

CV-14-500253-00CP

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN

DAVID JOYCE, SANCHO McCANN,
ALEXANDRE PEPIN and PAUL COLLIN

Plaintiffs

and

MTGOX INC., MT. GOX KK, TIBANNE KK, MT. GOX NORTH AMERICA INC.,
MIZUHO BANK, LTD., MARK KARPELES and JED MCCALED

Defendants

Proceeding under the *Class Proceedings Act, 1992*

NOTICE OF ACTION

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the statement of claim served with this notice of action.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyers or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this notice of action is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date:

March 14/14

Issued by:



Registrar

Address of Court Office:

393 University Ave. - 10th Fl.
Toronto, Ontario
M5G 1E6

TO:

MTGOX INC.
Level 15-F, Cerulean Tower,
26-1 Sakuragaoka-cho, Shibuya-ku,
Tokyo, Japan 150-8512

AND TO:

MT. GOX KK
Level 15-F, Cerulean Tower,
26-1 Sakuragaoka-cho, Shibuya-ku,
Tokyo, Japan 150-8512

AND TO:

TIBANNE KK
Level 15-F, Cerulean Tower,
26-1 Sakuragaoka-cho, Shibuya-ku,
Tokyo, Japan 150-8512

AND TO:

MT. GOX NORTH AMERICA INC.
Level 15-F, Cerulean Tower,
26-1 Sakuragaoka-cho, Shibuya-ku,
Tokyo, Japan 150-8512

AND TO:
MIZUHO BANK, LTD.
1-3-3, Marunouchi, Chiyoda-ku,
Tokyo, Japan 100-8210

AND TO:
MARK KARPELES
Level 15-F, Cerulean Tower,
26-1 Sakuragaoka-cho, Shibuya-ku,
Tokyo, Japan 150-8512

AND TO:
JED MCCALED
Level 15-F, Cerulean Tower,
26-1 Sakuragaoka-cho, Shibuya-ku,
Tokyo, Japan 150-8512

CLAIM

RELIEF SOUGHT

1. The plaintiffs claim on their own behalf, and on behalf of the members of the class, against all of the defendants for:
 - (a) an order certifying this action as a class proceeding and appointing them as representative plaintiffs for the class;
 - (b) a declaration that the defendants, besides Mizuho Bank, Ltd., are liable to the plaintiffs and the class for the following causes of action:
 - (i) negligence;
 - (ii) breach of contract;
 - (iii) breach of trust and/or breach of fiduciary duty;
 - (iv) fraudulent misrepresentation;
 - (v) negligent misrepresentation;
 - (vi) conversion; and
 - (vii) unjust enrichment;
 - (c) a declaration that the defendant Mizuho Bank, Ltd. is liable to the plaintiffs and the class for knowing assistance in breach of fiduciary duty;
 - (d) damages in the amount of \$500,000,000.00, or such other sum as this Honourable Court finds appropriate;
 - (e) the following orders:
 - (i) the imposition of a constructive trust on the defendants for the benefit of the plaintiffs and the members of the class;
 - (ii) an award of restitution for the defendants' wrongful conduct;

- (iii) a permanent and temporary injunction to cease the defendants' unlawful conduct; and
- (iv) an accounting;
- (f) an order directing reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;
- (g) prejudgment and postjudgment interest, compounded, or pursuant to ss. 128 and 129 of the *Courts of Justice Act*, R.S.O. 1980, c. 43;
- (h) costs of this action on a substantial indemnity basis or in an amount that provides full indemnity plus, the costs of distribution of an award under ss. 24 or 25 of the *CPA*, including the costs of notice associated with the distribution and the fees payable to a person administering the distribution pursuant to s. 26(9) of the *CPA*; and
- (i) such further and other relief as this Honourable Court deems just.

OVERVIEW

2. Bitcoin is a new form of digital currency that was created in early 2009.¹ Bitcoins are not issued from a government and are not regulated by any central authority. Instead, bitcoins can be created by any person with specialized hardware and computer software and then sold to other consumers on the Internet via private companies, called "Bitcoin exchanges". Bitcoin may also be used as currency to purchase goods and services online from vendors who accept that form of currency.
3. One such Bitcoin exchange is known as "Mt. Gox" which was owned and operated by the defendants, with the exception of the defendant Mizuho Bank, Ltd., (the "Mt. Gox

Defendants”) in the within action as described below. The Mt. Gox Defendants operated their Bitcoin exchange through the website www.mtgox.com, which operates from servers located in the Commonwealth of Massachusetts.

