

CITATION: Iakovlev v. Epayments Systems Ltd., 2026 ONSC 1296
COURT FILE NO.: CV-22-00686347-0000
MOTION HEARD: 20260304

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: ALEXANDRE IAKOVLEV, plaintiff

AND:

EPAYMENTS SYSTEMS LIMITED et al, defendants

BEFORE: ASSOCIATE JUSTICE R. FRANK

COUNSEL: Madeline Klimek and Adam Chisholm for the defendant/moving party,
ePayments Systems Limited
Vidit Deswal for the plaintiff/responding party

HEARD: December 16, 2025

REASONS FOR DECISION

[1] This is a motion by the defendant ePayments Systems Limited for an order dismissing the plaintiff's claim as against it on the basis that this Court has no jurisdiction over it, or alternatively on the basis that Ontario is *forum non conveniens*.

[2] For the reasons that follow, this action is dismissed as against ePayments on the basis that this court has no jurisdiction to hear it.

A. BRIEF BACKGROUND

[3] In this action, the plaintiff seeks damages for alleged misrepresentation and civil conspiracy. The allegations in the amended statement of claim include the following:

- ePayments is a digital payment company that is closely integrated with DSX Global (UK) Limited.
- A large portion of ePayments' revenue was generated by transactions related to DSX Global, such as payments of fiat currency by users to their DSX Global accounts and/or crypto payment transfers to or between users on the DSX Global crypto asset trading platform (the "Platform").
- In order to receive authorization to trade on the Platform, all users, including the plaintiff, were subject to an online registration process. This process required users to provide specific personal information, such as their jurisdiction for trading and address of residence.

- In reliance on various representations by the defendants, the plaintiff took steps to open an account with DSX Global.
- In October 2017, the plaintiff provided the Platform with all the information required for registration, including official identification documents that stated he was a resident of Ontario, Canada. ePayments agreed to provide crypto asset trading services within the plaintiff's jurisdiction.
- ePayments provided the critical "on-ramp" for the plaintiff to make deposits to the Platform.
- The plaintiff deposited funds (fiat currency) through ePayments to purchase certain crypto assets (bitcoin) that were then held in his account with DSX Global.
- The plaintiff's funds were deposited on the basis of a scheme concocted by the defendants that involved holding the Platform out to its users as a fully compliant and fully regulated crypto asset trading platform (the "DSX Scheme").
- The defendants acted illegally in Canada by operating in violation of Canadian securities laws and other regulations, and in violation of Canadian anti-money laundering laws. Neither DSX Global nor the Platform, were registered to operate in Canada.
- ePayments contributed to the DSX Scheme by: (a) permitting the onboarding of the plaintiff onto the Platform although the plaintiff was not residing in a jurisdiction for which the Platform could operate; (b) accepting funds through its website and facilitating the transfer of such funds onto the Platform through an account made by a Canadian resident; and (c) causing its organization to be closely interrelated and integrated with the Platform, therefore adding a false sense of legitimacy to the Platform.
- The Defendants made the representations with knowledge of them being false or, in the alternative, made them without belief in their truth or made them recklessly, not caring whether they were true or false.
- The representations were intended to and did induce users, such as the plaintiff, into the DSX Scheme and to cause such users to transfer and exchange funds on the Platform.
- At all material times, the plaintiff: (a) could access the Platform's website from the IP address linked to his home in Toronto, Canada; (b) disclosed all relevant details regarding his residency to the defendants and on the Platform; and (c) received the approval from the Platform to acquire and trade crypto from his Toronto home.
- The defendants participated in and assisted with the DSX Scheme and are liable for civil conspiracy based on their involvement in the DSX Scheme.
- As a result of the defendants' actions and representations, the plaintiff purchased bitcoins through ePayments and on the Platform instead of through another provider.

- Due to the bankruptcy of DSX Global, the plaintiff has been deprived of the six bitcoins he purchased.

B. ISSUES

[4] The issues on this motion are as follows:

1. Does this court have jurisdiction over ePayments with respect to this action on the basis of: (a) presence-based jurisdiction; (b) consent-based jurisdiction; or (c) assumed jurisdiction?
2. If the court has jurisdiction, should the action be permanently stayed on the basis that Ontario is *forum non conveniens*?

C. LAW AND ANALYSIS

Issue #1 – Does this court have jurisdiction over ePayments?

[5] There are three ways in which jurisdiction may be asserted against an out-of-province defendant: (1) presence-based jurisdiction; (2) consent-based jurisdiction; and (3) assumed jurisdiction.¹

[6] In this case, ePayments has not defended the action or otherwise attorned to the jurisdiction of the Ontario courts. Further, the plaintiff does not assert that consent-based jurisdiction applies. Rather, the plaintiff argues that the court has jurisdiction based on ePayments' presence in Ontario and on the basis of assumed jurisdiction.

