



**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION**

**FSD CAUSE No. 302 of 2023 (DDJ)**

**IN THE MATTER OF THE EVIDENCE (PROCEEDINGS IN OTHER JURISDICTIONS)  
(CAYMAN ISLANDS) ORDER 1978**

**AND IN THE MATTER OF A CIVIL PROCEEDING NOW PENDING BEFORE THE UNITED  
STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK ENTITLED AS  
FOLLOWS:**

**SECURITIES AND EXCHANGE COMMISSION v TERRAFORM LABS, PTE. LTD. and DO  
HYEONG KWON, No. 1:23-cv-1346 (JSR)**

**Before:** The Hon. Justice David Doyle

**Appearances:** Michael Wingrave and Jack Stringer of Dentons, for the Applicants  
Kyle Broadhurst and Richard Parrish of Broadhurst LLC for Binance Holdings Limited

**Heard:** 11 December 2023

**Ex Tempore Judgment delivered:** 11 December 2023

**Draft transcript of Ex Tempore Judgment circulated:** 12 December 2023

**Transcript of Ex Tempore Judgment approved:** 13 December 2023

**HEADNOTE**

*Determination of application to set aside or vary an ex parte order made pursuant to the Evidence  
(Proceedings in other jurisdiction) (Cayman Islands) Order 1978*

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## JUDGMENT

### Introduction

1. By “urgent *ex parte* originating summons” dated 6 October 2023 and signed by the attorneys Dentons, Terraform Labs, Pte. Ltd and Do Hyeong Kwon (the “Applicants”) applied for “orders giving effect to the Letter of Request ... issued by the United States District Court for the Southern District of New York on 15 August 2023” (the “Application”).
2. The Application was supported by a document entitled “First Affidavit of Matthew Adam Lafferman” (“Mr Lafferman”) stated to be affirmed on 4 October 2023. There appears to have been some confusion as to how to progress the Letter of Request and at some stage there was reference to the Attorney General’s Chambers. On 6 October 2023 Dentons wrote to “Registrar of the Financial Services Division” filing the Application and supporting documents including “An undated draft order”. No written submissions or skeleton argument or authorities were filed. Dentons stressed the urgency of the Application and referred to Clause B1.2(b) of the FSD Guide and stated that the Application “may, at the discretion of the Judge, be determined on the papers.” In fairness Dentons did offer “to attend before the Judge in Chambers if the Judge considers it would assist to hear from counsel in relation to this application.” Dentons added: “Accordingly, we would be grateful if this matter could receive the urgent attention of the Court, with the matter being assigned to a FSD Judge and listed for hearing, if deemed necessary, as soon as possible.” B1.2(b) provides: “Where an *ex parte* application without notice does not involve the giving of undertakings to the Court, it may in the discretion of the Judge be dealt with on the papers ...”.
3. Mr Lafferman says that he is an attorney based in Washington DC and a partner at Dentons US LLP who represent the Applicants in civil proceedings brought by the United States Securities and Exchange Commission (“SEC”) before the United States District Court for the Southern District of New York (“US District Court”).

**The Letter of Request**

4. Mr Lafferman exhibits the 10 page Letter of Request dated 15 August 2023 and signed “Jed S. Rakoff United States District Judge”. Specifically the US District Court requests assistance in obtaining documents and records from non-party Binance Holdings Limited (“Binance”) stated to be “an entity residing in George Town, Grand Cayman of the Cayman Islands”. In section 8 (a) the registered address of Binance in the Cayman Islands is stated to be “Binance Holdings Limited c/o International Corporation Services Ltd ... George Town, Grand Cayman, Cayman Islands.” The Letter of Request further states:

“The requested documents are described in Attachment A. Defendants [the Applicants] assert that these materials are not available from any source within the jurisdiction of the Southern District, and cannot be obtained by any means other than pursuant to an order of the Grand Court of the Cayman Islands.”

5. The nature and purpose of the civil proceedings brought by the SEC is outlined in section 7 of the Letter of Request and a copy of the Amended Complaint is attached to the Letter of Request as Attachment B.

**The October 2023 Order**

6. On 10 October 2023 Kawaley J sitting in the Grand Court of the Cayman Islands made an Order (the “October 2023 Order”) that “Binance produce the documents outlined in the Schedule to this Order (Documents) within 25 days of the date of service of this Order on Binance.” The document attached to the October 2023 Order appears largely to be in the same format as Attachment A to the Letter of Request.
7. It appears that service of the October 2023 Order on Binance was affected as long ago as 11 October 2023.

