

CANADA / JUDGMENT

Atom Holdings (Re)

2025 BCSC 2271

COURT

Supreme Court of British Columbia

DECIDED

20 November 2025

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2025 BCSC 2271 Atom Holdings (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Atom Holdings (Re),

2025 BCSC 2271

Date: 20251120

Docket: S242143

Registry: Vancouver

In the Matter of Part XIII of the

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-6,

As Amended

- And -

Atom Holdings (In Official Liquidation Under the Cayman Islands Companies Act, 2023 Revision)

- And -

Angela Barkhouse and George Kimberley Leck, in their capacities as joint official liquidators of
Atom Holdings

- and -

Docket: S242230

Registry: Vancouver

Between:

Atom Holdings (In Official Liquidation Under the Cayman Islands Companies Act, 2023 Revision)

Plaintiff

And

Su Weiyi a.k.a. Victor Su

Defendant

Before: The Honourable Mr Justice Crerar

Reasons for Judgment

Re: Jurisdictional Challenge

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Place and Date of Hearing:

Vancouver

November 10, 2025

Place and Date of Judgment:

Vancouver

November 20, 2025

Table of Contents

Paragraph Range

I. INTRODUCTION

[1] - [1]

II. FACTS

[2] - [22]

A. The collapse of Atom/AAX

[2] - [2]

B. The British Columbia proceedings

[3] - [10]

C. The Hong Kong civil proceedings

[11] - [17]

D. The Hong Kong criminal proceedings

[18] - [22]

III. DISCUSSION AND DECISION

[23] - [90]

A. The British Columbia pleadings

[23] - [32]

B. Law

[33] - [36]

C. Discussion and decision

[37] - [81]

(a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum

[44] - [58]

(b) the law to be applied to issues in the proceeding

[59] - [64]

(c) the desirability of avoiding multiplicity of legal proceedings and (d) the desirability of avoiding conflicting decisions in different courts

[65] - [71]

(e) the enforcement of an eventual judgment

[72] - [78]

(f) the fair and efficient working of the Canadian legal system as a whole

[79] - [79]

(g) other jurisdictional considerations

[80] - [81]

D. Other Su arguments

[82] - [90]

IV. CONCLUSION

[91] - [94]

I. Introduction

[1] The defendant Mr Su, alleged to have been a principal in the failed Atom/AAX cryptocurrency platform, seeks an order under s. 11 of the Court Jurisdiction and Proceedings Transfer Act, SBC 2003, c. 28 ("CJPTA"), and the common law forum non conveniens factors, that the Court exercise its discretion to decline jurisdiction over this claim, as Hong Kong is the "clearly more convenient" jurisdiction for its adjudication.

II. Facts

A. The collapse of Atom/AAX

[2] My reasons, indexed as Atom Holdings (Re), 2024 BCSC 1397 (the "BCSC Reasons"), aff'd Su v. Atom Holdings, 2025 BCCA 199, notice of appeal (SCC 41985) filed September 18, 2025, set out the background to the Atom/AAX collapse:

B. Atom / AAX

[7] These proceedings arise from the collapse of a Cayman Islands-based cryptocurrency company, Atom Holdings, incorporated, and now in liquidation, pursuant to the Cayman Islands Companies Act, 2023 Revision.

[8] Atom was a holding company for a number of subsidiary companies incorporated in various jurisdictions, including Hong Kong, Singapore, Seychelles, and Malta (the "AAX Group").

[9] The AAX Group operated a cryptocurrency exchange platform (the "AAX Platform").

[10] The AAX Group used its system wallets for the daily operations of the AAX Platform, including receiving and transferring cryptocurrency to and from other cryptocurrency exchanges, and storing AAX customers' cryptocurrency. The AAX system wallets were all standard "hot" wallets (see above), which stored the AAX Platform's cryptocurrency holdings via online software programmes. It is likely that the AAX system wallets would have been secured by a key, code, or passphrase within the control of members of the AAX Group's management.

[11] On November 11, 2022, the FTX cryptocurrency exchange, unrelated to AAX, declared bankruptcy, creating a crisis in the cryptocurrency industry.

- [12] That month, the AAX Group issued a series of public statements seeking to reassure the users of its platform. It acknowledged that a large number of users had requested withdrawal of their cryptocurrency assets. On November 19, 2022, the AAX Group issued a statement reassuring users that it would gradually resume normal operations. That was its final public statement.
- [13] Since that time, users of the AAX Platform have been unable to withdraw their assets. At the time of the collapse, the AAX Platform held various cryptocurrencies recorded as an amount equivalent to US\$212,207,603, along with deposited/pledged cryptocurrency to various platforms which provided broker, market maker, liquidity and settlement services recorded as an amount equivalent to US\$215,533,831.
- [14] The AAX Platform and application were shut down by mid-December 2022. All AAX social media accounts were either deleted or have ceased posting.
- [15] Following the AAX collapse, all of the directors, officers, and management of the AAX Group have resigned or gone into hiding. Two former AAX executives (Thor Chan and Liang Haoming) have been arrested by Hong Kong police. The defendant now joins their number.
- [16] On March 9, 2023, the Grand Court of the Cayman Islands (the "Cayman Court") appointed Angela Barkhouse and George Leck as the Joint Official Liquidators of the AAX Group (the "Liquidators").
- [17] On March 16, 2023, the Liquidators passed resolutions for Atom Holdings that replaced the incumbent directors, including the defendant, with the Liquidators.
- [18] On July 11, 2023, the Cayman Court ordered the winding up of Atom Holdings.
- [19] Since their appointment, the Liquidators have taken steps to recover assets of the AAX Group, and have initiated court proceedings in various jurisdictions to that end.
- [20] The Liquidators were unable to take direct control over Atom International Technology Limited ("Atom Hong Kong"), as all the shares in that entity had been transferred to the defendant on February 22, 2022, for HKD \$1.
- [21] Accordingly, on May 10, 2023, the Liquidators obtained from the High Court of the Hong Kong Special Administrative Region three forms of relief: an injunction to restrain Atom Hong Kong from dissipating its assets and disposing of its records; a proprietary injunction against the defendant over the Atom Hong Kong shares; and a freezing order against both the defendant and Atom Hong Kong within Hong Kong up to the value of HKD \$8.79 million. The defendant swore an affidavit in those proceedings.
- [22] To assist in the investigation and recovery of assets, the Liquidators retained Matthew Devost, a Reston, Virginia-based expert in cybersecurity. Mr. Devost has served as an adjunct professor in that field at Columbia and Georgetown Universities.