1. *Is there presence-based jurisdiction?*

Legal Principles

[7] Presence-based jurisdiction is one of the traditional bases for establishing jurisdiction.² As the Supreme Court has explained, to establish presence-based jurisdiction, the plaintiff must show that the defendant was carrying on business in Ontario at the time of the action. This is a factual determination that requires the court to inquire into whether a company has some direct or indirect presence in the jurisdiction, accompanied by a degree of business activity that is sustained over a period of time.³ The maintenance of physical business premises is a compelling indication of business activity for the purpose of asserting presence-based jurisdiction.⁴

¹ *Muscutt v Courcelles*, 2002 CanLII 44957 (ON CA) at para 19

² *Chevron Corp v Yaiguaje*, 2015 SCC 42 (CanLII) at para 82

³ *Chevron* at para 85

⁴ *Chevron* at para 85

[8] In *Club Resorts Ltd. v. Van Breda*, the Supreme Court found that, for purposes of assumed jurisdiction, carrying on business in a province is an appropriate connecting factor. However, the Supreme Court also cautioned against creating “what would amount to forms of universal jurisdiction in respect of tort claims arising out of certain categories of business or commercial activity”.⁵ Writing for the Court, Justice LeBel held that active advertising in the jurisdiction, or the fact that a website can be accessed from the jurisdiction, would not suffice to establish that a defendant is carrying on business in the jurisdiction. Rather, “carrying on business requires some form of actual, not only virtual presence in the jurisdiction, such as maintaining an office there”.⁶

[9] Although *Van Breda* was a case about assumed jurisdiction, the Supreme Court has explained that the meaning of carrying on business in a jurisdiction described in *Van Breda* also applies to traditional presence-based jurisdiction.⁷ Thus, “the *Van Breda* requirements for ‘carrying on business’ must also apply for the purposes of traditional presence-based jurisdiction”.⁸ The Supreme Court has also explained that “if the ‘carrying on business’ standard from *Van Breda* for assumed jurisdiction is different from the ‘carrying on business’ standard from *Chevron* for presence-based jurisdiction, the *Van Breda* standard is *less onerous*.”⁹

[10] Several recent decisions have applied the *Van Breda* analysis and concluded that a foreign defendant is not carrying on business in a jurisdiction simply because the plaintiff could access that defendant’s website or platform from within the jurisdiction.¹⁰ As part of the assessment of whether an online business is carrying on business in Ontario, the court has considered whether there is evidence that the foreign defendant targeted Ontario residents through the use of its website.¹¹ For example, in *Google Inc. v. Equustek Solutions Inc.*,¹² the British Columbia courts exercised jurisdiction over Google even though it had no servers, offices or employees in the province. In that case, the British Columbia courts found that Google was carrying on business in the province because it gathered information and data in the province that led to targeted search results and targeted advertising towards residents of British Columbia.¹³

[11] Other factors that could indicate business activity within a jurisdiction include:

- registration as an extra-provincial corporation;

⁵ *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17 (CanLII) at para 87

⁶ *Van Breda* at para 87. See also *Shirodkar v Coinbase Global Inc. et al.*, 2024 ONSC 1399 (CanLII) at para 25 (“*Coinbase* (ONSC)”; aff’d 2025 ONCA 298 (“*Coinbase* (ONCA)”))

⁷ *Coinbase* (ONSC) at para 26, citing *H.M.B. Holdings Ltd. v. Antigua and Barbuda*, 2021 SCC 44

⁸ *H.M.B.* at para 40

⁹ *Coinbase* (ONSC) at para 26, citing *H.M.B.* at para 45

¹⁰ *Coinbase* (ONSC) at paras 27-30; *Yip v HSBC Holdings plc*, 2018 ONCA 626 (“*Yip* (ONCA)”) at para 41, aff’g *Yip v. HSBC Holdings plc*, 2017 ONSC 5332 (“*Yip* (ONSC)”)

¹¹ *Rieder v Plista GMBH*, 2021 ONSC 4458 (CanLII) at paras 25-26, aff’d 2022 ONCA 281 (CanLII); *Vahle et al. v Global Work & Travel Co. Inc.*, 2019 ONSC 3624 (2019) at paras 37 and 39, aff’d 2020 ONCA 224 (CanLII)

¹² 2017 SCC 34, aff’g 2015 BCCA 265

¹³ See also *Vahle* (ONSC) at para 38

- obtaining a licence or registration from a regulator to conduct business activity within the jurisdiction;
- having executives and key decision-makers residing in the jurisdiction; and
- having employees in the jurisdiction.¹⁴

Analysis

[12] The plaintiff submits that ePayments was present and carrying on business in Ontario because it actively targeted Canadian users and its platform was deliberately marketed as globally accessible and secure.