### The Set Aside Application

8. By summons dated 3 November 2023 and signed by Broadhurst LLC an attorneys for Binance (the “Set Aside Application”), Binance applied for an order that the October 2023 Order “be set aside or varied”. The grounds of the Set Aside Application were not specified in the Set Aside Application. The variations sought were not specified.
9. Binance also applied for an order that the Applicants pay all reasonable costs and expenses of it in complying with the October 2023 Order in the event it is not set aside and that the costs of the Set Aside Application “be provided for”. The estimated length of the hearing of the summons was stated to be 2 hours.
10. Some correspondence followed. Suffice to say the attorneys wanted an urgent hearing of the Set Aside Application and in view of Kawaley J’s other judicial commitments the matter was re-assigned to me and listed for 11am this morning 11 December 2023, amongst a number of hearings this week before I leave the jurisdiction for the Christmas and New Year vacation.

### The Evidence

11. By affidavit sworn at New York on 7 November 2023 Anirudh Bansal (“Mr Bansal”) says that he is a partner at Cahill, Gordon & Reindel LLP who are stated to be counsel to Binance. Mr Bansal says that on 11 October 2023 Binance received a letter from Dentons enclosing a copy of the October 2023 Order. Mr Bansal says that on 30 October 2023 Dentons wrote to Broadhurst enclosing a copy of the Application and Mr Lafferman’s affidavit. Mr Bansal complains of the Applicants’ delays and the lack of urgency. Mr Bansal descends into legal argument in his affidavit. Affidavits should contain facts, not legal argument. I nevertheless note what Mr Bansal has written under the headings “Information Not Proffered by Applicants”, “Impermissible Discovery”, “Fishing Expedition” and “Oppression”.
12. I have also considered a document entitled “Second Affidavit of” Mr Lafferman. It is in fact another affirmation and was affirmed on 17 November 2023. Mr Lafferman says that the October 2023 Order was served on Binance on 11 October 2023 and Binance was required to produce the documents identified by 6 November 2023. No documents have been produced. I have considered

all that Mr Lafferman has written under the headings “Background”, “Urgency”, “Mr Bansal’s Criticisms Concerning Relevance”, “Mr Bansal’s Criticism of the LoR Being a Fishing Expedition”, “Mr Bansal’s General Criticisms”, “Allegations of Impermissible Discovery” and “Conclusion”. Again this affirmation descends into legal argument rather than confining itself purely to facts.

13. Mr Bansal in his second affidavit sworn on 24 November 2023 refers again to the delay and makes the submission that “Dentons’ failure to issue that application for nearly two months created the urgency on which Dentons relies.” I have also considered all that Mr Bansal writes under the headings “Urgency”, “Notice”, “Fishing”, “Impermissible Discovery” and “Conclusion”.

### Law

14. In respect of the relevant law, I have considered the Evidence (Proceedings in Other Jurisdictions) (Cayman Islands) Order 1978 (the “Evidence Order”).
15. Suffice to say that under section 2(1) of the Evidence Order the Grand Court has power by order to make such provision for obtaining evidence in the Cayman Islands as may appear to the court to be appropriate for the purpose of giving effect to a letter of request issued by or on behalf of a requesting court exercising jurisdiction in a country or territory outside the Cayman Islands.
16. Section 2(2) provides that, without prejudice to the generality of subsection (1) an order may, in particular, make provision for the production of documents.
17. Section 2(3) provides that an order shall not require any particular steps to be taken unless they are steps which can be required to be taken by way of obtaining evidence for the purposes of civil proceedings in the court making the order.
18. Section 2(4) provides that an order shall not require a person:
  - (a) to state what documents relevant to the proceedings to which the application for the order relates are or have been in his possession, custody or power or;

