

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Class Action Chamber)

No: 500-06-001199-229

SHAY ABICIDAN

Applicant

v.

SHAKEPAY INC.,

and

SHAKE LABS INC.,

and

WEALTHSIMPLE DIGITAL ASSETS INC.,

and

WEALTHSIMPLE FINANCIAL CORP.,

and

WEALTHSIMPLE INVESTMENTS INC.,

Defendants

**APPLICATION FOR AUTHORIZATION TO ADDUCE RELEVANT EVIDENCE
(574 CCP)**

**TO THE HONOURABLE SHAUN E. FINN OF THE SUPERIOR COURT, ACTING AS
THE DESIGNATED JUDGE IN THE PRESENT CASE, THE DEFENDANTS
SHAKEPAY INC. AND SHAKE LABS INC. RESPECTFULLY SUBMIT AS FOLLOWS:**

I. INTRODUCTION

1. The Defendants Shakepay Inc. and Shake Labs Inc. (collectively, “**Shakepay**”) hereby seek the authorization of this Honourable Court to adduce relevant evidence pursuant to article 574, paragraph 3 of the *Code of Civil Procedure*, RLRQ c C-25.01 (“**CCP**”).
2. More specifically, Shakepay seeks the authorization to adduce as relevant evidence the *Autorité des marchés financiers* (“**AMF**”)’s Decision No. 2023-SACD-

1031528, as last published in the AMF bulletin of June 22, 2023 (Vol. 20, n° 24), confirming Shakepay Inc.'s registration with the AMF as a restricted dealer under the *Securities Act*, CQLR c V-1.1 ("**QSA**"), a copy of which is filed herewith as **Exhibit S-1**.

3. As further detailed below, the relevant evidence Shakepay seeks authorization to adduce is relevant and necessary for the Court's analysis of the authorization criteria pursuant to article 575 CCP, serving to complete and clarify certain incomplete allegations advanced by the Applicant.

II. THE AUTHORIZATION APPLICATION

4. On September 29, 2022, the Applicant Shay Abicidan filed an *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff*, further amended on October 4, 2022, and again on September 1st, 2023 (the "**Authorization Application**") against Shakepay, on behalf of the following proposed class (the "**Proposed Class**" or "**Class Members**"):

"Shakepay Class:

All consumers and businesses in Canada who made a transaction using Shakepay's mobile application or website for the purchase or sale of Bitcoin and/or Ethereum.

*(hereinafter the "**Shakepay Class**")*

Wealthsimple Class:

All consumers and businesses in Canada who made a transaction using Wealthsimple's mobile application, website or by telephone, for the purchase or sale of any cryptocurrency (digital currency).

*(hereinafter the "**Wealthsimple Class**")*

5. The Authorization Application alleges notably that Shakepay:
 - a) Bait customers in by making false and misleading statements that they can buy and sell cryptocurrencies without fees or commission at market-leading prices;
 - b) Maintains the spreads between its "bid/sell" and "ask/buy" prices of the cryptocurrencies offered on its platform intentionally large, enabling it to collect a hidden commission/fee; and
 - c) Fails to disclose the precise cost for its services to its customers and charges a higher price than that advertised.

the whole, in violation of the *Consumer Protection Act*, CQLR c P-40.1 (“**CPA**”), the *Competition Act*, RSC 1985 c C-34, and the *Civil Code of Quebec*, CQLR c CCQ-1991.

6. With respect to the Applicant’s alleged personal case against Shakepay, he advances that:
 - a) On September 22, 2022, he purchased \$200 worth of Bitcoin from Shakepay;
 - b) He noticed that his \$200 balance dropped by 1.2% after his Bitcoin purchase, and his account showed a balance of \$197.60;
 - c) On September 27, 2022, he directed his attorney to send a message to Shakepay’s online chat support detailing the situation and asking for an explanation (Exhibit P-41).
7. As a result of Shakepay’s alleged faults, the Applicant seeks the following damages on behalf of the Proposed Class:
 - a) Restitution or compensatory damages, in an amount to be determined; and
 - b) Punitive damages pursuant to the CPA, in the aggregate amount of \$10 million.

III. THE RELEVANCE OF SHAKEPAY INC.’S REGISTRATION WITH THE AMF

8. Shakepay seeks this Honourable Court’s permission to file the AMF Decision (Exhibit S-1) in order to complete the otherwise incomplete allegations advanced in the Authorization Application regarding Shakepay.
9. This evidence confirms that Shakepay Inc. is registered with the AMF as a restricted dealer under the QSA, as well as with the securities regulators in all other Canadian provinces, the Yukon and the Northwest Territories. More specifically, the AMF Decision (Exhibit S-1) confirm that Shakepay Inc.’s crypto asset trading platform and all of the contracts or transactions involving crypto assets are subject to the QSA and other applicable securities legislation.
10. This evidence is thus relevant and necessary in order to provide an accurate and complete factual matrix regarding Shakepay Inc. and its status with respect to securities regulators and applicable securities legislation with which it must comply. In fact, the Applicant has already filed the same information and documents with respect to the Wealthsimple Defendants (see Exhibits P-1 to P-3) and therefore Exhibit S-1 will allow this Court to appreciate the same evidence with respect to Shakepay in its analysis of the authorization criteria.
11. Specifically, proposed Exhibit S-1 is relevant for the Court’s evaluation of whether the Applicant’s proposed legal syllogism establishes an arguable case as required

by article 575(2) CCP, and particularly whether the Applicant's proposed cause of action under the CPA applies to Shakepay.

