



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

CAUSE NO

OF 2021

IN THE MATTER OF TRAX LTD

AND IN THE MATTER OF ORDER 50, RULE 11 OF THE GRAND COURT RULES

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AFFIDAVIT OF GERARD MIGNARDI

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I, **GERARD MIGNARDI**, of 712 Fifth Avenue, New York NY 10019-4102 do **MAKE OATH** and say as follows:

1. I am Corporate Secretary of ENG LLC ("**ENG**"). ENG is a Limited Liability Corporation formed in the State of Delaware, USA, and is the entity which has a beneficial entitlement to an interest in certain shares of Trax Ltd ("**Trax Cayman**"), a company incorporated in the Cayman Islands. I am authorised by ENG to swear this Affidavit.
2. The facts and matters in this Affidavit which are in my own personal knowledge are true and correct. Insofar as the facts and matters in this Affidavit are not within my own personal knowledge, I state the source of that knowledge and I confirm that such facts and matters are true and correct to the best of my knowledge, information and belief.
3. There is now produced to me marked GM-1 a bundle of copy documents to which I refer. Unless otherwise stated, references in this Affidavit to pages are to those in GM-1.
4. I make this Affidavit in support of ENG's application, pursuant to Order 50, rule 11 of the Grand Court Rules (the "**GCR**"), for the issuance of a stop notice in respect of certain shares in Trax Cayman to which ENG has a beneficial entitlement (the "**Stop Notice**").
5. Annexed to this affidavit is a copy of the Stop Notice signed by me.

**A. The Applicant**

6. ENG is a company incorporated under the laws of Delaware, USA with registered address of 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808 in the County of New Castle.

**B. The Company**

7. The Company, which I have defined above as Trax Cayman, is an exempted company incorporated under the laws of the Cayman Islands on 8 December 2017 with registration number 330189. It has its registered office at Maples Corporate Services Limited, Ugland House, South Church Street, George Town, Grand Cayman KY1-1104, Cayman Islands.

**C. The Shares**

8. The Shares which are the subject of the Stop Notice are as follows:

8.1 21,871 of shares in Trax Cayman now registered in the name of Topmost Access Limited; and

8.2 121,915 of the shares in Trax Cayman now registered in the name of Tron LP<sup>1</sup>.

**D. Background**

9. I set out below the background to ENG's beneficial entitlement to the shares in question.
10. In or around 2015, ENG made the decision to invest approximately US\$2,000,000 in an entity called Trax Technology Solutions Pte Ltd ("**Trax Singapore**") with the assistance of an existing investor in Trax Singapore, Mr Panagiotis Triantafyllidis ("**Mr Triantafyllidis**").
11. That investment was by way of debt instrument, namely a convertible bridge loan agreement dated 18 October 2015 (the "**CBL Agreement**") (pages 8-23). Pursuant to clause 2.3 of the CBL Agreement, in the event that either (i) a specific round of investment known as the **MS Investment Round** did not close within a specific time frame and/or (ii) Trax Singapore's Board of Directors determined, prior to the expiration of that period, that the MS Investment Round would not close, ENG's loan amount would automatically convert into ordinary shares of Trax

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<sup>1</sup> However, I note that the draft Written Resolution dated 18 February 2021 (pages 1 to 7) refers to the relevant number of shares sold as 19,985 and 121,915 respectively (page 4).

Singapore at a company valuation of US\$180,000,000. On that basis, and based upon ENG's loan amount of US\$2,000,000, in the event of a conversion, the CBL Agreement would require ENG to be issued with 1,419 shares in Trax Singapore.

12. On 28 October 2015, ENG paid Trax Singapore US\$2,000,000 pursuant to the terms of the CBL Agreement (pages 24 to 26).
13. On or about 18 March 2016, the events provided for in clause 2.3 of the CBL Agreement did in fact occur, but since there was a 100:1 share split, ENG was allotted, not with 1,419 shares, but 141,900 shares in its name in Trax Singapore.
14. A copy of a share certificate numbered 164 and dated 17 October 2016 recording ENG as the holder of 1,419,000 shares is exhibited at (page 29).