- (b) to produce any documents other than particular documents specified in the order as being documents appearing to the court making the order to be, or to be likely to be, in his possession, custody of power.
19. In *United Staves v Carver* 1980-83 CILR 297 Rowe JA sitting in the Court of Appeal considered the Order. It was held that the Grand Court has jurisdiction to hear an application under the Order if, inter alia, it is satisfied that the civil proceedings have either been instituted before the requesting court or their institution before the court is contemplated (page 302). The Cayman court will ordinarily give effect to a request so far as it is proper and practicable and to the extent that is permissible under the law of the Cayman Islands. This principle reflects judicial comity. It is the duty and pleasure of the Cayman court to do all it can to assist the foreign court. The Cayman court has first to decide whether it has jurisdiction and if it has whether as a matter of discretion it ought to make or refuse to make such an order. As a matter of jurisdiction and in the absence of evidence to the contrary the Cayman court should be prepared to accept the statement of the foreign court in its request that the evidence is required for the purposes of civil or criminal proceedings, as the case may be, in that court. The form of the letter of request is not however conclusive. The court must examine the request objectively and it has to look at the substance of the matter, but it may have regard to what was said in the foreign court when the request for evidence was issued. As a matter of discretion, the Cayman court should exercise its discretion to make the order asked for unless it is satisfied that the application would be regarded as falling within the description of frivolous, vexatious or an abuse of the process of the court. The Cayman court has power to accept or reject the foreign request in whole or in part, whether as to oral or documentary evidence. It can and should delete from the foreign request any parts that are excessive. The Cayman court will act on the principle that it should salve what it can, but should decline to comply with the foreign request in so far as it is not proper, permissible or practicable under the laws of the Cayman Islands to give effect to it. The Cayman court ought not to embark on the process of restructuring or re-casting or re-phrasing the foreign request so that it becomes different in substance from the original request. The court has no power so to modify the original foreign request as to substitute a different category of documents for the category which has been requested by the foreign court (pages 309-311 relying on English principles).
20. Rowe JA at page 317 referred to section 2 (4)(b) of the Order which conferred the jurisdiction upon the Grand Court to place a limitation upon the documents, the production of which can be ordered.

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An order shall not require a person to produce any documents other than particular documents specified in the order as being documents appearing to the court making the order to be, or to be likely to be, in his possession, custody or power. Rowe JA (on page 318) noted that section 2(4)(a) prohibited a court from making an order for general discovery of documents as such an order would be in the nature of a fishing expedition. Rowe JA considered *Rio Tinto Zinc Corp v Westinghouse Elec. Corp* [1978] A.C. 547 (HL) and Lord Diplock's comment that:

“Classes of documents, provided the description of the class is sufficiently clear, may be required to be produced ... The requirements of s2(4)(b), however, are not in my view satisfied by the specification of classes of documents. What is called for is the specification of ‘particular documents’ which I would construe as meaning individual documents separately described.”

21. Importantly for present purposes, Rowe JA at page 319 helpfully added:

“The documents referred to in the *Westinghouse* case were of the most diverse, varied and complex variety. Consequently, the language of the members of the House of Lords must be looked at against those facts. On the other hand, the traditional description of bankers' books used by bankers in the ordinary course of business has been “ledgers, day books and account books.” When therefore these terms are used in a statute or in business correspondence they must be taken to relate to the actual books used by the particular bank in the keeping of its accounts. An outsider would be at a disadvantage if he were to be compelled to know the precise system of accounting used by the bank and the precise and particular documents in which the bank's accounting records are kept. What such a third person must show is that he requires information regarding a particular transaction made on a particular day, in respect of a particular account. Where the banker is merely required to place his hands upon and to pick up the letter which forwarded the cheque, or the lodgment slip which evidenced the transaction or the cable confirming the transaction, could that be said to be in the nature of a fishing expedition? I think not. These documents are manifestly the conduits through which money may be transferred to the credit of an account and the request for their production is at least analogous to the request for the letter in reply to correspondence, the existence of which is either admitted or is not denied.



I am not persuaded that any of the members of the House of Lords who made speeches in the *Westinghouse* case, had they been discussing a case concerning bankers' books, would have established a rule that a call for the books in which a banker in the ordinary course of business accounted for a specific transaction, would not be a call for particular documents. Accordingly, in my view, a banker to whom an order was made to produce "all correspondence, ledgers, day books and account books used in its ordinary course of business" in which it recorded the receipt of a *particular sum, on a particular day, which funds it credited to a particular account*, would be able to place his hands directly on such records, and therefore to that extent such a description would sufficiently satisfy the statutory requirement of "particular documents, etc." in S.2(b)(b)".

22. Rowe JA (at page 320) referred to the proposition that "the court has an undoubted power to narrow down the ambit of the request" but also made reference to Viscount Dilhorne's comment that this power of severance should be sparingly resorted to and only in specific circumstances. At page 321 Rowe JA stated:

"As I have already indicated, I am of the view that the substantial request was one for "particular documents" within the meaning of the Schedule to the Imperial Order. The words "all other books, documents and papers" are too wide as they could lead to a fishing expedition through the entire accounts of the subjects of the request. I am also of the view that the words "including all records" add nothing to the wide words "all other books, documents and papers" but that they fall in the same category and are likely to lead to a fishing expedition. These surplus words are clearly severable from the remainder of the request. They form but a minor part of that request and they ought to be deleted. Upon their deletion the request remains grammatically agreeable and fully understandable without the necessity for the addition of any words whatsoever."