B. The British Columbia proceedings

- [3] The BCSC Reasons also set out the history of these British Columbia proceedings to June 2024, including the issuance of Anton Piller and Mareva orders against Mr Su:

C. These proceedings

- [23] On April 4, 2024, counsel for the Liquidators appeared ex parte before this Court in the Bankruptcy and Insolvency Act proceeding. This Court granted three orders (2024 BCSC 721):
- a) an order pursuant to Part XIII of the Bankruptcy and Insolvency Act, RSC 1985, c. B-3 [BIA], ss. 269, 272, recognizing the Cayman Islands liquidation proceedings as a "foreign main proceeding", and issuing certain ancillary relief;
 - b) an order pursuant to s. 272 of the BIA, but substantially in the nature of an Anton Piller order, authorizing the seizure and preservation of evidence and assets of the plaintiff against the defendant (the "APO"); and
 - c) a sealing order.
- [24] On April 5, 2024, at around 10 am, the Independent Supervising Solicitor (Mr Melton: the "ISS"), the search party (led by the search officers, Messrs Munro and Clark, with three digital forensic experts (including Mr Devost), and two other search party members) and a translator, executed the APO at the British Properties house where the defendant and his family reside.
- [25] On April 8, 2024, the applicants appeared ex parte before the Court to obtain leave to commence the civil action, in the name of Atom Holdings, against the defendant, and to obtain the freezing order. The orders were granted: 2024 BCSC 722. The Court ordered the defendant to provide passwords to certain electronic devices removed from his house during the APO search.
- [26] On April 12, 2024, the ISS filed his report with the Court. The search officer has also filed reports with the Court dated April 7, 12, 19; May 14; and June 17, 2024, setting out developments in the search process.
- [27] On April 19, 2024, the Court ordered the defendant to provide a list of assets pursuant to the freezing order.
- [28] On May 15, 2024, the defendant applied to set aside the orders, and the applicants applied to continue the freezing order. This Court adjourned the set-aside application, and confirmed the continuation of the freezing order until resolution of that application. This Court also ordered that the defendant attend a cross-examination with respect to the execution of the APO and his affidavit in relation to the APO. The Court provided directions to counsel with respect to the scope of this cross-examination.

[4] Paragraphs 29-35 of those reasons set out the evidence against Mr Su, both before and after the issuance of the Anton Piller order.

[5] This evidence included a transfer at 12:42 am on April 6, 2024: that is, just hours after the Anton Piller execution:

the blockchain recorded a transaction in which 4,869 Ether (worth roughly US\$16 million) was transferred from the MetaMask wallet to a new wallet address. The timing may be a remarkable coincidence. Of course, at the time, only the defendant and his wife (in addition to the applicants and their counsel) knew of the APO and these proceedings, which are subject to a sealing order.

[paragraph 33]

[6] Paragraph 29 summarised further evidence in hand against Mr Su:

- a) the defendant was a key figure in the AAX Group and the operation of the AAX Platform. He was publicly listed as a director of several AAX Group companies: Atom Holdings (Caymans), AAX Asia, Atom Malta, and Atom Hong Kong;
- b) the defendant was an authorised signatory of the Atom Holdings bank account;
- c) on February 22, 2022, all of the shares in Atom Hong Kong were transferred to the defendant for only HKD \$1;
- d) the defendant appears to have held an account that processed over US\$100 million in AAX transactions between June 2022 and February 2023. That account was held under the email address victor[number redacted]@gmail.com. The "Know Your Client" identity documentation provided to Binance for the account is the defendant's Chinese passport;
- e) a March 2020 Slack message sent by Daniel Chen (an AAX Group employee) to Thor Chan (a former AAX executive), states that "Victor" was needed to "open the old safe" and "complete cold wallet backup phone's update [sic]";
- f) an AAX Excel spreadsheet refers to a "Vic MetaMask" wallet holding significant crypto assets on behalf of the AAX Platform (the "Victor MetaMask Wallet");
- g) in the Google Workspace data obtained by the Liquidators, a user account with the domain addresses "victor@atomintl.com" and "victor@aax.com" had two Google Chrome bookmarks for the MetaMask Wallet's entries on etherscan.io and another public blockchain search website, "debank.com";
- h) between July 28, 2021 and September 22, 2022, a total of 11,010.08 Ether and 8,499,888 USDT were transferred to the Victor MetaMask Wallet from AAX System Wallets;
- i) an August 2022 Slack message written by Sarah Mok (AAX Group employee) states: "25/8/2022 USDT - Vic's metamask return 1M to 103881, so total is (USDT 8,500,000 - USDT 1,000,000) = USDT 7,500,000";

