

Justice L. Merritt Decision Comments

Summary

Merritt's decision is clearly prejudiced, and she cannot even accurately state the facts of the claim. She relies on hearsay to discount Equibit's evidence and testimony, while taking any negative statement about Equibit, regardless of source, as accurate despite contradictory evidence having been presented.

Sergei's Attempts to Determine Legitimacy

Sergei claims he believed the lawsuit he was properly served with was "fraudulent", and Jus. Merritt agrees that the steps he took to validate the lawsuit were reasonable. This is completely contradicted on the following grounds:

- The company registry entry provided by Sergei in his factum, Equibit Group AG, is not even the plaintiff identified in the action against him.
- Sergei admits he did not bother to research the law firm retained by Equibit (Rueters LLP, later merged into Weintraub Erskine Huang LLP).
 - This would have been much easier to find, as Rueters is a domestic Canadian law firm, whereas to find the corporate listing for Equibit Group AG he would have had to access the Zug corporate registry, in a foreign language and country/canton he was not familiar with.
 - It is more likely this search was performed later by someone with expertise in locating corporate records, like his own counsel.
- Sergei admits he never sought counsel after being served.
- Sergei admits he took no steps to contact Equibit's lawyers, by phone, email, or any other means, even though all contact information was provided in the statement of claim.
- Sergei admits he took no steps to contact the Superior Court of Ontario to verify the legitimacy of the lawsuit.
- Sergei admits he took no steps to contact the plaintiff, Chris Horlacher, either.

With this decision Jus. Merritt has set the precedent that anyone can, for any reason, claim a lawsuit they are served with is fraudulent, fail to take any reasonable steps to determine the lawsuit's validity, and overturn a default judgment, thus rendering the entire process of law meaningless.

The Russia-Ukraine War

Sergei's other main excuse for ignoring the multiple times he was served with documents was that his attention was consumed by the invasion of Ukraine by Russia. This is not reasonable on its face and is simply a blatant attempt to garner sympathy from the court.

- Russia invaded Ukraine [on February 24, 2022](#).
- Sergei was served with our statement of claim over a year earlier, on February 9, 2021, as per the affidavit of service sworn by Christopher Maniaci.
- Sergei was noted in default on May 17, 2021, over nine months before the invasion of Ukraine by Russia.

It is obvious that Sergei could not have been distracted by the war during the period he was required to file his defense.

Fraud Prevalence

Jus. Merritt's claims that Sergei's belief the lawsuit was fraudulent is supported by widespread fraud in the crypto industry, and that Equibit agrees with this view, are patently false and prejudiced.

- In discovery Chris Horlacher stated the opposite, that fraud is no more or less prevalent in the crypto industry than any other.
- Neither Sergei nor Jus. Merritt could cite even a single similar case of fraudulent legal papers being served on anyone, neither by a crypto company nor one from any other industry.
 - Indeed, concocting fake lawsuits to extort people is a trivially easy plot to expose, as already detailed in the section about Sergei's attempts to establish the legitimacy of the claim he was served with.
- An expert analysis by a former 33-year CIA veteran [confirms the view](#) that crypto is not enabling illicit finance.
- Furthermore, even if one were to take ALL losses to frauds in the crypto industry since inception (2009), it would not even equal the amount of credit card fraud losses in a single year ([2022: US \\$32.34 billion](#)).
- Sergei never claimed he suspected any fraudulent activities were taking place at Equibit, despite him being employed by the company longer than anyone else (he was the very first full-time hire).

At no point has anyone demonstrated that suspecting legal papers being duly served are fraudulent, whether by a cryptocurrency developer or any other kind of company, is a reasonable assumption.

Sergei's Trip to Russia

Jus. Merritt falsely claims that it was Equibit who stated that Sergei went to Russia and that, by providing his passport, Sergei has disproved this claim. This fails for the following reasons:

- Equibit's claim clearly states it was Sergei himself who alleged he went to Russia, as his explanation for being absent without leave for a week.
- Given the alleged involvement of CSIS, an entry stamp into the USA around the time of his travels is insufficient to "prove" the trip did not take place.
 - CSIS is permitted to forge documents [under the Act](#), and confidential informants are permitted to lie about it. Examples of government agencies forging government documents [exist](#).
 - Given it was Sergei who also alleged that the Russian GRU was looking for him and had contacted his business associates in Russia about him, it is conceivable that CSIS constructed a false identity for him to enter Russia under, using the USA as a waypoint to further conceal his place of origin.
 - Sergei was unable to provide any details of where he stayed or whom he met with during his alleged "job interview" in New York, or any reason why a simple job interview took two entire weeks (including a week AWOL) to complete.

Whether or not Sergei, in fact, went to Russia is immaterial to his conviction for breach of contract. Absence of evidence is not evidence of absence, and this line of reasoning should be rejected given the facts and circumstances of the case.

Strength of Sergei's Defense

Contrary to Jus. Merritt's opinion, Sergei's defense is not only incredibly weak, but Equibit's allegations of breach of contract have been proven true beyond a reasonable doubt.