[13] Although ePayments' evidence is that it did not actively target Canadian users, the plaintiff submits that it did so through its globally accessible website and client accounts, and through its process of member registration. In support of this assertion, the plaintiff argues that, at the time the plaintiff registered his account with ePayments, the online registration form requested personal information that users entered via dropdown menus. Specifically, the ePayments online "Electronic Payments Association Membership Application" required users to provide their citizenship, and the dropdown menu included Canada as one of the countries that could be selected. In addition, the registration form included a section through which a user could order an ePayments prepaid Mastercard, and the dropdown menu for the delivery address listed Canada as one of the countries to which the credit card could be delivered.

[14] With respect to global accessibility, there is no dispute that the ePayments website and client accounts were accessible to clients throughout the world, including from Ontario, and that ePayments had clients from more than 100 countries. In terms of the registration process, it is uncontested that the plaintiff was in Russia when he registered with ePayments. Although the plaintiff says that he intended to register with ePayments as a Canadian, he did not do so because he was working in Russia. Rather, the personal information the plaintiff provided to ePayments when he registered for his ePayments account included that (i) he was a Russian citizen, and (ii) he resided in Moscow. This is inconsistent with the allegations in the amended statement of claim that the plaintiff provided official identification documents that stated he was a resident of Ontario when he completed the registration process with ePayments.

[15] In terms of the plaintiff's access to and use of his ePayments account, there is conflicting evidence as to whether he actually did so from Ontario. ePayments' evidence is that all of the plaintiff's logins to his ePayments account were from Russia. In contrast, the plaintiff's evidence is that throughout his investment with DSX Global he regularly accessed the DSX Global Platform and executed trades both from Russia and Ontario. Although the plaintiff's evidence does not specifically reference access to his ePayments account, there is evidence that DSX Global was

¹⁴ *Coinbase* (ONSC) at para 30

registered with the UK Financial Conduct Authority as a payment service agent for ePayments.¹⁵ Therefore, for purposes of this jurisdictional analysis, I find that access to the DSX Global Platform from Ontario was sufficiently linked to ePayments and can be treated as online access to ePayments' from Ontario.

[16] Other pertinent evidence with respect to whether ePayments was carrying on business in Ontario includes the following:

- ePayments is a United Kingdom company, headquartered in London, England, that is currently in a “solvent wind down”;
- when ePayments was an operating business, it operated as an electronic money institution as authorized by the United Kingdom Financial Conduct Authority, with permission to issue electronic money and provide payment services. ePayments' business was that of a payment processor moving currencies between online wallets;
- ePayments currently has one active officer and director who resides in the United Kingdom. There are four other former directors of ePayments. All of the former directors were listed as residents of England or the United Kingdom;
- at all times since its incorporation in 2012, ePayments' employees and services (other than its physical servers) were located in the United Kingdom;
- all ePayments' servers were located within the European Union;
- at no time did ePayments have a physical office in Ontario, or elsewhere in Canada;
- at no time was ePayments registered as an extra-provincial corporation in Ontario or elsewhere in Canada;
- ePayments did not obtain a license or registration from any federal or provincial Canadian regulator to undertake a particular business activity in Ontario; and
- ePayments did not target its advertisements to Ontario residents.

[17] Considering the applicable principles and the evidence in the record, I find that ePayments did not carry on business in Ontario. As in *Coinbase* and unlike *Google*, there is no evidence that ePayments gathered information or data in Ontario or used targeted advertising in Ontario. Although users, including the plaintiff, could register with ePayments and access the ePayments website and their accounts globally, including from Ontario, this is not carrying on business in Ontario in the sense required by *Chevron* and the other decisions referenced above.

[18] With respect to registration, although ePayments members were able to select “Canada” as their country of citizenship and input a Canadian address for receipt of an ePayments credit card,

¹⁵ The DSX Global website included the following statement: “The e-money associated with your DSX account is issued by ePayments systems Limited. ... Digital Securities Exchange Limited (DSX) is registered with the FCA register reference (900410) as ePayments Systems Limited payment service agent.”

this is not sufficient to find that ePayments targeted Ontario or performed some substantial aspect of its business in Ontario. This aspect of the registration process is insufficient to demonstrate the requisite actual – as opposed to virtual – presence in Ontario for purposes of establishing that ePayments was carrying on business in Ontario for jurisdictional purposes. This conclusion would not change if the plaintiff had been in Ontario, rather than Russia, when he opened his ePayments account.