- j) on August 25, 2022, the blockchain recorded two transactions in which US\$1 million was moved from the Victor MetaMask Wallet to another address;
 - k) since July 2023, all assets held in the Victor MetaMask Wallet have been dispersed, with the exception of approximately 6,000 Ether that could not be moved as it was pledged as collateral to a Swiss-based smart contract company; and
 - l) the defendant had failed to assist the Liquidators with their investigations into the AAX Group.
- [7] The extensive evidence of the defendant's management and operational control of the Atom/AAX Group indicated that the defendant's August 18, 2023 affidavit that he swore in Hong Kong proceedings was untrue: para 30.
- [8] The plaintiff relied upon, and those reasons cited, an investigatory interview that the plaintiff's primary investigator, Mr Devost, conducted of Peter Lin, a former principal of Atom/AAX, indicating that Mr Su was centrally involved in Atom/AAX, and had access to the drained Meta Mask wallet and system wallet keys: para 31.
- [9] As set out in para 32, the applicants supplemented their case with evidence discovered during and after the execution of the Anton Piller order at Mr Su's West Vancouver home:
- a) during the search, the defendant abruptly reached over and slammed shut the lid of his primary laptop;
 - b) the search party observed the MetaMask browser plugin open on the defendant's personal laptop. Records of transactions involving the MetaMask wallet were located on the internet browsing history on that laptop;
 - c) the search party located partial and complete seed phrases, one of which generated the address of a cryptocurrency wallet ("0xee2"), likely controlled by the defendant. That wallet has received 839 Ether of cryptocurrency (worth approximately US\$2.8 million) from identified AAX system wallet addresses since the appointment of the Liquidators. One of the AAX wallets was held on the MetaMask application;
 - d) the search party located in a safe a cell phone with three different SIM cards, and a set of physical safe keys labelled "AIA Tower", the address of Atom Holdings's former office in Hong Kong. Mr Devost averred that there was a "very high likelihood that the cell phone is the AAX Cold Wallet " holding a significant portion of the AAX cryptocurrency holdings.
- [10] Paragraph 34 sets out other alleged incriminating and evasive actions by the defendant since the two orders:
- a) not providing full access to digital assets, passwords, PINs, and other authentication mechanisms, as required under the APO, including to his primary mobile telephone, the mobile telephone found in the safe, his primary laptop, and the MetaMask account;

- b) specifically, providing some PINs and passwords that did not work, thus endangering access to those devices and preservation of their data, through automatic lock or erasure functions;
- c) swearing two false affidavits of assets, both of which omitted a TD bank account;
- d) through his counsel's repeated objections, refusing to answer most of the questions posed in his court-ordered June 5, 2024 examination; and
- e) only providing cursory and incomplete sworn evidence in response to the substantial evidence mustered against him at the April 4 and 8 hearings, as cited above.

C. The Hong Kong civil proceedings

- [11] On May 10, 2023, before commencing this British Columbia action, Atom Holdings commenced a civil action in the Hong Kong Court against Mr Su, alleging that he breached his fiduciary duties owed to Atom Holdings as a director, by transferring 100,000 shares of AITL, an Atom subsidiary, to himself for less than fair market value (the "Hong Kong Action"). Atom also obtained a Mareva order against Mr Su.
- [12] On March 15, 2024, Mr Su's Hong Kong counsel brought an application before the Hong Kong Court requesting an order that Atom Holdings post security for costs. The Hong Kong Court granted the order on October 31, 2024.
- [13] Atom Holdings failed to post security for costs by the November 21, 2024 deadline. Accordingly, on November 28, 2024, by the guillotine order term of the security for costs order, the Hong Kong Court dismissed the Hong Kong Civil Action.
- [14] On July 22, 2024, the Hong Kong Court issued a Notice of Setting Down a Bill for Taxation, and awarded Mr Su HK\$3,426,316 (approximately CA\$604,000) as costs for the Hong Kong Action. Atom Holdings has not yet paid those costs to Mr Su.
- [15] Two other Hong Kong civil proceedings should be noted.
- [16] First, on June 19, 2023, 17 former AAX users commenced an action against Mr Su and others (the "Creditors' Action"). Unfortunately, there are few details in the present record of its status.
- [17] Second, on September 14, 2023: Atom Holdings filed a petition in the Hong Kong Court to wind up Atom Holdings and liquidate its assets, paralleling similar proceedings in the United States, Singapore, Cayman Islands, and the Seychelles, to wind up those Atom/AAX subsidiaries.

D. The Hong Kong criminal proceedings

- [18] On July 19, 2024, Mr Su was arrested in Hong Kong, and charged with theft (the "Hong Kong Criminal Proceeding"). The charges against him allege that between November 10, 2022, and July 19, 2024, Mr Su stole cryptocurrency stored in 10 digital asset wallets, of rough value HK\$16.74 million, belonging to 51 AAX users.
- [19] If convicted, he could face up to 10 years in prison.
- [20] Mr Su was released on the following bail conditions:
- a) he must not leave Hong Kong for any reason until his criminal case is tried and determined;
 - b) he must permanently reside at a specific address in Hong Kong;
 - c) he must report to police in Hong Kong three times a week; and
 - d) he must provide the police 24 hours' notice if he intends to change his Hong Kong residence.
- [21] Mr Su and his Hong Kong counsel have received disclosure from the prosecution in the Hong Kong Criminal Proceeding, including a list of approximately 50 witnesses who provided statements to the police. Mr Su and his counsel have given an undertaking not to contact those witnesses. As such, Mr Su cannot presently obtain evidence from those witnesses to respond to this British Columbia action.
- [22] The Hong Kong Criminal Proceeding is at an early stage. No trial date has been set, although it is asserted, with little to test the assertion, that the trial is expected to occur in 2026 or 2027.

III. Discussion and decision

A. The British Columbia pleadings

- [23] The Amended Notice of Civil Claim, filed April 8, 2024, seeks orders and alleges facts of international and domestic scope.
- [24] Paragraph 14 alleges that Mr Su, as a principal of Atom/AAX, transferred Atom assets, including AAX cryptocurrency wallets into other cryptocurrency wallets in his possession, or control: defined as "Unauthorized Transfers."
- [25] Paragraph 15 alleges a specific Unauthorized Transfer represented by the April 6, 2024 transfer of 4,869 Ether (approximately US\$16 million), as set out above.
- [26] Paragraphs 27 to 31 allege that Mr Su applied part of the proceeds of the Unauthorized Transfers towards the purchase of an ownership interest in the British Properties West Vancouver house where the defendant and his family resided at the time the Anton Piller order was executed and at the time of the April 6 Ether transfer (the "Property"; the "Property Claim").