White JA concurred, as did Kerr Ag.P.

23. I have also considered the helpful judgment of Smellie CJ (as he then was) in *Gray 1 CPB, LLC v Gulfstream Finance Inc* (FSD unreported reasons for judgment 22 May 2012). Smellie CJ referred to the Evidence Order and subsections (3) and (4) of section 2 and at paragraph 18 referred to the four requirements of which the court should be satisfied:



- (1) the request must seek evidence which is necessary for the trial of the action;
- (2) there must be evidence as to the existence of the particular documents sought;
- (3) the documents must appear to be or to be likely to be in the possession, custody or power of the intended witness; and
- (4) as regards oral evidence, that in addition to it being necessary evidence at trial, there is reason to believe that the intended witness has knowledge of the matters relevant to the issues at trial.

24. In *Voluntary Purchasing Group Incorporated v Insurco International Limited* 1994-95 CILR 84 a youthful Smellie J (as he then was) referred to the prohibitions against pre-trial discovery and fishing expeditions in search of information which may lead to the discovery of evidence. At page 89 Smellie J stated:

“Put in general terms this court has a duty to assist the foreign court to the extent it is proper to do so under local law ... Full faith and credit must be given to the request of the foreign court just as full faith and credit would be given to a foreign judgment.”

At page 97 Smellie J referred to section 2(4)(b) of the Evidence Order and stated:

“The test to be applied in relation to the production of documents is whether “particular documents” were specified, that is, individual documents separately described, although it is permissible to have a compendious description of several documents, provided that evidence of the actual documents is produced to satisfy me that they do exist or at least have existed ... Whether those general standards may be satisfied in the context of any particular case will necessarily depend on the circumstances ...”

Smellie J at page 98 added:

“In this case I am urged to consider the nature of the documents being sought on the basis that they are likely to exist as records of the business and as records of the type of property which it is reasonable to expect the defendant company would have acquired in the conduct of its business. I am satisfied that reasonable inferences must be drawn in that regard and in the absence of direct evidence of the existence of such documents – direct evidence

which, in all the circumstances, it would be unrealistic to require the applicant to produce ...

In keeping with the general principles earlier outlined. I adopt the approach that as a matter of comity I should assist the foreign court to the extent that it is permissible to do so under Cayman law and for those purposes salvage what I can of the request, provided that in so doing I do not rework the foreign request into something else altogether.”

25. Andrew Bolton and Paul Kennedy in an informative chapter 5 of *Cross-Border Judicial Cooperation in Offshore Litigation* (2<sup>nd</sup> edition 2016 editors Kawaley, Bolton and Mayor) make reference to the Evidence Order and at page 71 it is stated:

“The general approach of the Grand Court is, based on principles of comity, to give effect to letters of request where it properly can, and where there are problems with part of a request, to salvage the remainder if possible ...”

26. The authors at pages 74-75 refer to *Voluntary Purchasing Group Inc v Insurco International Ltd* 1994-95 CILR 84 and Smellie J’s comments that it would not be appropriate for the Grand Court to try to assess the matters relevant to the issues before the foreign court with a view to determining the scope of examination. At page 75 the authors refer to *Re United States District Court’s Request* 2007 CILR N-2 where Henderson J held that the Grand Court would accept the statement of the requesting court that the evidence was required for trial.

27. From page 77 onwards the authors refer to the “Section 2(4) protection” and state that:

“It is section 2(4) that prohibits general discovery orders, that is orders requiring a person to state what he has. It also proscribes ‘fishing’...” and add:

“The fact that a request contains a compendious description of documents to be provided does not automatically justify an objection of ‘fishing’ (although in extreme cases it might be objectionable on the grounds of oppression) provided it sufficiently identifies the particular documents required.”