4. When users registered accounts with Mt. Gox, the Mt. Gox Defendants agreed, by the terms of service, to “hold all monetary sums and all Bitcoins deposited by each Member in its Account, in that Member’s name as registered in their Account details, and on such member’s behalf.”
5. In doing so, the Mt. Gox Defendants held all currency that was not Bitcoin in trust for its users in an account or accounts with the defendant Mizuho Bank, Ltd. The currency held in these accounts consisted of the users’ currency which was used for the purchase and sale of Bitcoin on the Mt. Gox exchange. When a user requested non-Bitcoin funds to be transferred to their personal bank accounts, those funds would be transferred from the Mt. Gox Defendant’s bank account at Mizuho Bank, Ltd., to that user’s personal bank account.
6. On or about February 7, 2014, the defendants halted all withdrawals from the Mt. Gox exchange due to a supposed computer bug. Nonetheless, the defendants continued to allow users to trade bitcoins and transfer bitcoins and other currency into the users’ Mt. Gox accounts. Over the next few weeks, reports began to reveal that the so-called “computer bug” afflicting Mt. Gox’s servers may have actually been a several-year long security breach that resulted in the pilfering of millions of dollars’ worth of its users’

¹ For the sake of clarity, “Bitcoin” refers to the digital currency and “bitcoin” (with a lower case “b”) refers to an individual unit of the currency itself).

bitcoins. After this news broke, the price of bitcoins plummeted, creating a disruptive ripple effect that has nearly shut down the industry and left Mt. Gox users unable to trade bitcoins and cut their losses against a falling market if they wished to do so.

7. On or about February 25, 2014, Mt. Gox's website (www.mtgox.com) shut down and the users' currency, including Bitcoin, held by the Mt. Gox Defendants became unavailable to them. The users' currency has been converted and captured by the Mt. Gox Defendants for their own purposes. It is estimated that approximately 750,000 of users' bitcoins were lost, which is the equivalent of hundreds of millions of dollars in Canadian dollars ("CAD").
8. Additionally, all of the currency that was held in an account or accounts owned by the Mt. Gox Defendants at the Mizuho Bank, Ltd., in trust for the Mt. Gox users for the purchase and from the sale of Bitcoin, is unaccounted for.

THE DEFENDANTS

9. The defendant MTGox Inc. is a corporation existing under the laws of the State of Delaware with its principal place of business located at Level 15-F, Cerulean Tower, 26-1 Sakuragaoka-cho, Shibuya-ku, Tokyo, Japan 150-8512. MtGox Inc. conducts business throughout Ontario and Canada.
10. The defendant Mt. Gox KK is a Japanese corporation with its principal place of business located at Level 15-F, Cerulean Tower, 26-1 Sakuragaoka-cho, Shibuya-ku, Tokyo, Japan 150-8512. Mt. Gox KK, which also operates as Mt. Gox Co. Ltd., conducts

business throughout Ontario and Canada. It is the parent of MtGox Inc. and Mt. Gox North America Inc. and conducts business in Canada directly by and through MtGox Inc. and Mt. Gox North America Inc.

11. The defendant Tibanne KK is a Japanese corporation with its principal place of business located at Level 15-F, Cerulean Tower, 26-1 Sakuragaoka-cho, Shibuya-ku, Tokyo, Japan 150-8512. Tibanne KK conducts business throughout Ontario and Canada. It is the parent of Mt. Gox KK and conducts business in Canada directly by and through MtGox Inc. and Mt. Gox North America Inc.
12. The defendant Mt. Gox North America Inc. is a corporation existing under the laws of the State of New York with its principal place of business located at Level 15-F, Cerulean Tower, 26-1 Sakuragaoka-cho, Shibuya-ku, Tokyo, Japan 150-8512. Mt. Gox North America Inc. conducts business throughout Ontario and Canada.
13. The defendant Mark Karpeles serves as the Chief Executive Officer of MtGox Inc., Mt. Gox KK, Tibanne KK, and Mt. Gox North America Inc. Additionally, Mr. Karpeles is the sole shareholder of all four companies, with the exception of Mt. Gox KK of which he owns 88% of the shares. Mark Karpeles is also the President and CEO of both Mt. Gox KK and Tibanne KK and provides the overall direction and supervision of the main operations of the companies. Mr. Karpeles was personally and intimately involved in the fraudulent conduct and theft described herein.
14. The defendant Jed McCaleb is a 12% shareholder of Mt. Gox KK. Mr. McCaleb was personally and intimately involved in the fraudulent conduct and theft described herein.

