JDEx), 2019 WL 8129081, at \*2.

<sup>9</sup> *Siddiqui*, *supra*, 2019 WL 8129081, at \*2; *Boschetto v. Hansing* (9th Cir. 2008) 539 F.3d 1011, 1016.

<sup>10</sup> *Burdick v. Superior Court* (2015) 233 Cal.App.4th 8, 24-26; *ViaView, Inc. v. Retzlaff* (2016) 1 Cal.App.5th 198, 218-19; *Kula*, *supra*, 2020 WL 7770915, at 5-6.

elsewhere, the court has the express authority to stay or dismiss the action.”<sup>11</sup> If neither the litigants nor the public have a real or genuine interest in having the matter litigated in California, the California courts may dismiss an action under the doctrine of *forum non conveniens* – even without any request to do so by the parties themselves.<sup>12</sup>

[45] Mr. Morvillo posits that even if the Defendant were to grant his consent to jurisdiction in California, it is possible that California courts would decline to exercise jurisdiction over a matter between two non-California parties relating to conduct that neither occurred in, nor was directed at, California.<sup>13</sup>

[46] John J. O'Brien indicated that there are several recognisable bases which are consistent with United States federal due process standards to access the forum. These are general appearance in the action; contractual consent; or “minimum contacts” between defendant and the forum state.

[47] *General appearance*. California may assert personal jurisdiction over non-resident defendants who make a general appearance in the action.<sup>14</sup> A general appearance is participation in the action in a manner that recognizes the court's jurisdiction before filing a motion to quash service of process.<sup>15</sup>

[48] *Contractual consent*. The Courts in the State of California may also exercise personal jurisdiction over a non-resident who has contractually consented in advance to such jurisdiction<sup>16</sup>.

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<sup>11</sup> Cal. Code Civ. Proc. § 410.30(a) (“When a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just.”).

<sup>12</sup> See, e.g., *Quanta Computer Inc. v. Japan Communications Inc.* (2018) 21 Cal.App.5th 438, 445-46 (“The questions presented by the court's ruling are whether a trial court may take this action on its own motion, and if so, whether the trial court acted within its discretion. We conclude the trial court could act sua sponte, and in doing so, the court acted within the bounds of reason and did not abuse its discretion. The issue of a trial court's sua sponte authority to raise *forum non conveniens* issues is resolved by the plain language of section 430.10, subdivision (a): “When a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just.”) (emphasis in original); *Baltimore Football Club, Inc. v. Superior Court* (1985) 171 Cal.App.3d 352, 364-65 (holding that exercise of personal jurisdiction over out-of-state defendants in action brought by non-California plaintiffs was improper because “California has no interest in adjudicating the disparate claims of non-residents under sister state laws against non-California defendants.”); *Appalachian Ins. Co. v. Superior Court* (1984) 162 Cal.App.3d 427, 434, 437-38 (confirming that doctrine of *forum non conveniens* “is typically applied to litigation where all of the parties are out-of-state residents and where the cause of action arose outside the forum state”) (internal quotations and citations omitted).

<sup>13</sup> See *Quanta Computer*, 21 Cal.App.5th at 447-48 (affirming dismissal of action brought by and against non-California parties because the parties lacked “any connection to the state other than [their] forum selection clause, and California has no meaningful public interest whatever in retaining the action”); see also *Dailey v. Dallas Carriers Corp.* (1996) 43 Cal App.4th 720, 725 (“California does not blindly follow a ‘plaintiff's choice rule in forum selection or choice of law cases. Even where both parties explicitly agree to a choice of law or forum, California courts will respect that choice only if it has a reasonable basis and the foreign state's law does not conflict with a fundamental policy of California.”).

<sup>14</sup> California Code Civil Procedure § 410.50(a); *Fireman's Fund Insurance Company v. Sparks Construction, Inc.* (2004) 114 Cal.App.4th 1135, 1145 [by making general appearance, a defendant forfeits any objection to defective service even if unaware such objection was available].

<sup>15</sup> (*Factor Health Management v. Apex Therapeutic Care, Inc.* (2005) 132 Cal.App.4th 246, 250.)

<sup>16</sup> *National Equipment Rental Ltd. v. Szukhent* (1964) 375 US 311, 315-316.