28. In support the authors refer to what they describe as “The leading Cayman case of *United States v Carver...*”.
29. At page 79 the authors refer to a further issue arising from section 2(4) of the Evidence Order namely the requirement that the documents must be in the possession, custody or power of the intended witness. The authors, citing *Voluntary Purchasing Group*, state “in an appropriate case, the Grand Court may be prepared to infer that records such as would in the ordinary course be maintained by the business in question will be in the possession of a particular person.”
30. Smellie J (as he then was) in *First American Corporation v Zayed* 2000 CILR 57 at pages 76-77 stated:
- “... comity dictates that I accept that, as the request states on its face, it seeks “evidence for use at trial.””
31. Smellie J also referred to “the fact that the court does not allow pre-trial discovery” (page 77).
32. Smellie J at page 80 closed by “reaffirming the willingness of this court to assist, whenever possible in the interests of comity.”
33. I made similar remarks when sitting as First Deemster in the Isle of Man in *US Securities and Exchange Commission v Wyly* 2012 MLR 292.
34. I distilled the following general principles from the authorities:
- (1) the court will ordinarily give effect to a letter of request from a foreign court for assistance in obtaining evidence for the purpose of proceedings in that foreign court so far as it is proper and practicable and to the extent that it is permissible under local law. This principle reflects judicial and international comity and conforms with the spirit of the relevant Convention;
  - (2) the court first has to decide whether it has jurisdiction and secondly, if it has, whether as a matter of discretion it ought to make or refuse to make such an order;

- (3) the court should normally be prepared to accept the statement of foreign court in its request that the evidence is required for the purposes of civil proceedings in that foreign court. The form of the letter of request is not however conclusive. The court should examine the letter of request objectively and look at the substance of the matter;
- (4) as a matter of discretion the court should normally exercise its discretion to make the order asked for unless it is satisfied that the application would be regarded as falling within the description of frivolous, vexatious or an abuse of the process of the court;
- (5) the court has power to accept or reject the request from the foreign court in whole or in part, whether as to oral or documentary evidence; and it can and should delete from the request from the foreign court any parts that are excessive either as regards witnesses or as regards documents. The court will act on the principle that it should save what it can, but should decline to comply with the request from the foreign court insofar as it is not proper or permissible or practicable under local law to give effect to it. The court however ought not to embark on the process of restructuring or recasting or rephrasing the request from the foreign court so that it becomes different in substance from the original request. The court should not re-modify the original request from the foreign court to substitute a quite different category of documents for the category which has been requested by the foreign court;
- (6) the issue of relevance normally falls to be determined by the foreign court; and
- (7) the foreign court should be afforded the fullest help it is possible to give.

### **The Submissions**

35. I record that I have considered the skeleton arguments and oral submissions put before the court.

### **Determinations**

36. I now turn to my determinations of the various issues arising in respect of the Set Aside Application.

37. The main substantive objection of Binance is that the Applicants are engaged in an impermissible fishing expedition seeking out wide ranging pre-trial discovery in the hope that they may find something of use for trial. Binance says that the requests are not for particular documents but rather for all possible documents without regard to whether documents exist or not. Binance adds that the October 2023 Order does not comply with section 2(3) or 2(4)(a) or (b) of the Evidence Order.
38. Subject to a couple of issues which I raised during my exchanges with counsel and which I shall come to shortly, in my judgment, in the particular circumstances of this case, the Letter of Request was properly focused on obtaining documentation that will assist in achieving a fair trial in America. The October 2023 Order does not relate to “pre-trial discovery” or “merely exploratory or investigatory” matters but rather intends to seek “evidence for use at the trial in the foreign court” (to use the words of former Chief Justice Smellie in *Zayed*). The Letter of Request expressly seeks “documentary evidence to be used in the above-captioned civil proceedings before this Court”. The requesting court in paragraph 4 seeks a response “within 30 days or as soon as is practicable, to ensure that evidence is received in a timely manner for use in the civil proceedings...”. The nature of the proceedings is described as a “civil case” and reference is made to the Amended Complaint. The express purpose of the documents sought is that such are “necessary in the interest of justice for the Defendants to defend themselves fairly against the allegations made by the SEC...”. I heed the words of Lord Wilberforce in *Westinghouse* at page 610 : “ The fact that any evidence obtained is intended to be put in at the trial, is quite consistent with the inquiry extending (impermissibly) to trains of inquiry which may produce such evidence” and Viscount Dilhorne’s remarks at page 624, but in my judgment the Applicants in the case presently before me were seeking documents “for direct and immediate use at a trial” rather than “ in the hope that it might lead to a line of inquiry which might lead to such evidence” (to use the words of Smellie J, as he then was, in *Zayed* at page 73). The documentation is plainly and clearly required for the main substantive trial in America which Mr Lafferman in his second affirmation at paragraph 28(d) says is listed to commence on 29 January 2024, with the trial exhibit list required by 8 January 2024.
39. In my judgment, the October 2023 Order was issued largely in compliance with the Evidence Order and the Letter of Request duly made by the requesting court. The documents were defined with adequate particularity. There was however some excessively wide wording used in the Letter of Request which I am entitled to take a “blue pencil” to i.e. delete (See Lord Wilberforce in *Westinghouse* at page 610). Lord Diplock in the *Westinghouse* case at pages 635-636 criticised the

