

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**EQUIBIT GROUP LTD., CHRISTOPHER ERIC HORLACHER and
MARC GODARD**

Plaintiffs

- and -

**CHRISTIAN SAUCIER, DAVID MCFADZEAN, BART DE GROOT,
ABDELAZIZ OULAD HADJ, VALENTIN GANEV,
JOHN DOE NO. 1, also known as ZEEMOBYDICK,
JOHN DOE NO. 2, also known as THELOSTBOY@THETWISTEDDIGIT,
and JOHN DOE NO. 3, also known as SATOSHI JIMENEZ**

Defendants

STATEMENT OF DEFENCE OF THE DEFENDANT DAVID MCFADZEAN

1. The defendant David McFadzean ("**McFadzean**") has no knowledge in respect of the allegations contained in paragraphs 7, 9-14, 18-28, and 35-83 of the Statement of Claim.

2. Except as is expressly admitted, the McFadzean denies each and every other allegation contained in the Statement of Claim.

3. Equibit Group Ltd. ("**Equibit**") is a corporation incorporated pursuant to the laws of Canada. Christopher Eric Horlacher ("**Horlacher**") is the only current director of

Equibit. Among other things, Equibit was developing a peer-to-peer network for users to manage their digital securities.

4. Pursuant to an employment agreement between McFadzean and Equibit dated August 20, 2018 (the "**Employment Agreement**"), McFadzean commenced employment as Senior Software Engineer.

5. McFadzean worked with Reza Soltani ("**Soltani**"), a Senior Software Engineer at Equibit, and Christian Saucier ("**Saucier**"), Equibit's Quality Assurance Developer, to develop the source code for the software for Equibit's network. McFadzean, Soltani, and Saucier reported to Kiarash Narimani ("**Narimani**"), Equibit's Director of Development.

6. The source code for the software for Equibit's network was based on Bitcoin Core, the open-source software developed for Bitcoin. Bitcoin Core is released under the terms of the MIT license, which states:

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7. The Equibit office was shut down in or about December 2018. The employment of many of Equibit's employees was also terminated at this time, including Soltani and Narimani. McFadzean began working from home.

8. A test launch of Equibit's software was completed in early 2019. On or about February 1, 2019, Equibit's software was posted publicly on GitHub.com ("**GitHub**") as open-source software. Similar to Bitcoin Core, Equibit's software was released under the terms of the MIT license.

9. On or about February 21, 2019, McFadzean completed updates to the source code to Equibit's software and mined the first block of Equibit. At or about this time, a new version of the source code for Equibit's software was posted publicly on Github.

10. McFadzean's employment at Equibit was terminated on February 22, 2019. Saucier's employment at Equibit was also terminated on that date.

11. Contrary to paragraph 88 of the Statement of Claim, a "Fixed Node" was not required to keep Equibit's network alive. The network is a peer-to-peer network, which means that there are multiple nodes connected to each other. As long as one node is alive at any given time, then the network will also be alive. McFadzean had one active node on Equibit's network as of February 22, 2019. There was at least one other node, which was controlled by Horlacher, at that time.

12. McFadzean shut down his Equibit node in or about early April 2019. If Equibit's network collapsed on April 9, 2019, as is alleged at paragraph 89 of the

Statement of Claim, then the other users who had active nodes in the network, including Horlacher, must have shut down their nodes prior to April 9, 2019.

13. In March 2019, after the termination of his employment at Equibit, McFadzean was approached by Saucier to work with Saucier's company, CryptoTech Guru ("**Cryptotech**"), in a consulting capacity.

14. In April 2019, Cryptotech published a crypto-securities protocol named OCEAN (Open Crypto Equity and Assets Network). The source code for OCEAN's software was published publicly on GitHub under the terms of the MIT license.

15. In or about late April 2019, Cryptotech published another crypto-securities protocol named Tesseract. The source code for Tesseract's software was published publicly on GitHub under the terms of the MIT license.

16. McFadzean did not use or misappropriate any of Equibit's proprietary property, Intellectual Property (as defined in the Employment Agreement) or Confidential Information (as defined in the Employment Agreement). The only information or software used to create OCEAN and Tesseract was information and software available for public download on GitHub, pursuant to the MIT license.

No Breach of the Employment Agreement or Other Duties

17. The plaintiffs are entitled to any of the relief claimed. McFadzean did not:

- (a) breach the Employment Agreement as alleged in paragraphs 84 to 90 of the Statement of Claim;

- (b) owe any fiduciary duties to Equibit or breached any fiduciary duties as alleged in paragraphs 84 to 90 of the Statement of Claim;
- (c) solicit Equibit's investors as alleged in paragraphs 8 and 86(b) of the Statement of Claim.
- (d) breach a duty of confidence owed to Equibit under the Employment Agreement or at common law by disclosing Equibit's confidential information to others or by using Equibit's confidential information for his own benefit, as alleged in paragraphs 91 to 94 of the Statement of Claim;
or
- (e) breach a duty of trust in any capacity by transferring Equibit's proprietary property, Intellectual Property and Confidential information to others, as alleged in paragraphs 97 to 98 of the Statement of Claim.

18. Specifically, McFadzean did not breach the "Non-Solicitation and Non-Competition" provision (section 4.1), the "Non-Disclosure" provision (section 4.2), or the "Title to Intellectual Property" provision (section 5.1). In any event, the "Non-Solicitation and Non-Competition" provision, the "Non-Disclosure" provision, and the "Title to Intellectual Property" provision in the Employment Agreement are unenforceable. They contain overly broad and unreasonable terms. They are unreasonable in scope with respect to time periods and/or geography.

19. Contrary to paragraph 87 of the Statement of Claim, McFadzean did not boast about the alleged use and misappropriation of Equibit's alleged proprietary property, Intellectual Property and Confidential Information on GitHub or at all.

No Conversion

20. There is no basis to the claim that McFadzean deprived Equibit of its proprietary property, Intellectual Property or Confidential Property as alleged at paragraphs 95 to 96 of the Statement of Claim. McFadzean denies that he used any of Equibit's proprietary property, Intellectual Property or Confidential Property in a manner that was inconsistent with Equibit's rights. Any use of Equibit's software after the termination of McFadzean's employment by McFadzean was not inconsistent with Equibit's right of possession, if any existed, which is denied. McFadzean did not act in a way that was wrongful or as to deny Equibit's title or possessory right over the property at issue.

No Conspiracy

21. There is no basis for the claim that McFadzean conspired with the other defendants to commit overt and tortious acts to deprive Equibit of its proprietary property, Intellectual Property or confidential property, as alleged at paragraphs 99 to 100 of the Statement of Claim. McFadzean denies that any of his actions were intended to cause injury to Equibit.

Damages

22. The plaintiffs have not suffered damages in the amount claimed or at all. If the plaintiffs have suffered damages, which is not admitted but denied, the damages were the result of the plaintiffs' own actions and were not the fault or responsibility of McFadzean. In the further alternative, the damages claimed are excessive and remote and the plaintiffs have failed to take steps to reasonably mitigate their damages.

23. There is no basis for an award of aggravated or punitive damages.

24. McFadzean requests that this action be dismissed with costs on a substantial indemnity basis.

September 28, 2021

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Court File No. CV-21-00654929-0000

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Proceeding commenced at TORONTO

STATEMENT OF DEFENCE

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