[49] *Minimum Contacts*. The Courts in the State of California may also exercise personal jurisdiction over non-residents who have “minimum contacts” with the state. Minimum contacts refer to the relationship between the non-resident and the state is such that the exercise of jurisdiction does not offend “traditional notions of fair play and substantial justice” under the United States Constitution.<sup>17</sup> The courts in California are authorized to exercise jurisdiction over parties “... on any basis not inconsistent with the Constitution of [California] or of the United States.”<sup>18</sup>

[50] Mr. O’Brien also notes that a non-resident defendant may be subject to California jurisdiction if his suit-related conduct creates a substantial connection California.<sup>19</sup>

[51] With respect to conduct on “interactive websites,” such as YouTube and Twitter, Mr. O’Brien states that the exercise of jurisdiction must be determined “by examining the level of interactivity and commercial nature of the exchange of information that occurs on the website.”<sup>20</sup> He further states that in California, whether website interactivity by itself establishes jurisdiction is presently unclear.

[52] He goes on to say that the total views in the United States of the Defendant’s alleged defamatory statement, and the total subscribers in the United States (and, more specifically, in California) to the subject Internet channel(s), are unclear, but he understands them to be substantial based on YouTube’s and Twitter’s headquarters and well-known, immense popularity in California.

[53] Mr. O’Brien notes that the Claimant’s contact with California is irrelevant. There is no requirement that a Claimant reside in California for its courts to exercise jurisdiction over a non-resident defendant<sup>21</sup>.

[54] Mr. O’Brien notes that if the Defendant generally appears and/or consents to California jurisdiction, the “minimum contacts” test (sometimes referred to as the “effects test”) is inapplicable and becomes irrelevant. “Minimum contacts” is an alternative method of establishing jurisdiction.

## **Whether the Forum of the United States of America is Practically Available**

### **Connections to the United States of America**

[55] The Court must also weigh in the balance whether the alternate forum does present as a real option for the hearing of the suit. In this regard the Court considers, among other things whether there are

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<sup>17</sup> *Burger King Corp. v. Rudzewicz* (1985) 471 US 462, 475.

<sup>18</sup> California Code of Civil Procedure § 410.10.

<sup>19</sup> *Walden v. Fiore* (2014) 571 US 277, 284.

<sup>20</sup> *Jewish Defense Organization, Inc. v. Rambam* (1999) 72 Cal.App.4th 1045, 1060; *Snowney v Harrah’s Entertainment, Inc.* (2005) 35 Cal.4th 1063, 1054.

<sup>21</sup> *Keeton v Hustler Magazine, Inc.* (1984) 465 US 770,780.

any restrictions to the Claimant accessing the jurisdiction, the jurisprudence, and the administration of justice of the other forum and whether there are advantages and disadvantages to the parties of the hearing in the alternate forum.

[56] In the circumstances of this case, it is noted that there is no guarantee that court in the State of California would be available to the parties. If it is taken that State of California is a forum which is open to the parties in order for the Defendant to succeed on its application, the Defendant must show that the alternate forum is clearly or distinctly more appropriate. In the circumstances of this case both the Claimant and the Defendant are citizens of Antigua and Barbuda, and both have business interests in Antigua and Barbuda. The Defendant has admitted that the Defendant has hosted a number of “Bitcoin Cash Meetups” which are small social networking events in many jurisdictions including Antigua and Barbuda. The Claimant also contends that the Defendant has been involved in digital asset development in the jurisdiction.

[57] On the matter of connection to the United States of America it is noted that neither party resides in that jurisdiction although they do have business interests. Additionally, neither party holds citizenship to the United States of America.

[58] A Court would not easily disturb a Claimant’s access to its courts unless it is of the view that the Defendant has shown that the alternate forum is more appropriate. Having considered the matters hereinbefore stated, the Court is of the view that the stay ought not to be granted. The Claimant indicates that he advises the Government of Antigua and Barbuda on crypto legislation and intends to be a significant player in the jurisdiction in relation to cryptocurrency. The Claimant alleges defamation in this jurisdiction where the Claimant contends that he has built what the Claimant considers to be important associations and intends to further develop ties within the jurisdiction. Accordingly, the Claimant is entitled to defend his reputation in the jurisdiction.

[59] Finally, on the matter of the location of potential witnesses this Court notes that while it is possible that witnesses may be required to speak to the matters relating to cryptocurrency and its development and to address the data on publication on social media platforms may reside out of the jurisdiction the issue of the location of witnesses is reducing in significance in the face of the continued advancement in technology.

[60] Accordingly, the Defendant’s application is dismissed with costs quantified in the sum of EC\$2,500.00 payable to the Claimant by the Defendant.

**Marissa Robertson  
High Court Judge**

**By the Court**

**Registrar**