fact that the wide letters rogatory in that case for many requests for particular documents were followed by a request for “any memoranda, correspondence or other documents relevant thereto.” which he felt was “far too wide and these words were struck out wherever they appeared by the Court of Appeal...” Lord Diplock noted that in a number of cases the Court of Appeal substituted the phrase “any memoranda, correspondence, or other document referred to therein”. Lord Diplock did not think that was sufficiently specific to satisfy the requirement of subsection (4) (b) and did not consider that “the court had any power to substitute a different category of documents for the category which had been requested by the United States court”. In effect deletions can be permitted but additions may be impermissible especially when they substitute a different category.

40. In light of the wording of the Evidence Order and the comments made in the caselaw, in my judgment certain deletions must be made. The Schedule to the October 2023 Order should be entitled as such and the following deleted:

- (1) In paragraph 12 “, or any similar types of information collected for the purposes of verifying the Person’s identity, as well as any information collected in connection with ongoing monitoring or identity-verification activities You conduct”. The opening words of that paragraph are sufficient. The offending words in particular “any similar types of information” are far too broad;
- (2) In paragraph 14, “or any other documents referred to or incorporated by reference in the requested documents”, where it twice appears. Delete also in paragraph 14 “The term includes any attachments or exhibits to the requested documents.” The words in the second sentence remain namely “The term “Document” and “Documents” also include any attachments or exhibits to the requested documents.”; and
- (3) Paragraph 20. The word “regarding” should be interpreted according to its usual meaning and not the extended meaning in the 8 lines of paragraph 20, which must be deleted.

41. I am content to leave the October 2023 Order in place with these necessary variations.

42. The Letter of Request refers to “assistance in obtaining documentary evidence to be used in the above-captioned civil proceedings before the Court.” The Letter of Request contains a helpful summary of the Amended Complaint (which is also attached as Attachment B to the Letter of Request) and a summary of the defence as follows:

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“(b) Summary of Amended Complaint:

The SEC alleges that from April 2018 until May 2022, Terraform and Kwon offered and sold an inter-connected suite of crypto asset securities, some of which purportedly constituted unregistered transactions. The SEC alleges that this included transactions in “mAssets,” purported security-based swaps based on crypto assets that mirrored the price of stocks of US companies, and Terra USD (UST), a crypto asset referred to as an “algorithmic stablecoin” that maintained its peg to the U.S.dollar by being interchangeable for another of Defendants’ crypto assets, LUNA. The SEC further alleges that Terraform and Kwon offered and sold investors other means to invest crypto asset tokens MIR, or “mirror” tokens, and LUNA itself. The SEC also alleges Defendants falsely represented that a Korean payment system, known as Chai, used the Terra blockchain to process and settle commercial payments, and the Defendants did so in order to encourage purchases of the two tokens used on the Terra blockchain – LUNA and UST.

The SEC further alleges that the Defendants falsely represented the stability of the UST stablecoin in its ability to withstand market forces due to its algorithmic “mint/burn” mechanism. Specifically, the SEC alleges that after the market price of UST declined from its peg of one U.S. Dollar in May 2021, Defendants misrepresented UST’s recovery by claiming that the algorithm was able to restore and maintain the price peg; when – according to the SEC – it instead recovered because Defendants entered an arrangement with a U.S. trading firm, Jump Trading LLC, to purchase substantial amounts of UST to support the price. The SEC alleges that the Defendants’ actions led to the May 2021 depeg and the loss of \$40 billion of market value, including devastating losses for U.S. retail and institutional investors. It also alleges that the May 2022 Depeg occurred because there was no intervention similar to Jump’s intervention in the May 2021 depeg. Based on these allegations, the SEC alleges that Defendants misled investors about the stability of UST by claiming that the algorithm was able to automatically restore and maintain the price peg, which establishes the reliability and effectiveness of UST.

“(c) Summary of defense:

For numerous reasons, Defendants deny the allegations in the Complaint. This Letter of Request is intended to obtain information particularly relevant to the following defenses (which is not an exhaustive list of Defendants’ defenses in this proceeding): Trades in UST by Jump Trading LLC were not the cause for the restoration of the peg in May 2021.



