

## DIGITAL ASSETS CASE SUMMARIES

Overview	
<b>Case Citation</b>	<i>Charles Wildes, et al. v. Bitconnect International PLC, et al.</i> , (Citation Pending)
<b>Date of judgment</b>	February 18, 2022
<b>Country</b>	U.S.
<b>Original Language of Judgment</b>	English
<b>Court</b>	11th Cir.
<b>Subject matter/catchwords</b>	Liability for Solicitations to Public at Large
<b>Decision summary</b>	<p>The Eleventh Circuit reversed the dismissal of a complaint in which buyers that fell victim to the Ponzi scheme of BitConnect coin sought to hold the U.S. promoters of Bitconnect responsible.</p> <p>The district court had dismissed the complaint on the grounds that section 12 of the Securities Act of 1933, which creates liability for any person who offers or sells an unregistered security, only covers sales pitches to particular people and did not allow the buyers to recover against marketers who made pitches to the public at large. Not so--according to the Eleventh Circuit. Neither the Securities Act nor Eleventh Circuit precedent imposes that kind of limitation.</p> <p>The decision that the U.S. Securities Act provides no free pass for mass solicitations confirms that any party seeking to solicit the purchase of digital assets in the U.S. through communications to the public at large should be mindful of potential liability under the Securities Act.</p>
<b>Digital asset involved (e.g. Bitcoin, Ethereum, Ripple etc.)</b>	BitConnect
<b>Valuation issues</b>	
Expanded Case Description	
<b>Debtor</b>	n/a
<b>Identity of Insolvency Practitioner (if applicable)</b>	n/a

<b>Authorities considered by this case (categorised by country)</b>	<i>Pinter v. Dahl</i> , 486 U.S. 622 (1988) (the leading case interpreting section 12 says nothing about what solicitation entails).
<b>Domestic legislation applied</b>	Securities Exchange Act, Section 12
<b>Factual background</b>	<p>An online promotions team posted thousands of videos, all with a single aim: persuading people to buy BitConnect coin, a new cryptocurrency. But BitConnect wasn't a sound investment—it was a Ponzi scheme.</p> <p>Plaintiffs allege that each round of investors in BitConnect was simply paid back by the one that followed in a multi-level marketing structure—with the promoters siphoning off money each time—a classic pyramid scheme.</p> <p>Just short of a year after the coin's introduction, BitConnect was bringing in around \$7 million per week in investments from the United States. The next month, BitConnect's weekly haul was more than \$10 million.</p> <p>In advance of BitConnect's announcement of another cryptocurrency, BitConnectx, Texas and North Carolina issued emergency cease and desist orders. Within moments, BitConnect's value fell almost 90% and within months, its value was down 99.9% over the year.</p> <p>After the scheme collapsed, BitConnect buyers sought to hold the promoters liable under Section 12 of the Securities Act of 1933 for soliciting the purchase of unregistered securities.</p> <p>The marketers insist that they cannot be held liable because, they contend, the Securities Act covers sales pitches to particular people, not communications directed to the public at large.</p> <p>The district court agreed, dismissing the case for failure to state a claim, and plaintiffs appealed.</p>
<b>Legal issues</b>	Whether a person can solicit a purchase within the meaning of section 12 of the Securities Act by promoting a security in a mass communication.
<b>Reasoning</b>	<p>The Securities Act prohibits a person from using "any means or instrument of transportation or communication in interstate commerce" to sell an unregistered security. 15 U.S.C. § 77e(a)(1). And to enforce the prohibition, section 12 of the Act authorizes buyers of an unregistered security to sue a person who "offers or sells" it. <i>Id.</i> §77l(a)(1).</p> <p>So what does it mean under the Act to offer or sell a security? In reverse order, a person sells a security when he makes a "contract of sale" for or disposes of a security for value. And a person offers a security "every" time he makes an "offer to dispose of"—or a "solicitation of an offer to buy"—a security for value.</p> <p>Nowhere in those definitions does Congress limit solicitations to "personal" or individualized ones as the district court did. In fact, the Act suggests the opposite.</p> <p>Technology has opened new avenues for both investment and solicitation. Sellers can now reach a global audience through</p>

	<p>podcasts, social media posts, or, as here, online videos and web links.</p> <p>A seller cannot dodge liability through his choice of communications— especially when the Act covers “any means” of “communication.” Id. § 77e(a)(1).</p>
<b>Further information (e.g. liquidator’s website)</b>	<p><a href="https://media.ca11.uscourts.gov/opinions/pub/files/202011675.pdf">https://media.ca11.uscourts.gov/opinions/pub/files/202011675.pdf</a></p>