**INSOL EUROPE**

**DIGITAL ASSETS CASE SUMMARIES**

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| **Overview** |
| **Case Citation** | *Ion Science Ltd and Duncan Johns v Persons Unknown, Binance Holdings Limited and Payward* *Limited* (unreported), 21 December 2020 (Commercial Court). |
| **Date of judgment** | 21 December 2020 |
| **Country** | United Kingdom |
| **Original Language of Judgment** | English |
| **Court** | The High Court of Justice Business and Property Courts of England & Wales Commercial Court (QBD) |
| **Subject matter/catchwords** | Fraud – initial coin offering – worldwide freezing order |
| **Decision summary** | Butcher J of the High Court of Justice granted the following relief on an *ex parte* application:1. A proprietary injunction, a worldwide freezing order an ancillary disclosure order against the persons unknown, first respondent being individuals or companies describing them as being or connected to Neo Capital; and
2. A disclosure order pursuant to the *Bankers Trust* jurisdiction and CPR 25.1(g) against the second and third respondents, Binance Holdings Ltd and Payment Ventures Inc.
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| **Digital asset involved (e.g. Bitcoin, Ethereum, Ripple etc.)** | Uvexo and Oileum |
| **Valuation issues** | N/A |
| **Expanded Case Description** |
| **Debtor** | Neo Capital |
| **Identity of Insolvency Practitioner (if applicable)** | N/A |
| **Authorities considered by this case (categorised by country)** | ***United Kingdom****A v Persons Unknown* [2019] EWHC 3556 (Comm).*AB Bank Ltd v Abu Dhabi Commercial Bank PJSC* [2016] EWHC 2082.*Lockton v Google Inc* [2009] EWHC 3243 (QB).*MacKinnon v Donaldson, Lufkin and Jenrette Securities Corporation* [1986] Ch 482.*Massey v Haynes* [1888] 21 QBD 330.*Ruscoe v Cryptopia Ltd (in liquidation)* [2020] NZHC 782.***Secondary Sources***Professor Andrew Dickinson, *Cryptocurrencies in Public and Private Law* (2019) at paragraph 5.108. |
| **Domestic legislation applied** | *Civil Procedure Rules* (**CPR**) |
| **Factual background**  | The claimant pleaded that they had been defrauded of around £580,000 across two transactions. Ion Science Ltd and its owner Mr Johns were persuaded by Neo Capital to invest in two initial coin offerings (ICO) for new cryptocurrencies called Uvexo and Oileum. Mr Johns believed that the investment had made a significant profit (approximately $15 million), however the profit was not paid over and Mr Johns learned that the investment had in fact been converted into bitcoin and dissipated through two cryptocurrency exchanges. Neo Capital could not be traced. |
| **Legal issues**  | Whether the Court should grant:1. a proprietary injunction, a worldwide freezing order an ancillary disclosure order against the persons unknown, first respondent being individuals or companies describing them as being or connected to Neo Capital; and
2. a disclosure order pursuant to the *Bankers Trust* jurisdiction and CPR 25.1(g) against the second and third respondents, Binance Holdings Ltd and Payment Ventures Inc.
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| **Reasoning** | Butcher J was satisfied that: 1. there was a serious issue to be tried that cryptoassets such as bitcoin are property within the common law definition of the term; and
2. there are a number of cases that have recognised that it is possible to issue claims and to make injunctions against persons unknown as long as the description used to describe persons unknown is sufficiently certain to help identify who is included and not included.

**Orders against Persons Unknown***Jurisdiction against persons unknown*Butcher J concluded that the High Court does have jurisdiction over the persons unknown on the basis that there was a serious issue to be tried on the merits of the claims brought in relation to deceit, unlawful means conspiracy and equitable proprietary claims. Further Butcher J decided that there was a serious question to be tried in as to whether Professor Andrew Dickinson’s book, *Cryptocurrencies in Public and Private Law* at paragraph 5.108 is the correct analysis of the *lex situs* of a cryptoasset (that is, the place where the person or company who owns it is domiciled).*Appropriate forum*He was also satisfied that England was the appropriate forum as the claimants are domiciled in England and Wales, the funds were transferred from England and Wales, the bitcoin was located in England and Wales and the documents were witnessed in England. *Proprietary Injunction*Butcher J awarded a proprietary injunction on the basis that:1. the balance of convenience favoured the awarding of an injunction as there was a prima facie case of wrongdoing and evidence that the persons unknown would not satisfy a monetary judgement;
2. there was a serious question to be tried; and
3. it was just and convenient to grant the order as the claimants were “the victims of an extensive cyber fraud”.

*Worldwide freezing order and ancillary disclosure order*Butcher J awarded a freezing order and an ancillary disclosure order as there was a real risk of dissipation as Neo Capital was not a registered entity, was on the regulator’s warning list and the defendant’s conduct involved the use of aliases and false documents. **Orders against second and third respondents**Butcher J granted relief pursuant to a *Bankers Trust* as there was good grounds for concluding that the bitcoin was the claimant’s property and there was a real prospect that the information sought from the second and third respondents would lead to the location and preservation of the claimant’s property.  |
| **Further information (e.g. liquidator’s website)** | N/A |