Further, the May 2022 Depeg was the result of an intentional effort by third parties to “short” and depeg UST from its price and involved a direct, public intervention in an effort to combat the short. This Letter of Request seeks identifying information about crypto wallets and the trading accounts associated with them that have been identified as causing and contributing to the May 2022 Depeg which were hosted by the Binance.com cryptocurrency exchange. The evidence to be obtained from Binance is thus probative of the issue of whether the May 2022 Depeg was the result of an intentional effort to depeg UST, of Defendants’ efforts and coordinated intervention to defend the peg, and that this depeg did not result from instability in the algorithm.”

43. The Letter of Request at page 7 states:

“(b) Purpose of the documents sought:

The evidence sought in this Letter of Request pertains to the allegations and defenses described above. The information sought in this Letter of Request is necessary in the interest of justice for Defendants to defend themselves fairly against the allegations made by the SEC. As discussed above, the documents sought contain information about crypto wallets and the trading accounts that were hosted by the Binance.com cryptocurrency exchange that were involved in trading UST by Jump Trading LLC during the May 2021 and 2022 Depeg and have been identified as causing and contributing to the May 2022 Depeg. The materials sought are thus relevant to the issue of whether the May 2022 Depeg was the result of an international effort to depeg UST and did not result from the any unknown deficiency in the algorithm.”

44. Many of the documents required are limited by reference to a Target Wallet which is defined at paragraph 22 and comprises just 5 specific wallets which are stated to be known to be hosted on the Binance exchange, that have been identified as facilitating transactions resulting in the May 2022 Depeg which is an issue in the US proceedings. Careful thought has plainly and properly been given to limited and precise time windows where appropriate. The time period is unless otherwise specified from 1 January 2018 to the present. Some of the required documents are further limited to the short time window of 1 May to 30 May 2022 and some to 1 April 2022 to 30 May 2022. Some requests are further limited by reference to Terraform Labs, Pte Ltd and Jump Trading, the relevance of which has been explained. The relevance of the required documentation is clear from

Schedule One (in fact the only schedule) to the Applicant's skeleton argument dated 4 December 2023. Furthermore, it is plain to me that the US judge is better placed to determine relevance of the documents in respect of the issues arising in the US proceedings and I do not intend to second guess the US judge. What I intend to do is to provide the US judge with assistance pursuant to the Evidence Order to enable a fair trial to be held in the United States of America. Other responsible and law-abiding legal entities should also be keen to assist in that respect.

45. The request sought evidence which was necessary for the impending trial of the action in the United States of America. There is adequate evidence before the court as to the existence of the particular documents sought (which have been specified with sufficient particularity) and it appears that such documents are likely to be in the possession, custody or power of Binance, by virtue of the nature of its business.
46. I do not think there is anything of substance in Binance's argument that the US District Court, in apparently applying Rule 26 of the Federal Rules of Civil Procedure, was engaged in an impermissible pre-trial discovery exercise. Lord Wilberforce in *Westinghouse* at page 608 referred to "the United States pre-trial procedure, as laid down in the Federal Rules of Civil Procedure and particularly rules 26 and 30. These rules give wide powers, wider than exists in England, of pre-trial discovery against persons not parties to a suit." Lord Wilberforce at page 609 referred to the words of Lord Goddard CJ directing the English courts not to countenance "fishing" expeditions.
47. Binance attempt to argue that because of a reference in paragraph 13 of Mr Lafferman's first affirmation to Rule 26 of the Federal Rules of Civil Procedure and the US District Court making a determination that the evidence sought is relevant under the applicable US laws, that this somehow turns the Letter of Request into an impermissible pre-trial discovery fishing operation. I must look at the Letter of Request and objectively determine whether it complies with the Evidence Order and Cayman law, whatever the relevant law of the United States may be. For the reasons stated in this judgment I disagree with Binance when it says that "viewed objectively the Letter of Request is an impermissible fishing exercise". It is wrong of Binance to submit that the Letter of Request "was not directed to the obtaining of evidence for use at trial but instead issued as part of pre-trial discovery and seeks information on an investigatory basis."