- [27] The claim alleges that Mr Su has sought to hide his ownership interest in the Property in a "Fraudulent Arrangement" (a defined term), whereby Mr Su is registered on title as holding two mortgages, with an Edmonton businessmen (one Rakesh Dhunna) listed as the legal owner.
- [28] The Claim alleges that, by making the Unauthorized Transfers, the Defendant breached fiduciary duties owed to the plaintiff corporation. It alleges that Mr Su committed the torts of conversion, deceit, and conspiracy by applying the proceedings of the Unauthorized Transfers towards the British Columbia Property and entering into the Fraudulent Arrangement. It pleads that as a result of the purchase of the Property and the Fraudulent Arrangement, the Defendant was unjustly enriched and holds the Property on constructive trust for the plaintiff.
- [29] The plaintiff indicates that it will seek leave to file a Further Amended Notice of Civil Claim which would add Mr Su's spouse, Lin Kong, as a defendant, alleging that she conspired with Mr Su to perpetrate the Fraudulent Arrangement and the April 6 Ether Unauthorized Transfer. The proposed pleading also claims that the plaintiff has acquired an interest in any cause of action in relation to the Property, as a result of losing the \$3 million deposit paid towards the purchase of the Property: see below.
- [30] Stepping outside of the proposed pleading, affidavits filed by Mr Su and Ms Kong set out that:
- a) on April 21, 2023, Mr Su entered into a Purchase and Sale Agreement for the Property with Mr Dhunna;
 - b) on April 26, 2024, Ms Kong paid \$3 million for the first deposit on the Property;
 - c) on October 26, 2023 under a Loan Agreement, Mr Su lent \$6.98 million to the vendor Mr Dhunna, secured by a mortgage on the Property;
 - d) in October 2025, Ms Kong indicated that she was willing to accept assignment of the April 2023 Purchase and Sale Agreement from Mr Su, under a proposed Assignment of Purchase and Sale Agreement. She stated that she hoped to obtain a mortgage to finance the balance of the purchase price.
- [31] At the hearing, counsel for Mr Su indicated that Ms Kong was unable to obtain a mortgage, and as a result lost the \$3 million first deposit.
- [32] With regard to the present jurisdictional enquiry, the plaintiff notes that the Loan Agreement and Assignment of Purchase and Sale Agreement expressly stated that those agreements would be governed by and construed in accordance in all respects by British Columbia law. Mr Su also confirmed in those agreements that he holds a British Columbia work permit. Mr Su's address on the April 21, 2023 Purchase and Sale Agreement was stated to be on Pacific Boulevard, in Vancouver.

B. Law

[33] The parties agree on the applicable law.

[34] Section 11(2) of the CJPTA sets out the following considerations guiding the court as to whether it should decline to exercise its territorial jurisdiction over a dispute:

- (a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum,
- (b) the law to be applied to issues in the proceeding,
- (c) the desirability of avoiding multiplicity of legal proceedings,
- (d) the desirability of avoiding conflicting decisions in different courts,
- (e) the enforcement of an eventual judgment, and
- (f) the fair and efficient working of the Canadian legal system as a whole.

[35] In *Rotor Maxx Support Limited v. Air Palace Co. Ltd.*, 2020 BCSC 1321 at para 62, Madam Justice C. Ross noted that these factors are not exhaustive, and that common law principles of forum non conveniens remain relevant, including:

- (1) where each party resides;
- (2) where each party carries on business;
- (3) where the cause of action arose;
- (4) where the loss or damage occurred;
- (5) any juridical advantage to the plaintiff in this jurisdiction;
- (6) any juridical disadvantage to the defendant in this jurisdiction;
- (7) the convenience or inconvenience to potential witness;
- (8) the cost of conducting the proceeding in this jurisdiction;
- (9) the applicable substantive law;
- (10) the difficulty and cost of proving foreign law, if necessary;
- (11) whether there are parallel proceedings in any other jurisdiction.

[36] At para 63 Ross J helpfully summarises the principles guiding the Court's discretion:

- a) The court must consider all relevant factors listed in s. 11 to determine if a stay is warranted: *Teck Cominco* at para. 21;

- b) The court must also consider s. 11(1): the interests of the parties and the ends of justice, and in particular, the prima facie right of the plaintiff to its chosen forum: *Ruloff Capital Corporation v. Hula*, 2013 BCSC 322 at para. 44, aff'd 2013 BCCA 514 at paras. 14, 29; *Purple Echo* at para. 59;
- c) The weighing of each factor is a matter of discretion and no one factor is determinative: *Teck Cominco* at paras. 24-30; *Purple Echo* at para. 59; *Budget* at para. 40;
- d) The right of the plaintiff to choose its forum is a mandatory consideration; therefore the discretion to decline jurisdiction is only for the exceptional case: *Budget* at para. 40;
- e) The burden is on the applicant to demonstrate that the alternative forum is "clearly more appropriate", thereby displacing the plaintiff's choice of forum: *Club Resorts* at paras. 108-109; *Environmental Packaging Technologies, Ltd. v. Rudjuk*, 2012 BCCA 343 at para. 37; and,
- f) The threshold will be met where the alternative forum has a significant advantage, in that it "would be fairer and more efficient" for disposing of the litigation: *Club Resorts* at para. 109; *Andrew Peller Ltd. v. Mori Essex Nurseries Inc.*, 2017 BCSC 203 at para. 30, citing *Lapointe Rosenstein Marchand Melançon LLP v. Cassels Brock & Blackwell LLP*, 2016 SCC 30 at para. 52; *Olney v. Rainville*, 2009 BCCA 380 at para. 42.