15. The Mt. Gox Defendants act in direct concert and as a single economic entity under the brand and trade name “Mt. Gox.” MtGox Inc., Mt. Gox KK, Tibanne KK, Mt. Gox North America Inc., Mark Karpeles and Jed McCaleb are the directing minds behind all of the corporate defendants who are indistinguishable as separate entities, as all four corporations are maintained for a singular economic purpose – the operation of the Mt Gox Bitcoin exchange – and Mr. Karpeles and Mr. McCaleb are the only shareholders of these companies.

16. The defendant Mizuho Bank, Ltd. is a Japanese financial institution with its head office located at 1-3-3, Marunouchi, Chiyoda-ku, Tokyo 100-8210, Japan. Mizuho Bank, Ltd. conducts business worldwide and has branches located in Toronto, Calgary, and Vancouver, Canada. All non-Bitcoin currency received by the Mt. Gox Defendants from its users was held in an account or accounts with Mizuho Bank, Ltd.

THE PLAINTIFFS

17. The plaintiff David Joyce is a resident of Toronto, Ontario. During 2011 Mr. Joyce created or “mined” bitcoins through the use of specialized hardware and software. On or December 13, 2012, he registered an account on the Mt. Gox exchange. In or about November 2013, Mr. Joyce moved approximately 20 bitcoins that he had mined into his Mt. Gox account. On or about November 29, 2013, he sold all 20 of his bitcoins on the Mt. Gox exchange at a price of \$1,225 in Canadian dollars (CAD) each for a total sale of \$24,500.

18. In January 2014, Mr. Joyce initiated a series of wire transfers to withdraw all CAD from his Mt. Gox account into his personal bank account. After the wire transfers had still not come into his personal banking account after one month, Mr. Joyce made inquiries with Mt. Gox. He was advised by email of February 12, 2014, that Mt. Gox was experiencing a huge back-log of withdrawals that were needed to be processed and that it would take a few weeks to get back to normal processing speeds. To date, these wire transfers have not gone through and Mr. Joyce is owed \$24,500 CAD.
19. The plaintiff Sancho McCann is a resident of Vancouver, British Columbia. In or about July 2011, he registered an account on the Mt. Gox exchange. In or about September 2013 he transferred approximately 18 bitcoins to it. Since then, he has made several trades on the Mt. Gox exchange but did not withdraw any Bitcoin or other currency and since February 2014 has been unable to do so. He is owed 3.8 bitcoins.
20. The plaintiff Alexandre Pepin is a resident of Montreal, Quebec. In or around December 2013, he registered an account on the Mt. Gox exchange. Throughout January 2014, he transferred approximately 7.8146 bitcoins to that account. He also requested a withdrawal of \$7,000 CAD in or about late January 2014. In February 2014, Mr. Pepin further transferred approximately \$750 in United States dollars (USD) to his Mt. Gox account. He has been unable to withdraw Bitcoin or other currency from his Mt. Gox account since February 2014. He is owed \$7,000 CAD, \$364.81 USD, and 2.2 bitcoins.
21. The plaintiff Paul Collin is a resident of Calgary, Alberta. In or about April 2013, he registered an account on the Mt. Gox exchange and subsequently transferred approximately \$17,000 CAD to that account which he converted into 126.777 bitcoins.

On or about May 21, 2013, Mr. Collin's account was subject to a hack and there was an unauthorized withdrawal of 100 bitcoin from his account. The Mt. Gox defendants denied all liability for that loss and Mr. Collin has not received any compensation for that loss.

22. Mr. Collin continued to maintain his Mt. Gox account, however, and by February 2014, he had approximately 7.9 bitcoins in it. In February 2014, Mr. Collin also attempted to wire \$3,000 CAD to an account with the Mizuho Bank, Ltd. in Japan held by the Mt. Gox Defendants. The wire transfer did not go through and the funds were returned to Mr. Collin. He has been unable to withdraw Bitcoin or any other currency from his Mt. Gox account since February 2014 and is currently owed 7.9 bitcoins and \$2.01 CAD.

23. The plaintiffs bring this action on behalf of:

- (a) all persons in Canada who paid a fee to Mt. Gox to buy, sell, or otherwise trade bitcoins; and
- (b) all persons in Canada who had bitcoins or fiat currency stored with Mt. Gox on February 7, 2014.

Venue

24. The plaintiffs propose that this action be tried in the City of Toronto, in the Province of Ontario.

JOYCE, et al.
Plaintiffs

v.

MTGOX INC., et al.
Defendants

Court File No.:

CU-14-500253-0069

Ontario
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

NOTICE OF ACTION

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