48. In my judgment the disclosure sought under the Letter of Request, with the specified deletions, is not too wide or imprecise. Mr Broadhurst, in eloquent and robust submissions, makes the point that the Letter of Request was made in the context of an unopposed application by the parties to the US proceedings. He refers me to the words of Lord Fraser in *Westinghouse* at pages 642-643, that “it would be wrong to place reliance on that recital [to the letters rogatory that “justice cannot be done amongst the parties without the testimony, which is intended to be given in evidence at the trial of the actions ...”] because it was drafted by the legal advisers of Westinghouse with the object of meeting the requirements of the English courts, and it cannot be regarded as stating the considered opinion of the American court.” Mr Broadhurst also placed emphasis on the words of Mrs Justice Cockerill in *Allergan Inc v Amazon Medica* [2018] EWHC 307 (QB) at paragraph 57 that “US Courts do not necessarily comprehend unless it is explained to them – the basis upon which this jurisdiction operates and in particular its limitations”. Mr Broadhurst submitted that there was no evidence that the Evidence Order and the relevant caselaw had been brought to the attention of the US judge in this case. I agree however with Mr Wingrave that questions of relevance are generally a matter for the requesting court as the court seized of the substantive proceedings. I do not seek to second guess the US judge in this respect, although I have objectively considered whether the requirements of the Evidence Order have been met. The requesting court has considered the question of relevance and made the appropriate request. The documentation requested is to be used in the US court proceedings. Mr Wingrave stressed that Judge Rakoff is recorded as referring to the evidence to be obtained as “probative of” an issue in the substantive US proceedings. Mr Wingrave referred to Lord Diplock’s comments in *Westinghouse* at page 634 to the effect that the local court should, in the absence of evidence to the contrary, “be prepared to accept the statement by the requesting court that such is the purpose for which the evidence is required.” Mr Wingrave has persuaded me that the documentation is for use at a civil trial and is necessary in the interests of justice for the Defendants to defend themselves fairly against the allegations made by the SEC. In my judgment the material is necessary for use at the substantive trial in the US proceedings.
49. I agree with Mr Wingrave that the traditional banking analogy in *Carver* (Rowe JA at page 319) demonstrates that the particularisation and likely existence of documents are questions that are sensitive to the context of each case. In our case the context is blockchain and cryptocurrency rather than traditional financial products. As Mr Wingrave says the ledgers, daybooks and account books in *Carver* are the traditional equivalent of the digital records and documents sought in this

case. There is considerable force in Mr Wingrave's submission that the requests in this case are just as specific as the requests made in *Carver* but in a more technologically advanced context.

50. In short summary I am satisfied that, with the relatively minor deletions I have specified, the October 2023 Order complies with the Evidence Order. There is nothing of substance in Binance's allegations of an impermissible fishing expedition or a lack of sufficient particularity. Moreover, Binance's complaints of delay by the Applicants and lack of genuine urgency do not persuade me that the October 2023 Order should be set aside.
51. Kawaley J had jurisdiction to grant the October 2023 Order and exercised his discretion accordingly. I have not been persuaded that any valid grounds exist upon which I could legitimately set aside the October 2023 Order and I do not do so. I have not been persuaded that Kawaley J was wrong, in principle, to grant the October 2023 Order. Moreover, it is plain that the request was not frivolous, vexatious or an abuse of process. No oppression to Binance arises in this case.
52. Although I have not been persuaded that I should set aside the October 2023 Order, I have in effect varied it in order that the specified deletions can be made. I am also willing to vary it to the extent that Binance may have until 3pm on 19 December 2023 to comply. Binance has been aware of the October 2023 Order since 11 October 2023. The filing of the Set Aside Application did not operate as an automatic stay and no stay was applied for or granted. The clock ticking down the deadline for compliance with the October 2023 Order did not stop upon the filing of the Set Aside Application. I note that Rowe JA in *Carver* at page 309 referred to "a provisional order which can only become absolute if the person to whom it is directed does not seek to have it discharged or if his challenge to the order is rejected" but there is ample authority to the effect that orders must be complied with unless and until they are set aside or discharged (See albeit in a different context the authorities cited in *Toledo v Walkers* (FSD DDJ unreported judgment 25 January 2022 especially at paragraphs 78-103)). We do not, however, need to enter into any debate in that respect as I am willing pragmatically to give Binance some further time to comply with the October 2023 Order as varied. I simply make the point that the extension I have just given will give it more than ample time to finalise any outstanding preparations to ensure full compliance with the October 2023 Order and as a prudent financial entity with the benefit of legal advice one can reasonably expect that it would already have all its ducks in a row to deal with compliance quickly in the event that its Set Aside Application was unsuccessful, as indeed it largely has been.

53. This court is happy to be able to be of assistance to the US court. Binance should produce the required documentation and should be content that it, in turn, is assisting a US court to conduct a fair trial and achieve justice.
54. I am minded to require Binance to pay 70% of the costs of its largely unsuccessful Set Aside Application such costs be taxed on the standard basis in default of agreement.
55. I am also minded to order that the Applicants pay Binance's reasonable costs and expenses of complying with the October 2023 Order as now varied to include the deletions I have specified.

David Doyle

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**The Hon. Justice David Doyle**  
**Judge of the Grand Court**