C. Discussion and decision

- [37] For the reasons that follow, Mr Su has not acquitted his persuasive burden to establish that Hong Kong would "clearly" be the more appropriate and convenient forum for the adjudication of this dispute.
- [38] It is true that the allegations of Mr Su's corporate wrongdoing have strong ties to other jurisdictions, particularly Hong Kong, the site of Atom/AAX corporate headquarters and the bulk of its corporate and operational records, and the Cayman Islands, where Atom/AAX is registered, and the laws of which would likely govern the corporate aspects of this dispute. But at least one of the Unauthorized Transfers, as alleged, occurred while Mr Su lived in British Columbia with his wife Ms Kong, who has Canadian permanent resident status. Mr Su may well have been to some degree resident or present in British Columbia during some or all of the earlier alleged Unauthorized Transfers, in the dying days of Atom, from late 2022 and beyond. The claim further alleges that some of the Unauthorized Transfers were directed towards Mr Su's real and personal property located in British Columbia, including some five British Columbia bank accounts; only the British Columbia court can impose a remedy with respect to the Property Claim. The British Columbia connection to the Property Claim and the claim overall will solidify further if and when Ms Kong is added as a defendant. Finally, through the ongoing maintenance of the Mareva order, as well as the ultimate execution against the Su-Kong British Columbia-based personal and real property if the action succeeds, British Columbia proceedings will embroil Mr Su in any case, even if this Court were to decline to exercise jurisdiction over the present substantive dispute.

- [39] Mr Su argues that the now-defunct Hong Kong Action was based, at least in part, on the same foundational allegation as the present British Columbia action: that Mr Su owed and breached fiduciary duties to Atom Holdings under the laws of the Cayman Islands. As noted above, however, the Hong Kong Action focussed solely on his alleged transfer of the AITL shares, rather than the Unauthorised Transfers and other tortious actions alleged in the present claim. Further, the Hong Kong Action contained no allegations about the allegedly sham Property transaction. While notionally the claimants could have included such allegations in the Hong Kong Action, they did not, and that action is now at an end.
- [40] Mr Su particularly emphasises that the Liquidators voluntarily chose not to maintain the Hong Kong Action, by failing to pay the \$250,000 security for costs ordered: if there exists some impediment to the Liquidators resuscitating those proceedings or launching new proceedings in Hong Kong, they have made their own bed through what Mr Su describes as a "tactical decision" to bolster their present jurisdiction argument.
- [41] This argument ignores, however, the fact that Mr Su himself applied for security for costs, including a guillotine order dismissing the Atom/AAX claim if that security was not paid: it is not the case that he has embraced and sustained the Hong Kong Action for the orderly adjudication of this dispute in the forum for which he advocates. And there is nothing inherently wrong, and much to be commended, in a claimant opting against pursuing myriad overlapping claims in multiple jurisdictions, particularly where the proceeding is directed by Joint Liquidators appointed by the Cayman Court to seek to recover funds for Atom/AAX users and other creditors in a cost-effective manner. Further, a defendant in Mr Su's shoes should be grateful for one fewer claim to defend. Courts considering jurisdiction disputes in other proceedings did not condemn those claimants for discontinuing parallel actions in other jurisdictions: *Canada (Attorney General) v. Yasinski*, 2006 BCSC 757 at para 28; *Smiley v. The Pierre Elliott Trudeau Foundation*, 2023 NLSC 107 at paras 94-96.
- [42] This leads to the final and over-riding impediment to Mr Su's application. In contrast to some forum non conveniens battles in which each party advocates in favour of its own extant proceedings in separate jurisdictions, there is no alternative parallel proceeding in Hong Kong. I agree that it is not in the interests of justice to stay a British Columbia proceeding with real and substantial ties to British Columbia, substantially concerning British Columbia real estate, where no alternative foreign proceeding presently exists. In noting this, I recognise that the test not whether a more appropriate alternative proceeding exists, but whether a more appropriate alternative forum exists: the former is a valid consideration for the latter, however.
- [43] I will proceed to consider the arguments in the s. 11(2) framework, parenthetically addressing common law considerations under the closest statutory headings.
- (a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum

- [44] Mr Su notes that he now resides in Hong Kong and, as a condition of his bail, is prohibited from leaving Hong Kong until the Hong Kong Criminal Proceeding concludes, likely, but not certainly, in 2026 or 2027. It would result in a "real unfairness" on a party to require the trial proceedings to take place in a jurisdiction where the party is not legally permitted to travel, as he will not be able to physically observe and participate in the litigation first-hand: *Nagra v. Malhotra*, 2012 ONSC 4497 at para 42; *Bouzari v. Bahramani*, 2015 ONCA 275 at para 52.
- [45] Mr Su further argues that all of his witnesses are located in Hong Kong or the People's Republic of China ("PRC"). He states that he cannot compel witnesses who reside in Hong Kong or the PRC to testify in the British Columbia action. A party unable to compel its witnesses to testify in order to mount a defence faces significant unfairness: *Haaretz.com v. Goldhar*, 2018 SCC 28 at para. 65; *Tims v. Royal Bank of Canada*, 2022 BCSC 1181 at para 31.
- [46] Further, Mr Su's undertaking in the Hong Kong Criminal Proceeding bars him from contacting the approximately 50 witnesses identified by the Hong Kong Police, significantly impairing his ability to marshal evidence to defend himself in the British Columbia action. In contrast, Atom Holdings has no such prohibition, creating significant procedural unfairness. He argues that the Hong Kong Court is the only court that can address this issue with respect to both the Hong Kong criminal and civil proceedings.
- [47] Finally, a British Columbia trial would be logistically burdensome. Many of those witnesses will likely provide their testimony in Mandarin or Cantonese, and many of the documents will be written in those languages, necessitating interpreters and translators. Further, both credibility and documentary evidence would be central to the trial, making the remote appearance of witnesses cumbersome. Further, Hong Kong is 15 hours ahead of Vancouver, meaning that Mr Su (and other witnesses located in Hong Kong or the PRC) will have to testify, through a translator, by video in the middle of the night; alternatively, this Court will have to adjust its ordinary hours to accommodate that cross-Pacific testimony. Mr Su notes that Hong Kong, as an officially multilingual court, would be better suited to handle these difficulties.
- [48] The Court is sympathetic to these concerns. The Court is also cognisant that a trial with several remote witnesses is less than optimal, particularly when combined with credibility concerns, linguistic interpretation, and the potential need to present documentary exhibits to witnesses: see *Lonking (China) Machinery Sales Co. Ltd. v. Zhao*, 2021 BCSC 556 at para 17.
- [49] That said, the evidence disclosed to date in these proceedings indicates that each of Mr Su, Ms Kong, and Mr Lin, and likely other potential witnesses, have considerable English competence, as is not rare amongst international business people with Hong Kong origins; all three of those individuals provided English-language affidavits, attaching as exhibits English-language emails, texts, communications and other documents, without need of translation. Further, those witnesses are hardly tethered to Hong Kong, but are truly international citizens, as evidenced, for example, by Mr Su's two countries of residence, and