[19] With respect to the global accessibility to the ePayments website and accounts, including from Ontario, this is also insufficient to demonstrate that ePayments performed some substantial aspect of its business undertaking in Ontario.¹⁶ Rather, ePayments’ presence in Ontario was virtual only, and passive, and does not meet the requirements to find that ePayments was carrying on business in Ontario for jurisdictional purposes.¹⁷ This conclusion does not change as a result of the alleged connection between ePayments and DSX Global, or the evidence that DSX Global was registered with the UK Financial Conduct Authority as a payment service agent for ePayments. Other than permitting users to access their accounts from Ontario, there is no evidence that DSX Global had any other connection to Ontario. Therefore, even if access to the DSX Global Platform from Ontario is treated for purposes of this jurisdictional analysis as online access to ePayments’ from Ontario, that is not sufficient to ground jurisdiction. As with ePayments, there is no basis to find that DSX Global performed some substantial aspect of its business undertaking in Ontario.

[20] In the result, I find that ePayments did not carry on business in Ontario. Therefore, there is no presence-based jurisdiction over ePayments.

2. *Is there consent-based jurisdiction?*

[21] Consent-based jurisdiction arises where a defendant has made a “voluntary submission, attornment by appearance and defence, or prior agreement to submit disputes to the jurisdiction of the domestic court”.¹⁸ Here, ePayments has not attorned to the jurisdiction of the Ontario courts, and the plaintiff does not assert consent-based jurisdiction.

3. *Is there assumed jurisdiction?*

Legal Principles

[22] As the Supreme Court has explained in *Van Breda*, for the court to assume jurisdiction, there must be a “real and substantial connection” between the court and the subject matter of the litigation.¹⁹ An Ontario court will assume jurisdiction over a foreign defendant where the plaintiff

¹⁶ See *Coinbase* (ONSC) at para 37 citing *Yip* (ONSC) at para 186; *Yip* (ONCA) at para 41.

¹⁷ *Coinbase* at paras 36-38

¹⁸ *Muscutt* at para 19

¹⁹ *Van Breda* at paras 66 and ff

establishes a “good arguable case” for doing so through the allegations in the statement of claim, or a combination of the allegations in the claim and evidence filed on the jurisdiction motion.²⁰

[23] In *Van Breda*, the Supreme Court set out four presumptive connecting factors, each one on its own capable of giving rise to a “real and substantial connection” between the court and subject matter of the litigation. Those presumptive connecting factors are:

- (a) the defendant is domiciled or resident in the province;
- (b) the defendant carries on business in the province;
- (c) the tort was committed in the province; and
- (d) a contract connected with the dispute was made in the province.²¹

[24] When a recognized presumptive connecting factor applies, the defendant may rebut jurisdiction by establishing “facts which demonstrate that the presumptive connecting factor does not point to any real relationship between the subject matter of the litigation and the forum or points only to a weak relationship between them”.²²

Analysis

[25] With respect to the first of the four listed presumptive connecting factors, ePayments is not domiciled in Ontario. With respect to the fourth presumptive connecting factor, the plaintiff completed the registration process while he was in Russia, and, therefore, the contract connected with the claim was not made in Ontario. The plaintiff does not assert otherwise. Of the four listed presumptive connecting factors, the plaintiff relies only on the following two: (1) that the defendant carried on business in Ontario; and (2) that the alleged torts were committed in Ontario.

(i) *Was ePayments carrying on Business in Ontario?*

[26] I have already found that ePayments is and was not carrying on business in Ontario for the purposes of establishing presence-based jurisdiction. For the same reasons as outlined above, even if a less onerous standard for finding business activity applies with respect to assumed jurisdiction than with respect to presence-based jurisdiction,²³ I find that the plaintiff has not demonstrated that ePayments is carrying on business in Ontario for the purposes of establishing assumed jurisdiction. Therefore, this presumptive connecting factor does not apply.

²⁰ *Ontario v. Rothmans Inc.*, 2013 ONCA 353 at para 54

²¹ *Van Breda* at para 90

²² *Van Breda* at para 95

²³ *Coinbase* (ONSC) at para 26, citing *H.M.B.* at para 45

(ii) *Was a tort committed in Ontario?*

[27] A tort occurs in the jurisdiction substantially affected by a defendant's activities or its consequences, or where the important elements of the tort occurred.²⁴ The court adopts a flexible and pragmatic approach when determining the *situs* of a tort for jurisdictional purposes.²⁵

a. *Fraudulent or negligent misrepresentation – is there a presumptive connecting factor?*

[28] The causes of action in the amended statement of claim include both negligent and fraudulent misrepresentation. For jurisdictional purposes, the tort of negligent misrepresentation occurs in the jurisdiction where the representation is received or acted upon.²⁶ Similarly, the tort of fraudulent misrepresentation takes place where the misrepresentation is received and acted upon.²⁷

[29] The parties take contrary views as to whether the alleged misrepresentations occurred in Ontario. ePayments submits that the alleged misrepresentations were not committed in Ontario, arguing that: (1) there is no evidence from the plaintiff as to where he was when he received any alleged misrepresentations; and (2) based on ePayments' records, the plaintiff always interacted with ePayments from Russia, and the information he provided during the registration process referred to a residential address in Moscow. In response, the plaintiff submits that the tort of misrepresentation occurred in Ontario. He argues that, as an Ontario resident, he: (i) received ePayments' representations about security and global accessibility in Ontario; and (ii) relied on those representations in Ontario. The plaintiff also submits that he suffered a financial loss – the loss of his retirement savings – in Ontario.