#### ENG's entitlement to the ENG Shares

15. On or about 10 January 2018, Trax Singapore undertook a corporate reorganisation whereby the shareholders of Trax Singapore transferred their shares in that entity to Trax Cayman and, in return, received a like number of shares in Trax Cayman (page 30).
16. However, and without prejudice to ENG's reservation of rights, it appears that ENG came to be the holder in its own name of 1,419,000 shares in its name in Trax Cayman (the "**ENG Shares**").

#### Misappropriation of ENG's shares

17. In or around early December 2020, it came to ENG's attention that Mr Triantafyllidis, the gentleman who had originally introduced ENG to the Trax group, may have, without authority, engineered a sale of the ENG Shares.
18. Accordingly, on 10 December 2020, I wrote immediately on behalf of ENG to the legal department of the Trax group explaining that ENG held 141,900 shares in Trax Singapore, as represented by share certificate No 164 in ENG's name. I requested it to provide a copy of the share register as at (i) 31 December 2018, (ii) 31 December 2019 and (iii) as at the most recent date available. I also asked to be provided with any information regarding any changes to the number of shares held by ENG.

19. I received a response from Mr Joel Bar-El ("**Mr Bar-El**"), the CEO of Trax, cc'd to Mr Triantafyllidis, the same day. Mr Bar-el informed me that all of the ENG Shares had been sold and that Mr Triantafyllidis had "handled" the same. In terms, inter alia, Mr Bar-El said (pages 31 to 33):

*"The shares of ENG referenced below were sold on a secondary at two separate transactions in July/Sept 2018 (both executed documents are attached):*

1. *The sale of 21,871 shares at a price of US\$ 24.55 per share for a total proceeds of US\$ 536,934.67*
2. *The sale of 121,915 shares at the price of US\$ 24.55 per share for a total proceed (sic) of US\$ 2,993,013.25.*

*The person handling the sale on behalf of ENG LLC was Mr Takis Triantafyllidis."*

20. The "*executed documents*" referred to by Mr Bar-El were two sale and purchase agreements which purported to set out the terms upon which the sale of the ENG Shares were undertaken.
21. The first sale and purchase agreement dated 12 June 2018 purports to be between, amongst others, ENG (as vendor) and Topmost Access Limited ("**Topmost**") (as purchaser) (the "**Topmost SPA**") (pages 34 to 93). Pursuant to the terms of the Topmost SPA, 21,871 of the ENG Shares were purportedly sold to Topmost for the consideration of US\$536,934.67.
22. Similarly, the second sale and purchase agreement dated 29 September 2018 purported to be between, amongst others, ENG (as vendor) and Tron LP ("**Tron**") (as purchaser) (the "**Tron SPA**") (pages 94 to 141). Pursuant to the terms of the Tron SPA, 121,915 of the ENG Shares were purportedly sold to Tron for the consideration of US\$2,993,013.25.
23. Despite the sales being purportedly undertaken in ENG's names and involving its property, ENG has not received any of the proceeds of the sale of the ENG Shares, in the amounts set out above or at all.

Mr Triantafyllidis' lack of authority

24. Both the Topmost SPA and the Tron SPA are signed by Mr Triantafyllidis, allegedly for and on behalf of ENG.

25. As noted above, ENG first became aware of the sale of the ENG Shares in December 2020; over two years after the purported sales have been completed. For the avoidance of doubt, the sales of the ENG Shares were undertaken without ENG's permission or knowledge. Additionally, had the sales been proposed to ENG, it would have declined that proposal.
26. More specifically, both the Tron and Topmost SPAs, read together with Mr Bar-el's email dated 10 December 2020, make it clear that the sales of the ENG Shares were undertaken on the instruction of Mr Triantafyllidis. However, Mr Triantafyllidis had no authority to provide any instructions to anyone, including Trax Cayman, on behalf of ENG. Mr Triantafyllidis was not an officer of ENG and had not been provided with any authority, written or oral, to conduct any business on behalf of ENG in relation to the sale of the ENG Shares. As such, Mr Triantafyllidis did not act for ENG and could not bind ENG by his actions. Mr Triantafyllidis acted only under a Proxy which limited his authority to voting rights and did not extend to the sale of shares (page 142), confirmed by an opinion from Delaware counsel (pages 143 to 152).
27. On that basis, neither of the Topmost or Tron SPAs are valid and any sales of the ENG Shares which were undertaken, either pursuant to those agreements or otherwise, are invalid.

