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Cryptocurrency fraud: The English Court considers

Carmel King reports on recent case law in England which could provide the beginnings of a legal route to asset recovery in cases of cryptocurrency fraud



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Case law in England is leading the charge in providing the beginnings of a legal route to asset recovery in cases of cryptocurrency fraud. With regulation, moves towards central bank digital currencies and mainstream take-up, blockchain-based assets are something to which insolvency practitioners need to pay attention.

This is a rapidly-moving space: this article considers a decision which at the time of writing was the latest in a short series shaping the status of cryptoassets in law. By the time of publication it had been superseded by further decisions bolstering the message that fraudsters are not as anonymous as they assume when operating in this space, and furthermore, exchanges have a responsibility to know with whom they are dealing.

Background

In *Ion Science Ltd and Duncan Johns v Persons Unknown, Binance Holdings Limited and Payward Limited*, the applicants 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. An ICO is a fundraising exercise like an IPO, however instead of shares the company offers tokens or new cryptocurrency. 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.

Asset tracing and recovery

The applicants required the assistance of the Court at an early stage of the investigation and asset recovery exercise. They sought a worldwide freezing order and a disclosure order against Persons Unknown and disclosure orders against the second and third

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respondents, which were the two exchanges through which the bitcoin had been dissipated, on an urgent *ex parte* basis. Freezing orders against Persons Unknown are an innovative but established approach. In *AA v Persons Unknown*, the judgement confirmed that bitcoin is intangible property capable of being subject to a freezing order.

Significance of judgement

This case is believed to be the first of its kind, concerned with a fraudulent ICO. Further elements of the judgement could potentially provide a roadmap for insolvency practitioners and asset recovery professionals:

- The Court granted permission to serve a Bankers Trust order out of jurisdiction against the cryptocurrency exchanges. This order compels the recipients to disclose certain information about account holders and is key in the pursuit of unknown

or anonymous fraudsters.

- The Court also considered the *lex situs* of bitcoin. It is necessary to consider whether the English Court is the appropriate forum for the hearing of these proceedings, and whether the Court has jurisdiction. This is a difficult consideration, given the very nature and philosophy of bitcoin. The Court was satisfied that the *lex situs* of a cryptoasset is where its owner is domiciled, and the facts of a case arise out of the acts committed within the jurisdiction (in this case the fraud) or related to assets within that jurisdiction (the bitcoin). Straightforward and sensible one might think, but prior to this there was no guiding case law and so it brings clarity to the relief of many.

A subsequent (unrelated) judgement *Fetch AI Limited, Fetch AI Foundation PTE v Persons Unknown, Binance Holdings and*

Binance Markets, considers a completely different type of fraud, and ordered that Binance disclose the information they held on the hackers and freeze their accounts.

Conclusion

Ion Science is a first-instance decision, and the judgement made clear that it was not to be considered a binding authority. Having said that, it is a very significant addition to the canon on cryptoasset fraud and asset recovery, as is *Fetch AI*. The Courts are providing clarification around the legal status of cryptoassets which is sympathetic to the mainstream direction of travel we are seeing globally. As confidence in the asset increases, so will investment, rapid evolution of the form (such as smart contracts and NFTs) and opportunities for fraud. It is reassuring that the insolvency practitioner and asset recovery specialist's toolbox is also evolving. ■



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