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DAVID MCILROY INSTRUCTED BY STEVEN MURRAY AND EMMA CLARKSON OF HCR LAW APPEARED ON BEHALF OF MR JONES

## ***Jones v Persons Unknown [2025] 6 WLUK 223 — Whose cryptocurrency is it anyway?***

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*Jones v Persons Unknown* is a case which highlights the need for all participants in cryptocurrency markets to look carefully both at how cryptocurrencies are held by exchanges in theory and how the exchanges operate in practice when deciding how to attempt to enforce their rights.

Mr Jones was an investor in Bitcoin. Between January 2019 and January 2020 he was a victim of social engineering by scammers from ExtickPro. Taking control of his Bitcoin, they persuaded him that they were investing it in accordance with his instructions and generating profits. In fact, they were simply stealing it from him.

When Mr Jones discovered that he had lost just under 90 Bitcoin, he instructed HCR Legal LLP, who obtained expert evidence which asserted that the Bitcoin had found its way into a wallet address at the Huobi cryptocurrency exchange. Mr Jones brought a claim against the original fraudsters, the non-innocent recipients, the innocent recipients, and Huobi Global Ltd (“**Huobi**”). He obtained what have become the standard freezing orders (both proprietary and personal) and *Bankers Trust* orders. Huobi did not respond to those orders. In particular, Huobi did not disclose the identity of the persons who claimed ownership of the Bitcoin in the wallet address which the Claimant’s expert evidence had identified as the ultimate destination of Mr Jones’ Bitcoin (“**the targeted wallet**”).

What is the best way of thinking about the targeted wallet? It is common to see cryptocurrency customers and experts describe wallets as like a bank account. However, the money in a bank account belongs to a bank, leaving the bank’s customer with just a personal claim as a creditor of the bank.<sup>1</sup> This may not be what the customer wants or what the parties intended.

Another way to look at wallets may be as more like safety deposit boxes. The exchange is the custodian but the contents of the wallet continue to belong to the customer. If the wallet contains cryptocurrencies belonging to multiple customers, then perhaps the best analogy is to think of the wallet as a bank vault containing multiple safety deposit boxes.

Huobi’s terms and conditions at the time defined the targeted wallet as a custodial wallet. As a matter of law, the cryptocurrencies in a custodial wallet should belong to the depositors. By contrast, in the New York case of Celsius Network LLC almost all of the cryptocurrencies were held on terms where title to the cryptocurrencies had passed to Celsius, leaving depositors with claims as unsecured creditors in Celsius’s insolvency.<sup>2</sup>

The difficulty is that, in practice, Huobi treated the custodial wallet not as a designated

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1. *Foley v Hill* (1848) 2 HL Cas 28.

2. *Re: 22-10964-mg Celsius Network LLC* (4 January 2023), United States Bankruptcy Court, New York.

address containing only cryptocurrency belonging to a specific holder but rather as a source of funds from which it could add and deduct cryptocurrencies at will, so long as it kept an account record of what cryptocurrencies it owed to which depositors. It was, in effect, a vault containing safety deposit boxes, but one which Huobi was treating as if it was the banker keeping a ledger of the account balances owed to its customers. *This raises the first issue: the need to consider whether the way in which an exchange holds cryptocurrencies in practice aligns with the legal rights and duties created by its terms and conditions.*

The account record was kept off-chain so Mr Jones had no way of discovering who might have rights over cryptocurrencies kept in the targeted wallet unless Huobi chose to disclose that information. Huobi having chosen not to take an active part in the proceedings, Mr Jones obtained summary judgment against the original fraudsters, the non-innocent recipients, and Huobi on 5 September 2022: *Jones v Persons Unknown* [2022] EWHC 2543 (Comm). Huobi were ordered to pay Mr Jones the 90 Bitcoin he had lost and a further 8 Bitcoin in respect of costs and interest. The order specified that the 98 Bitcoin should be paid out of the targeted wallet and details of the summary judgement were contained in a NFT and airdropped into the targeted wallet.

Huobi did comply with the order by transferring 98 Bitcoin to Mr Jones, but not from the targeted wallet. Instead, Huobi satisfied the judgment by paying Mr Jones 98 Bitcoin from an entirely unconnected wallet address. Mr Jones, having been made whole, thought matters were at an end.

Once the final order was made, Huobi first froze and then deducted 98 Bitcoin from the account of a particular user of the targeted wallet. The user in question was Kyrrex Ltd, another cryptocurrency exchange. Its terms and conditions also provided that it held its customers' cryptocurrencies as custodian, meaning that it was those customers who allegedly suffered the loss of value. Kyrrex protested to Huobi at the time that Huobi had no justification for choosing to deduct Bitcoin from its account and that Huobi ought to have informed the Claimant's lawyers and the court that its Bitcoin was not the proceeds of the scam against Mr Jones.

A year after the judgment, Huobi Global Ltd was struck off the Seychelles Register of International Business Companies. The Huobi cryptocurrency exchange, now renamed HTX, continues to operate. Quite which entities control its activities, in which jurisdictions they can be sued, and to what extent they have succeeded to the rights and liabilities of Huobi Global Ltd are all questions the courts may be asked to resolve in due course.

A further year later, so over two years after Mr Jones had obtained his summary judgment,

Kyrrex issued an application under CPR 40.9 to set aside the judgment on the grounds that it had been directly affected by the judgment through the loss of the Bitcoin in its account in the targeted wallet and that the judgment was tainted because the expert evidence which asserted that Mr Jones's Bitcoin had ended up in the targeted wallet was obviously wrong.

HHJ Richard Pearce, sitting as a Judge of the High Court, rejected Kyrrex's application. First, Kyrrex could not show that it had been *directly affected* by the judgment. The judgment identified the targeted wallet but Huobi operated that targeted wallet in a way which meant it contained funds from more than one source. Although Kyrrex was the allocated user for that wallet, Huobi had allowed funds from other parties to be deposited in that wallet, including over 1,000 Bitcoin which was the proceeds of scams or frauds. Once again, there was a difference between Kyrrex's legitimate expectations, and possibly its legal rights, and how the targeted wallet was being operated in practice. Crucially, therefore, Huobi could have satisfied the judgment against it by transferring 98 Bitcoin out of the targeted wallet without using any of those Bitcoin belonging to Kyrrex's customers. It was Huobi's unilateral decision to select Kyrrex's account as the one from which it would deduct the Bitcoin which was the cause of Kyrrex's loss. On that ground alone, Kyrrex's application failed as in the absence of a direct effect, it did not have standing.

The judge went on to reaffirm, however, that whilst misleading the court is always a serious matter, it is only in cases of fraud, i.e. where the court has been deliberately misled, that a judgment given at an on notice hearing will be set aside because it was based on a misrepresentation. The position is, of course, different when an application is made without notice and therefore the duty to make full and frank disclosure applies.

Finally, the judge held that application by Kyrrex had been made far too late. It knew as soon as the judgment was issued in September 2022 that its customers' Bitcoin had been deducted by Huobi but took two years to make its application, by which time Mr Jones had been prejudiced because Huobi had been struck off and attempting to trace his Bitcoin through other exchanges would have been practically impossible.

The morals of the story are: each cryptocurrency is different and the way each cryptocurrency exchange operates is different, participants in cryptocurrency markets need to pay attention both to what the exchange's terms of business say and to how it operates in practice, and, as always in this space, you must act promptly to vindicate your rights over any cryptocurrency you hold.

**David McIlroy** instructed by **Steven Murray** and **Emma Clarkson** of **HCR Law** appeared on behalf of Mr Jones.