two passports.

- [50] Further, to state the obvious, British Columbia courts are no strangers to trials in which significant, or even a majority of testimony, is provided through interpretation. There is no shortage of competent court-certified Mandarin and Cantonese interpreters and translators with extensive experience providing services in this Court.
- [51] To further state the obvious, particularly post-pandemic, courts have become more accustomed and accepting of remote testimony. As stated by Justice Brundrett (before his translation this week to the Court of Appeal) in *British Columbia v Apotex Inc.*, 2025 BCSC 92 at para 410, and the authorities cited therein, "while the physical location of parties, witnesses, or evidence made sense as an important factor in the pre-digital era, such factors may be less significant in this case given the opportunities for testimony by video and the efficiency of electronic document delivery."
- [52] In *Thunderstruck Resources Ltd. v Bonga Xploration Drilling Supplies Ltd.*, 2022 BCSC 404, Madam Justice Fitzpatrick similarly noted:
- [106] It is apparent that some travel of witnesses--with ensuing costs--will be required, no matter which jurisdiction ultimately hears the matter. If the matter is heard in BC, our courts have substantial technology to accommodate video evidence from any witness in the world as long as they have access to an internet connection. I have no information that the Fiji Courts have this technology.
- [107] I conclude that this factor supports BC as the more appropriate forum, or at worst, is a neutral factor insufficient to displace the Plaintiffs' choice of forum.
- [53] In this, as in *Thunderstruck*, inconvenience to some witnesses, and remote testimony will inevitably occur, whether the trial occurs in Hong Kong or in British Columbia: the question is simply which and how many witnesses will be affected. This is an inherent inconvenience of litigation arising in our global age, particularly where the transactions are transnational and virtual, as with cryptocurrency connected to a multi-jurisdictional cryptocurrency exchange with subsidiaries in many countries and users around the globe.
- [54] In this, beyond reference to the 50 witnesses identified by the Hong Kong police, Mr Su is vague about specific witnesses that he would call, or whether they would willingly testify, here or from a remote location. He identifies only four specific witnesses: Hong Kong-based former Atom/AAX executives, two of whom are also restrained from leaving Hong Kong.
- [55] In contrast, there is more certainty about the witnesses that the plaintiff would call: Mr Leck (one of two Joint Official Liquidators); Mr Devos; the local and US-based cryptocurrency and forensic investigators; the Alberta-based vendor of the Property, representatives of the three local financial institutions and other local professionals involved in the Property transaction, and Ms Kong, all of whom are based in British Columbia or North America and, conversely, are not based in Hong Kong.

- [56] Further, while Tims noted that the purported inability to compel witness testimony is an important consideration under this heading, it went on to observe that both British Columbia and Hong Kong courts have mechanisms to facilitate the execution of requests for the taking of evidence from foreign courts: paras 30-31. Tims specifically noted that the Hong Kong courts would have the discretion to order the deposition of witnesses in Hong Kong at the request of this Court: para 31.
- [57] Tims also noted that there was no evidence that the Hong Kong-based witnesses would not or could not testify in British Columbia: para 30. Tims further noted that the plaintiff did not elaborate on the content or importance of the evidence the witnesses in his preferred jurisdiction would likely provide: para 26. Mr Su's present evidence on both of these points is similarly scanty.
- [58] Finally, while Mr Su avers that the Hong Kong Court holds his passports, and that his bail conditions prevent him from leaving Hong Kong, these are brief and conclusory statements. There is no evidence of any attempts to obtain leave from the Hong Kong Court to travel to British Columbia or contact witnesses for the limited purpose of defending himself in these proceedings, or legal opinions on those possibilities. There is no clear proof that he would not be permitted to attend trial in British Columbia on a specific future date. Nor is there evidence to categorically indicate that the Hong Kong Court would not permit some form of contact with witnesses, possibly limited to indirect contact through counsel, on undertakings, for the purpose of defending himself in the British Columbia civil action or otherwise. In any case, the prohibition against contacting witnesses, as it presently stands, would also affect his ability to defend a Hong Kong proceeding.
- (b) the law to be applied to issues in the proceeding
- [59] The parties agree that the likely law applicable to the claims of breach of fiduciary duty will be that of the corporate plaintiff's home jurisdiction: the Cayman Islands. Mr Su does not propose that the matter be heard in the Cayman Islands, however. Accordingly, regardless of whether a British Columbia or a Hong Kong court hears this dispute, that court will apply a foreign law, albeit one grounded in English common law principles familiar to that domestic court.
- [60] Despite this parity, each party argues that this factor modestly favors their position.
- [61] Mr Su argues that the *lex loci delicti* to be applied to the alleged Unauthorized Transfers should be that of Hong Kong, where Atom/AAX was based and where Mr Su alleges he lived at the time. He notes that the plaintiff has failed to plead any specific *lex loci delicti*.