12. Indeed, in the Authorization Application, the Applicant acknowledges the possibility that the CPA may not apply to the Wealthsimple defendants as a result of the decision by the AMF with respect to its registration as a restricted dealer pursuant to applicable securities legislation (Exhibit P-1), alleging the following: *"Should Wealthsimple claim that the CPA does not apply to it given the AMF's decision of August 7, 2020 (decision N° 2020-SACD-1039458), its "Operations Fee" of 1.5% to 2% is still unlawful because it was charged by Wealthsimple and paid by Class members contrary to Wealthsimple's undertakings to the AMF and the decision rendered based on those undertakings"* (paragraph 11 of the Authorization Application).
13. It follows that Exhibit S-1, which detail the fact that Shakepay Inc.'s platform and all of the contracts or transactions involving crypto assets on its platform are subject to securities legislation, including specifically the QSA, are directly relevant to the Court's appreciation of the CPA cause of action advanced by the Applicant, and namely whether the exemptions under the CPA are applicable:

"6. Business practices and contracts regarding

(a) transactions governed by the Derivatives Act (chapter I-14.01) or the Securities Act (chapter V-1.1);

(b) the sale, lease or construction of an immovable, subject to section 6.1;

are exempt from the application of this Act." (our emphasis).

14. Therefore, Shakepay asks this Honourable Court to authorize as relevant evidence the AMF Decision (Exhibit S-1) in order to complete the otherwise incomplete allegations regarding Shakepay, and because it is relevant for the Court's evaluation of the second criterion of article 575 CCP, namely whether the Applicant has demonstrated an arguable case against Shakepay.
15. The present Application is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present application;

AUTHORIZE the Defendants Shakepay Inc. and Shake Labs Inc. to file as relevant evidence the *Autorité des marchés financier's* Decision No. 2023-SACD-1031528, as last published in the AMF bulletin of June 22, 2023 (Vol. 20, n° 24), Exhibit S-1

THE WHOLE with legal costs.

Montréal, this November 22, 2024

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Fasken Martineau DuMoulin LLP

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LIST OF EXHIBITS

EXHIBIT S-1

Decision No. 2023-SACD-1031528, as last published in the
Autorité des marchés financier's bulletin of June 22, 2023.

Montréal, this November 22, 2024

Fasken Martineau DuMoulin LLP

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NOTICE OF PRESENTATION

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TAKE NOTICE that the present *Application for Authorization to Adduce Relevant Evidence* will be presented for adjudication before the honourable justice Shaun E. Finn S.C.J. of the Superior Court, sitting in civil practice division for the district of Montréal, at a time to be determined at the Montréal courthouse, located at 1 Notre-Dame Street East, Montréal, Quebec, H2Y 1B6, in a room to be determined or by videoconference in a virtual room to be determined.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, this November 22, 2024

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Marie Joan Lai Kwan

De: Marie Joan Lai Kwan
Envoyé: 22 novembre 2024 14:36
À: Me Joey Zukran; Me Lea Bruyère; Me Éric Préfontaine; Me Emily Lynch
Cc: Noah Boudreau; Mirna Kaddis
Objet: Notification - SHAY ABICIDAN V. SHAKEPAY INC., ET ALS. - 500-09-030866-248 - Notre réf. : 322047.00003 [FMD-CANADA.FID11237734]
Pièces jointes: 2024-11-22 Application for Authorization to adduce relevant evidence.pdf; Exhibit S-1.pdf

NOTIFICATION PAR MOYEN TECHNOLOGIQUE

Fasken Martineau DuMoulin S.E.N.C.R.L., s.r.l.
(Art. 133 - 134 du *Code de procédure civile*, RLRQ c. C-25.01)

Parties : SHAY ABICIDAN V. SHAKEPAY INC., ET ALS.
Cour : Superior Court
District judiciaire : Montréal
Localité : Montréal
Numéro de cour : 500-06-001199-229

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Document(s) notifié(s) :

Titre du document	Type	Nb pages	Taille
Application for Authorization to Adduce Relevant Evidence	PDF	8	377KB
Exhibit S-1	PDF	28	4MB

Veuillez communiquer avec l'expéditeur en cas de difficultés techniques avec les documents.

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**APPLICATION FOR AUTHORIZATION TO ADDUCE
RELEVANT EVIDENCE, LIST OF EXHIBITS
EXHIBIT S-1 AND NOTICE OF PRESENTATION**

ORIGINAL

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