[30] With respect to the plaintiff's alleged financial loss, for the reasons outlined below in the analysis of the alleged tort of conspiracy, I am not satisfied that the pleadings and evidence point to any loss in Ontario. In any event, to the extent that the plaintiff relies on the allegation that he suffered damages in Ontario as a presumptive connecting factor, that factor was rejected in *Van Breda*.²⁸

[31] With respect to the place where the alleged misrepresentations were received or acted upon, the connection to Ontario is insufficient. In this regard, there is no direct evidence from the plaintiff as to where the representations were received, and there is no evidence and no allegation in the amended statement of claim that the plaintiff received any misrepresentations while in Ontario. Rather, (1) in the amended statement of claim, the plaintiff pleads that he registered with ePayments and opened the relevant accounts in reliance on the alleged misrepresentations, and (2) the evidence indicates that the plaintiff was working and living in Russia in 2017 when he took

²⁴ *Yip* (ONSC) at para 207; *Coinbase* (ONSC) at para 100

²⁵ *Coinbase* (ONSC) at para 100, citing *Beijing Hehe Fengye Investment Co. Limited v. Fasken Martineau Dumoulin LLP*, 2020 ONSC 934 at para 59

²⁶ *Central Sun* at para 34

²⁷ *Sincies Chiementin SpA (Trustee of) v King*, 2010 ONSC 6453 at para 179, aff'd 2012 ONCA 653

²⁸ See *Coinbase* (ONSC) at para 122 citing *Van Breda* at para 29

those steps. Further, there is no evidence and no allegation in the amended statement of claim that the plaintiff received any alleged misrepresentations subsequent to the registration process he completed while in Russia. In those circumstances, the representations would have been received in Russia and not in Ontario.

[32] I also find that the pleadings and evidence are insufficient to support the plaintiff's position that he acted on the alleged misrepresentations in Ontario. The plaintiff's evidence is that in 2017 he transferred funds to ePayments and purchased the six bitcoins in issue in this action that he then "kept on their DSX platform". As noted, the evidence is that the plaintiff was living and working in Russia in 2017. I recognize that there is some evidence from the plaintiff that suggests conduct in Ontario, including that:

- he "chose to use the DSX Global platform due to its global accessibility and the company's assurances that it was secure and would also be accessible in Ontario";
- between October 2017 to July 2019, he made deposits through ePayments of over \$110,000 USD on the Platform;
- during his investment with DSX Global, he regularly accessed their platform and executed trades both from Russia and Ontario; and
- he conducted a significant portion of his "activities" from Ontario.

[33] However, the plaintiff's evidence on this point is inconsistent and extremely vague. It does not explain what "activities" were undertaken, or what "trades" were executed that are relevant to this claim. Specifically, although the claim centres on allegations relating to the purchase and loss of six bitcoins, there is nothing in the evidence nor the pleadings that connects the alleged trades or activities with the purchase or loss of the six bitcoins. Further, there is not a single example or any detail regarding the alleged activities or trades, or how those are in anyway connected to the alleged loss of the six bitcoins. The plaintiff's evidence consists of bald statements that are contradictory to his own evidence that he purchased the six bitcoins in issue in 2017 (which occurred while he was in Russia) and kept them on the DSX Global Platform.

[34] In my view, the pleadings and evidence are insufficient to support a finding that the plaintiff received the alleged misrepresentations while in Ontario, or to find that the plaintiff acted on the representations in Ontario. Further, based on the pleadings and evidence, it is not appropriate to infer that the alleged misrepresentations were received or acted upon in Ontario. As a result, the plaintiff has failed to meet the threshold of demonstrating a good arguable case that ePayments committed a misrepresentation-based tort in Ontario for the purpose of assuming jurisdiction over that foreign defendant.

b. Fraudulent or negligent misrepresentation – rebuttal of a presumptive connecting factor

[35] In the event I am incorrect in concluding that the plaintiff has failed to establish a presumptive connecting factor based on the tort of misrepresentation, I have considered whether

the presumptive connecting factor would be rebutted because of the relative weakness of the connection to Ontario. To do so, I have considered whether the defendant has established facts showing that the presumptive connecting factor does not point to any real relationship between the plaintiff's claim and Ontario, or points only to a weak relationship between them.²⁹