- Sergei relies on the record of GitHub to demonstrate he delivered all code.
- Sergei acknowledges he was to deposit his code in the GitHub repository, as per his employment agreement.
- The [Github repository shows he was depositing code](#), the last commit being on July 20, and it was shortly after reviewing these updates, while Sergei was on his trip, that Equibit discovered it would not compile into the application he had previously sent us.
- The repository also shows a large gap in code commits starting Feb 28 (over four months of inactivity), presumably around the time his contact with CSIS began, resuming on July 19.
 - This gap, combined with Sergei's persistent absence from the office, raised concerns amongst Equibit management about what to do to secure the code he was clearly not uploading to GitHub during that time.
- Sergei acknowledges code was missing in his own departure email, dated August 13, 2018, meaning he could only have withheld it when he was making his commits on July 19 and 20.
- GitHub cannot search for or recover code that was never uploaded, thus invalidating Sergei's statements about Equibit not seeking assistance from GitHub.

That Sergei acknowledged the missing code, that he made uploads to the code repository just prior to leaving the country (thus demonstrating he was fully capable of uploading everything he had at that time), and his extended period of inactivity are enough to prove he breached his contract beyond a reasonable doubt. His motives for doing so, and whether this was induced by CSIS, are the only remaining questions.

Amount of Damages

Jus. Merritt's claims of excessive damage are made without any regard to the facts of the case.

- The company projections were prepared by a CA/CPA and subject-matter expert with more experience than any other professional (over 13 years) in the nation with cryptocurrencies.
 - This same individual accurately predicted the downfall of Quadriga CX, Celsius, BlockFi, and FTX many months before they occurred.
- Those amounts are further supported by expert opinion provided by Crowe Soberman.
- Sergei himself stated, in a Telegram message on August 9, 2018, that he believed Equibit "could be bigger" than Bitcoin.

Not only can Sergei not feel the claimed valuations were excessive, but that they are very likely quite conservative.

The Reason for Equibit's Collapse

Jus. Merritt relies on the bare assertion of an anonymous third party, who is the subject of a libel conspiracy charge, to insinuate that Equibit's funds were mismanaged, and that this is the true reason for the downfall of the company. This demonstrated further prejudice and is contradicted by numerous case facts in the court's possession already.

- The financial statements clearly show that all funds raised (US \$2.8 million) were spent on development.
 - This is confirmed by the CRA SR&ED auditor's report where their decision was made that there was "overwhelming evidence" Equibit was engaged in qualified research and development.
 - This is further confirmed by the extensive investigations conducted by the Ontario Securities Commission from 2017 through 2019.
- The financial statements show that not only were the funds not mismanaged, but that Chris Horlacher's careful management and timely actions resulted in nearly \$1 million in capital gains being realized.
- The claims that Equibit's funds were used to pay for a "lavish lifestyle" are completely unsubstantiated, and part of a scheme created by the defendants in a libel conspiracy lawsuit to defraud Equibit's original founders and investors of their work.
- Sergei utterly failed to substantiate any claims of "mismanagement" of any kind during discovery and recanted his original claim of witnessing "repeated changes in direction" in the company.
- Sergei sought to not only become a shareholder prior to his trip in emails from July 2018, but also a promotion in the "mismanaged" company in a Telegram message dated Thursday, August 9, 2018. He failed to appear at the office on Friday to discuss his request and then quit the company the following Monday.

Sergei has concocted a weak, self-serving, and wholly unsupported alternate reason for the company's collapse, which should be rejected by the court but has been inexplicably taken at face value.

Timeliness of Proceedings

Jus. Merritt insinuates there may be other motives for pursuing charges against Sergei due to the delays between his breach of contract and being served with the statement of claim. This is contradicted by the following facts:

- The claim was filed well before the statute of limitations expired.
- Sergei's claim that he was approached by CSIS had a chilling effect on the company, where many feared for their personal safety.
 - When Chris Horlacher's wife was drugged and nearly kidnapped in November 2018, these fears for our personal safety were confirmed.
- With the company's limited available funds in the latter half of 2018, it was more prudent to press forward with development and fundraising efforts rather than hire a litigator to immediately begin a lengthy and expensive lawsuit.
- Beginning in early 2019, Chris Horlacher began experiencing numerous cyber-attacks and attempts to gain control of his online accounts which have been logged by his honeypot and various other security systems he put in place.

- In February 2019, Chris and his pregnant wife had to abandon Switzerland and move back to Canada to live with his father and brother.
- On May 3, 2019, Equibit is required to respond to additional inquiries by the Ontario Securities Commission, providing a detailed analysis of the Equibit protocol considering the recently issued Consultation Paper 21-402.
- Also in May 2019, Chris's wife had been pregnant for approximately 5 months. The pregnancy was complicated ([complete placenta previa](#)) and she suffered many spontaneous bleeds, threatening both her life and the life of their unborn child.
 - She was admitted to the hospital around this time and put on bedrest until June 27, where another bleed prompted an emergency c-section to deliver their baby girl at 32 week's gestation.
 - Their daughter spent the next 4 weeks in the neonatal ICU before finally being discharged.
 - This affair led to Meera experiencing severe [postpartum psychosis](#), another life-threatening condition, for most of the rest of 2019.
- While suffering from postpartum psychosis, Chris and his wife are personally investigated by the OSC, having to provide all details of their transactions with the Equibit company, as well as several other employees and contractors.
- In early 2020, the COVID-19 pandemic is declared, requiring all of Chris's attention to determine the threat this presented to his family and what actions needed to be taken.

If the court can accept Sergei's excuse of the war in Ukraine (which had not yet occurred at the time he was noted in default) as reasonable for his failure to respond to any of the documents served upon him, then it must also accept these explanations as reason to not prejudice Equibit's claim against him.