ENG's steps to recover the ENG Shares

28. Upon being informed of the sale of the ENG Shares, ENG (through its US attorneys, Seward & Kissel LP) wrote to both Mr Triantafyllidis and Mr Bar-el (as CEO of Trax Cayman) informing them that:
  - 28.1 Mr Triantafyllidis had no authority to sell or transfer shares on behalf of ENG;
  - 28.2 Mr Triantafyllidis was not an owner or officer of ENG and this was clear from ENG's operating agreement sent to Trax in an email dated 22 September 2016, which listed the persons with authority to act for ENG; of which Mr Triantafyllidis was not one of the persons identified;
  - 28.3 Trax Cayman appears to have done no due diligence to confirm Mr Triantafyllidis' authority to conduct any sale on ENG's behalf;
  - 28.4 the sale of the ENG Shares was therefore not legally authorised as ENG did not authorise or consent to the sale; and

- 28.5 in any event, ENG has never received the sale proceeds of the ENG Shares (contrary to the terms of the purported Tron and Topmost SPAs).
29. In light of the above, Seward & Kissel went on to expressly request that ENG's shareholdings be reinstated to their position prior to the sales.
30. Despite several further attempts to secure this result, the ENG Shares have not been returned to ENG nor have any of the sale proceeds.
31. Accordingly, ENG maintains at least beneficial – and, in fact, legal - entitlement to the ENG Shares and so claims.

**E. ENG's intent to issue proceedings**

32. As neither Trax Cayman nor Mr Triantafyllidis have restored ENG's shareholding as requested, or provided it with the sale proceeds or any account thereof, ENG intends to issue proceedings in the Cayman Islands Grand Court to assert its interest and, *inter alia*, recover the ENG Shares. There are Singapore arbitration agreements in the Tron SPA and the Topmost SPA but ENG's case is that they are not bound by them because they were concluded without its knowledge and authority.
33. However, in the interim, it wishes at present to secure and protect at least its beneficial entitlement to the ENG Shares until the determination of those proceedings. On that basis, it hereby requests that this Honourable Court issue a stop notice in the form annexed to this affidavit pursuant to Order 50, rule 11 of the GCR.

**F. Service of Notice**

34. Pursuant to Order 50, rule 11(3) of the GCR, I confirm that the address to which any notice as is referred to in Order 50, rule 12 of the GCR should be sent is the address for service on ENG as follows:

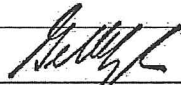
**Ogier**  
**Attorneys-at-law for ENG LLC**  
**89 Nexus Way**  
**Camana Bay**  
**Grand Cayman, KY1-9009**

89 Nexus Way  
Camana Bay  
Grand Cayman, KY1-9009  
Cayman Islands

FAO: Christopher Levers

G. Conclusion

35. In light of the above, it is respectfully requested that this Honourable Court issue the stop notice as sought.

SWORN at New York NY	)	 _____ GERARD MIGNARDI
This [date] 07/15/2021	)	
	)	
	)	
Before me [name of authorised person]	)	_____ 
[Occupation]	)	
[Address]	)	

MANTHOS V. TSILLIS  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01TS6316135  
Qualified in Queens County  
Certificate Filed in New York County  
My Commission Expires December 08, 2021  
*MVC*  
1370 Avenue of Americas  
New York, NY 10019-4102



**STOP NOTICE**

**TO:** TRAX LTD  
Maples Corporate Services Limited, Uglaird House, South Church Street, George  
Town, Grand Cayman KY1-1104, Cayman Islands

**TAKE NOTICE** that the securities comprised in and subject to the beneficial entitlement referred to in the affidavit to which this notice is annexed consist of the following:

1. 21,871 of the shares in Trax Ltd now registered in the name of Topmost Access Limited
2. 121,915 of shares in Trax Ltd now registered in the name of Tron LP

This notice is intended to stop the transfer of the said securities and not the payment of any dividend or interest due thereon.

A handwritten signature in black ink, appearing to be "G. Kelly", written over a horizontal line.

For and on behalf of ENG LLC