- [62] I agree that it is premature to pronounce categorically on the location of the alleged torts and thus the applicable law. The process of forensic analysis of various digital assets seized under the Anton Piller order and otherwise is not yet complete, to illuminate dates and locations. Further, as Mr Parsons evocatively states, cryptocurrency is everywhere and yet nowhere. The ephemeral nature of interjurisdictional internet-based transfers of encrypted virtual currency inherently confounds traditional concepts of *lex loci delicti*.
- [63] In any case, it would appear that with respect to the tort claims, the Property Claim, and the April 6 Ether transfer, there is a strong connection to British Columbia. The Property Claim concerns the West Vancouver property, where both Mr Su and Ms Kong lived, with their family, at the time of the April 6 Ether transfer. Further, Mr Su, in signing the Loan Agreement and Assignment of Purchase and Sale Agreement expressly agreed those impugned transactions would be governed by British Columbia law. It is almost certain that British Columbia law--the *lex situs*--will apply to these components of the British Columbia action.
- [64] This factor ultimately favors the plaintiff.
- (c) the desirability of avoiding multiplicity of legal proceedings and (d) the desirability of avoiding conflicting decisions in different courts
- [65] Parallel proceedings are to be avoided, if possible. The domestic court should avoid interfering with the court of another jurisdiction that has a closer connection to the dispute: *Isklander and Sons, Inc. v. Haghighat*, 2007 BCSC 753; *lv to appeal dismissed* 2007 BCCA 416, at paras 33-34.
- [66] Mr Su notes that if one includes the Hong Kong Criminal Proceeding, there have been at least nine proceedings that involve Mr Su, AAX, and Mr Su's assets around the world, four of which have been filed in Hong Kong. He specifically argues that the ongoing Hong Kong Creditors' Action significantly overlaps with the present British Columbia action: both actions level similar claims against Mr Su concerning the same digital assets. He also argues that the evidence and issues in the Hong Kong Criminal Proceeding overlap significantly with those in the present British Columbia action. Accordingly, the Hong Kong Court is best situated to deal with the multiplicity of the proceedings within its jurisdiction, in order to avoid inconsistent findings and double recovery, and to deal with the evidentiary and procedural issues raised by Mr Su's undertaking and the prosecution's desire to obtain evidence from the civil proceedings.
- [67] Mr Su further notes that the Hong Kong Criminal Proceeding has progressed further than has this British Columbia action and that it likely will concluded before this civil matter.
- [68] There is no real and present danger of conflicting verdicts.
- [69] As Mr Su notes, if he is convicted, the findings in the Hong Kong Criminal Proceeding may give rise to issue estoppel in the British Columbia action. Similarly, the Hong Kong Court could find that Mr Su did not owe fiduciary duties to Atom Holdings or breach those duties,

based on its own assessment of credibility, in the Creditors' Action. By retaining this proceeding in British Columbia, the plaintiff, eyes wide open, assumes the risk that earlier findings in foreign courts could affect the viability of its claim and evidence in this proceedings, based on combined principles of issue estoppel, abuse of process, or comity. It is not unusual for a domestic proceeding to be affected partly or substantially by findings in other courts and in other proceedings.

[70] That said, the Hong Kong Criminal Proceeding raises different issues, on a different standard of proof, on different procedure. While it may proceed more swiftly than this present action, that timeline is unclear, and the evidence before this Court reveals little about how that case will unfold, or, again, what steps Mr Su has taken to alleviate the concerns he raises today.

[71] I turn to the civil proceedings. Again, the Hong Kong Action, based on the AITL share transfer, is at an end. And there is no evidence before this Court of the status, stage, or viability of the Creditors' Action, although such evidence would presumably be readily available. In any case, any overlap with those two Hong Kong civil claims is only partial: neither Hong Kong civil case concerns the Property Claim.

(e) the enforcement of an eventual judgment

[72] Each party points to a different aspect of the claim to argue that Hong Kong or British Columbia is better placed to enforce that portion of the judgment, if judgment is granted.

[73] Mr Su notes that any judgment against him would likely first be enforced in Hong Kong, where Mr Su owns real estate and other valuable property, all known to Atom Holdings (but not presented with any particularity in his evidence before this Court).

[74] While Hong Kong may be a convenient source of execution for the plaintiff if successful, the plaintiff is in a better situation than the Court to assess its risks or convenience in this regard. Again, the plaintiff may well be creating impediments for itself by seeking to keep the proceedings in British Columbia.

[75] Ultimately, I agree that the enforcement of an eventual judgment weighs in favour of the action remaining in British Columbia.

[76] First, the Mareva order likely will allow a British Columbia judgment to be directly and efficiently enforced against Mr Su personally.

[77] Further, the Property Claim requires exclusive British Columbia remedies. First, that claim asserts fraudulent conveyance. In *Wang v. Sun*, 2014 BCSC 87 at para 66, Skolrood J (as he then was) explained that property located in British Columbia subject to a fraudulent conveyance claim favoured this Court retaining jurisdiction. Second, that claim seeks a declaration of constructive trust. As only a British Columbia court can enforce a constructive trust on British Columbia property, this factor favours British Columbia: *Pangli v. Pangli*, 2009 BCSC 1070 at para 60.

- [78] As a final strong factor favouring British Columbia, as Hong Kong is not a reciprocating state under the Court Order Enforcement Act, RSBC 1996, c. 78, a Hong Kong judgment cannot be directly enforced in British Columbia.
- (f) the fair and efficient working of the Canadian legal system as a whole
- [79] This is a neutral factor, as this case does not involve two Canadian jurisdictions: *Tims* at para 49; *Rotor Maxx* at para 110.
- (g) other jurisdictional considerations
- [80] While the need for comity and certainty diminishes the weight formerly given to the claimant's choice of forum, the claimant is *prima facie* entitled to choose in which forum to pursue its claim, subject only to the applicant's persuasive burden to establish a clearly more appropriate forum: *Purple Echo Productions, Inc. v. KCTS Television*, 2008 BCCA 85 at para 59; *Schwarzinger v. Bramwell*, 2011 BCSC 283 at para 105.
- [81] The plaintiff's choice is not gratuitous or abusive. Again, both Mr Su and Ms Kong have real and substantial ties to British Columbia, including real and personal assets and residency, including around the time of the impugned transfers and transactions. And while not a significant factor, even with respect to the corporate and fiduciary claims, there are at least 14 Canadian cryptocurrency claimants, three of whom have British Columbia addresses.