[36] Several Ontario cases have considered the question of rebutting the presumptive connecting factor in a case of alleged misrepresentation. For example, in *Central Sun*, the plaintiff, Central Sun, alleged that it had received certain studies prepared by the defendants, and it relied on those studies when it built and operated a mine it owned in Costa Rica. Following a major landslide, the mine ceased operating. Central Sun lost its investment and incurred substantial remediation costs. Central Sun then brought an action in Ontario in which it claimed that the studies were badly flawed. In considering the question of rebutting the presumptive connecting factor based on the tort of misrepresentation, the Court of Appeal held that “the core of the tort of negligent misrepresentation is that the misrepresentation is received and acted upon. In this case, the misrepresentation was received and acted upon in Ontario. It cannot be said that only a relatively minor element of the tort occurred in this province. The respondents simply cannot show that only a relatively minor element of the tort occurred in the province, and they cannot therefore rebut the presumed jurisdiction of the Ontario court over this action.”³⁰

[37] In different circumstances, defendants have successfully rebutted the presumptive connecting factor with respect to alleged misrepresentations. In *Yip*, the plaintiff, Mr. Yip, commenced a class action in Ontario against HSBC Holdings plc and others asserting claims based on (i) a statutory tort under the Ontario *Securities Act*, R.S.O. 1990, c. S.5, and (ii) common law negligent misrepresentation. HSBC Holdings and another defendant brought a motion seeking an order dismissing or staying the action on various grounds, including that the Ontario court lacked jurisdiction *simpliciter* with respect to the claims.

[38] In considering the *situs* of the common law tort of misrepresentation, Perell J. considered whether Ontario was substantially affected by the defendant's activities or its consequences, and whether the important elements of the torts of fraudulent or negligent misrepresentation – where the misinformation was received or acted upon – occurred in Ontario.³¹ On the basis of Mr. Yip's allegation that he had downloaded HSBC Holdings' materials containing the alleged misrepresentations in Ontario, Perell J. held that Mr. Yip had a good arguable case that HSBC Holdings had committed a misrepresentation-based tort in Ontario. Therefore, subject to rebuttal, Mr. Yip had established a presumptive connecting factor and the Ontario court had jurisdiction *simpliciter*. However, Perell J. also held that HSBC Holdings had rebutted the presumptive connecting factor that the alleged wrongdoing had a real and substantial connection with Ontario

²⁹ See *Yip* (ONCA) at para 45 citing *Van Breda* at para 95

³⁰ *Central Sun* at para 38

³¹ *Yip* (ONSC) at paras 207 and 208, citing *Central Sun*

because the alleged misconduct fundamentally occurred outside of Canada.³² His reasons included the following:

- the fact that Mr. Yip had downloaded HSBC Holdings' materials containing the alleged misrepresentations in Ontario was "an extremely weak connection";³³
- the fact that HSBC Holdings' materials were also available on the webpage of a Canadian affiliate of HSBC Holdings did not point to any real relationship between the subject-matter of the litigation and Ontario;³⁴
- HSBC Holdings had no reason to believe that it was required to comply with the disclosure requirements or to be subject to the regulation of the law of Ontario. If it was so obliged, it would also be required to comply with the law of any other country that regulates its own stock exchanges regardless of whether its shares traded on that country's exchange;³⁵ and
- in these circumstances, the presumptive connecting factor is rebutted, which was appropriate to avoid the type of universal jurisdiction that Justice LeBel cautioned against in *Van Breda*.³⁶

[39] The Court of Appeal upheld Perell J.'s conclusion that the presumptive connecting factor had been rebutted on the evidence, noting that: very few, if any, activities of HSBC Holdings' business ever occurred in Ontario; it had no fixed place of business in Canada; and there was no agent of HSBC Holdings doing its management business in Ontario.³⁷

[40] In my view, the circumstances of the alleged misrepresentations in this case, and their connection to Ontario, are distinguishable from those in *Central Sun* and similar to those in *Yip*. In *Central Sun*, the alleged misrepresentations were contained in reports from the defendants who had been retained by Central Sun to prepare and provide the reports to Central Sun. The alleged misrepresentations were made directly to and received by Central Sun. The facts in this case are very different. There are no studies, reports, or other documents containing alleged misrepresentations that were prepared specifically for the plaintiff by ePayments. As in *Yip*, the alleged misrepresentations were posted on a website and accessed online.