D. Other Su arguments

- [82] Before concluding, I will address four further arguments advanced by Mr Su.
- [83] First, in supplemental November submissions, supported by a late October affidavit, Mr Su denies having transferred, *inter alia*, the 4,869 Ether (worth roughly US\$16 million). He claims that he could not have effected the transfer, as his electronic devices, and those of his family members were held by the search party. He also denied ownership of an evidence-laden cell phone and a cryptocurrency wallet device found in his safe at his West Vancouver home in the execution of the Anton Piller order: he claims that he was safekeeping these items for a former AAX employee whose surname he does not disclose. He hypothesises that the transfers were effected overseas, possibly triggered by a mysterious person surveilling his property around that time. Mr Su asserts that the person directing the transfers "would likely be located in Hong Kong or other Asian countries, not BC."
- [84] These vague conjectures do not move the needle towards establishing Hong Kong as the clearly more appropriate jurisdiction, in light of the overall pleadings and evidence setting out British Columbia ties to the claim and parties.
- [85] Second, I will address the two primary cases relied upon by Mr Su, both of which found Hong Kong to be the appropriate forum over British Columbia: *Tims* and *Bakali v Mak*, 2024 BCSC 2345

- [86] In *Tims*, the Court exercised its discretion to transfer the British Columbia proceedings to Hong Kong. While Mr Su echoed many of the arguments made by the successful defendant in *Tims*, in the end, *Tims* turns on the fact that "the connections to Hong Kong in the underlying facts [we]re overwhelming": para 51. In contrast, the underlying Property Claim facts are solidly in British Columbia, while the corporate and cryptocurrency allegations are international and to some extent untethered by geography. Further, again, both Mr Su and Ms Kong resided here during much of the period in question, and at least one Unauthorized Transfer occurred during that period on British Columbia soil.
- [87] These stronger domestic connexions to both the defendants and the alleged torts also contrast the present case to *Bakali*. There, the India-based plaintiff advanced a primary claim that the corporate and individual defendants made misrepresentations, and never intended to pay the plaintiff for the delivery of fish products sold in Hong Kong; they then engaged in a breach of trust by not holding the shipment in trust until payment was made in full: para 35. The secondary claim alleged that the unpaid funds were used for the upkeep and maintenance of a property in Richmond, British Columbia, owned by another personal defendant: para 36. The secondary claim was more in the nature of a tracing exercise, wholly dependent on a finding of liability in the primary claim: para 73. The damages flowing from the alleged nonpayment and the fraud and misrepresentation occurred in Hong Kong: para 88. The Court found that the plaintiff essentially sought to obtain jurisdiction over the primary defendants by bootstrapping the primary claim to the Richmond property tracing claim: para 72. Importantly, *Bakali* found that the British Columbia courts lacked even jurisdiction simpliciter territorial competence over the primary individual and corporate defendants, who were neither resident in, nor had attorned to, British Columbia: paras 43, 51, 53, 60. In contrast, in the present case, jurisdiction simpliciter is not and could not realistically be contested.
- [88] Third, I will address Mr Su's public policy-based argument that:
- .Despite having no connection to Canada, Atom Holdings nonetheless seeks to benefit from our publicly funded court system for the private benefit of itself, its foreign third-party funder and foreign users of AAX.
- Public resources should not be used to adjudicate a case with almost no connection to BC. Atom Holdings seeks to use the BC judicial system to prosecute a case that involves companies domiciled in the Cayman Islands, Hong Kong, Seychelles, Malta, British Virgin Islands, Lithuania and Singapore, and witnesses and evidence located in Hong Kong and the PRC. The trial of the BC Action will be lengthy, complex and expensive, both for the parties, and Canadian taxpayers.
- [89] As set out above, it is hyperbolic to suggest that the claim, presently, and as proposed to be amended, "has no connection to Canada". This contrasts the present proceeding to the defendant's cited cases, with almost no connection to the domestic Canadian jurisdiction, in which the claimants primarily filed for tactical advantage. For example, in *Cunningham v. Hamilton*, 209 AR 123, 1997 ABCA 352 (CanLII) at paras 26-28, the Court noted that the

claimants commenced their action in Alberta, despite its tenuous connection to the dispute, to avoid the effects of expired US limitation periods: blatant forum shopping to escape their own lassitude in pursuing a claim in the appropriate jurisdiction.

- [90] Fourth, in the final paragraph in his submissions, Mr Su proposes an intriguing alternative remedy of the Court "staying the primary causes of actions pleaded in the Notice of Civil Claim": presumably referring to the corporate claims, although this is not clear. In the absence of specific arguments for this proposal, coupled with jurisprudence setting out the process and precedent for this jurisdictional bifurcation, this Court declines to do so.

IV. Conclusion

- [91] The Court declines to exercise its discretion to decline jurisdiction over this proceeding in favour of the Hong Kong courts.
- [92] The Court reiterates its directions to the plaintiff to move this matter forward, including providing the defendant with the digital evidence seized, with all reasonable haste, as set out in paras 104-105 of the BCSC Reasons.
- [93] This obligation to move swiftly towards trial and eventual relief of Mr Su from the freezing order as soon as reasonably possible is a two-way street. Mr Su is again directed to fully comply with the existing orders, as well as the discovery process, in order to expedite these proceedings. Given the liberal approach of this Court to the addition of pleadings and parties, Ms Kong and Mr Su should consider whether it will oblige the plaintiff to bring an application to that effect.
- [94] The Court commends counsel for their thorough and persuasive submissions. In particular, Mr Parsons's determined and thoughtful submissions made this application more challenging to decide than might have been expected.

"Crerar J"

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