[41] There are other similarities between this action and *Yip*. In *Yip*, the plaintiff alleged that he and other purchasers on foreign exchanges who purchased HSBC Holdings' shares were misled by misrepresentations about compliance with anti-money laundering and anti-terrorist financing laws and non-participation in an illegal scheme to manipulate bank rates. Similar to *Yip*, the plaintiff in this case alleges that ePayments operated illegally in Canada and in violation of

³² *Yip* (ONSC) at paras 8, 210 and 213

³³ *Yip* (ONSC) at para 211

³⁴ *Yip* (ONSC) at para 211

³⁵ *Yip* (ONSC) at paras 212 and 213

³⁶ *Yip* (ONSC) at para 213

³⁷ *Yip* (ONCA) at paras 43-50

Canadian securities laws and other regulations, failing to register with any Canadian securities regulator. He also alleges that the DSX Scheme operated in violation of Canadian anti-money laundering laws. Many of the allegations of misrepresentation relate to the allegations of illegal conduct, including that ePayments was not operating legally in Canada. In my view, as in *Yip*, ePayments had no reason to believe that it was required to comply with disclosure requirements or to be subject to the regulation of the law of Ontario.³⁸

[42] In addition, as in *Yip*, the alleged misconduct fundamentally occurred outside of Canada. As in *Yip*, ePayments' business activities did not take place in Ontario, it had no fixed place of business in Ontario or elsewhere in Canada, and there was no agent of ePayments doing its business in Ontario. ePayments and its employees were located in England, and its servers were in the European Union.³⁹ Further, the availability of information from a website that is not hosted from Ontario or anywhere else in Canada, and that does not belong to an Ontario or Canadian entity, or an entity regulated in Canada, does not point to any real relationship between the subject-matter of the litigation and Ontario.

[43] Even assuming that the plaintiff accessed the ePayments (or DSX Global) websites containing the alleged misrepresentations and read and received the alleged misrepresentations while in Ontario, that is "an extremely weak connection".⁴⁰ For the reasons explained in *Yip* and *Coinbase*, if the nature of the activity in this case – namely, creating or accessing an account to purchase or trade digital assets – were sufficient to ground jurisdiction, it would create the very type of universal jurisdiction that our courts have cautioned against.⁴¹ Further, as in *Coinbase*, I conclude that it would not be reasonable for ePayments to expect that it would be called to answer proceedings in Ontario in the circumstances where there is such a weak connection to Ontario.⁴² In these circumstances, the presumptive connecting factor would be rebutted.

(iii) *Civil conspiracy – is there a presumptive connecting factor?*

[44] With respect to the alleged tort of civil conspiracy, Canadian courts have held that an actionable conspiracy occurs in the jurisdiction where the alleged harm is suffered, regardless of where the wrongful conduct occurred.⁴³

[45] Here, the plaintiff argues that he suffered financial loss in Ontario because his retirement savings, an Ontario-based asset, were the source of the funds invested on the platform. His evidence on loss is that "... my permanent residence, financial activities, and the detriment suffered all occurred in Ontario. The financial harm has happened in Ontario, where the loss of my

³⁸ *Yip* (ONSC) at paras 212 and 213

³⁹ *Yip* (ONCA) at para 49

⁴⁰ See *Coinbase* (ONSC) at para 118, where Akbarali J. (citing *Yip* (ONSC) at para 211) reiterated the principle that accessing disclosure documents containing alleged misrepresentations and trading from Ontario is an extremely weak connection.

⁴¹ *Coinbase* at para 120; see *Van Breda* at para 87, *Yip* (ONSC) at para 213

⁴² See *Coinbase* (ONSC) at para 117

⁴³ *Ontario v Rothmans* at para 37

retirement savings happened and has had a devastating impact on my life. The funds were intended to pay off my mortgage and secure my retirement in Toronto.”

[46] In my view, the plaintiff’s evidence about damages suffered in Ontario is extremely vague and fails to connect the alleged losses to Ontario. It does not include any direct or specific evidence of any bank account, investment account, RRSP account, or other asset in Ontario or elsewhere in Canada from which any funds were taken or derived and then used in connection with the impugned transactions. Importantly, the plaintiff’s bald and vague statements about losses in Ontario are directly contradicted by the evidence regarding the bank accounts and funds used in the impugned transactions. That includes evidence from the plaintiff that he used his “Austrian Raiffeisen bank account” to fund his DSX Global account, depositing funds in U.S. dollars through ePayments. There is also evidence in the record that the other foreign banks and financial institutions involved in the transfer of funds by the plaintiff to ePayments were Sberbank Asset Management, Novy Vek bank, and Tinkoff Bank. The transactions were in Euros, U.S. dollars, or Rubles and there is no evidence that any of the financial institutions involved in the transactions had any connection with Ontario or Canada. Considering the allegations in the amended statement of claim and the evidence as a whole, I find that it is insufficient to demonstrate that the alleged loss was suffered in Ontario.

[47] Further, even if some or all of the funds used by the plaintiff to purchase the allegedly lost crypto assets had originated in Ontario – which is not supported by the evidence – the plaintiff’s digital assets were held on servers in the European Union. Those crypto assets were never held on servers in Ontario or anywhere in Canada, nor were they held by or through an entity located in or with any connection to Ontario or Canada. As such, the alleged harm and loss did not occur in Ontario. If the plaintiff’s position were accepted and taken to its logical conclusion, then damages would occur in Ontario whenever an Ontario resident suffers a loss of one of their assets located outside Ontario, regardless of whether the asset has any connection to Ontario other than its ownership by the Ontario resident. In my view, the fact that an Ontario resident suffers a loss of or damage to an asset located outside Ontario does not, on its own, mean that the harm occurs in Ontario. That would be akin to universal jurisdiction, a result that the Supreme Court has cautioned against in *Van Breda*.

[48] In the result, the plaintiff has failed to establish a presumptive connecting factor based on the allegations of civil conspiracy.

4. Conclusion on jurisdiction

[49] For the reasons outlined above, I conclude that there is no presence-based or consent-based jurisdiction over ePayments, and there is no basis for this court to assume jurisdiction over ePayments. The action against ePayments must therefore be dismissed.

Issue #2 – Should this action be stayed on the basis that Ontario is forum *non conveniens*?

[50] Having concluded that the court does not have jurisdiction *simpliciter* over ePayments, I need not consider ePayments' alternative argument that Ontario is forum *non conveniens*.

D. DISPOSITION AND COSTS

[51] For the reasons outlined above, the ePayments motion is granted and the action is dismissed as against ePayments on the basis that this court has no jurisdiction to hear it.

[52] With respect to costs, ePayments submits that the motion is, for obvious reasons, very important to the parties. Further, ePayments submits that although the applicable law is relatively well-settled, the parties were required to address various complex issues and deal with a record containing a significant amount of evidence. ePayments acknowledges that the Court has discretion to take into account the amount at issue in the action – which is a claim for \$195,000, plus \$1,000 in punitive, exemplary, and aggravated damages. Nevertheless, ePayments submits that the motion was hard fought and that the most important factor is the complexity of the issues. If successful, ePayments seeks costs on a partial indemnity basis in the amount of \$50,973.83, as set out in its bill of costs. ePayments also submits that the plaintiff's costs outline is not a fair or proper reflection of the work required for a motion of this nature.

[53] The plaintiff agrees that the issues raised on this motion are of great importance to the parties. The plaintiff submits that the motion was complex and raised complex questions of law, fact, and mixed law and fact. If successful, the plaintiff seeks costs fixed on a partial indemnity basis in the amount of \$8,845, inclusive of disbursements and taxes.

[54] The overriding principles in determining costs are fairness and reasonableness.⁴⁴ In addition, I am guided by the factors set out in Rule 57.01(1) when awarding costs. I have also noted the stated purposive approach to costs, namely that costs rules are designed to: (1) indemnify successful litigants for the costs of litigation, although not necessarily completely; (2) facilitate access to justice, including access for impecunious litigants; (3) discourage frivolous claims and defences; (4) discourage inappropriate behaviour by litigants in their conduct of the proceedings; and (5) encourage settlements.⁴⁵ Further, as the Court of Appeal has explained, a costs award should reflect what the court views as a fair and reasonable contribution by the unsuccessful party to the successful party rather than an exact measure of the actual costs to the successful litigant.⁴⁶

[55] As ePayments was successful on the motion, it is entitled to its costs of the motion. However, in my view, the total amount of time ePayments spent on the motion and the partial indemnity costs it claims are outside the reasonable expectations of the plaintiff as an unsuccessful

⁴⁴ See *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.)

⁴⁵ See *394 Lakeshore Oakville Holdings Inc. v. Misek*, 2010 ONSC 7238 at para 10

⁴⁶ See *Zesta Engineering Ltd. v. Cloutier* (2002), 21 C.C.E.L. (3d) 161, 2002 CarswellOnt 4020 (Ont. C.A.), at para 4

party. Similarly, the partial indemnity costs set out in the plaintiff's costs outline understate the amount that is reasonable in the circumstances.

[56] I have considered the factors set out in Rule 57.01(1) and the parties' submissions, and I have reviewed the parties' respective bill of costs and costs outline. I note the importance of this motion to the parties, and the complexity in applying otherwise settled law in the context of an online, digital platform. I am also mindful that the total amount claimed in the action is only \$195,000, plus \$1,000 in punitive, exemplary, and aggravated damages.

[57] Considering all the relevant factors, I find that it is fair and reasonable in the circumstances to order the plaintiff to pay ePayments its costs of this motion fixed in the amount of \$25,000, inclusive of taxes and disbursements. Those costs are payable within 30 days.

[58] I order as follows:

1. The action is dismissed as against ePayments Systems Limited.
2. The plaintiff shall pay to the defendant Systems Limited costs of this motion in the amount of \$25,000, inclusive of disbursements and taxes, within 30 days.

DATE: March 4, 2026

R. Frank Associate J.