[2024] EWHC 814 (Comm)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
IN BRISTOL
CIRCUIT COMMERCIAL COURT

No. CC-2023-BRS-000015

2 Redcliff Street
Bristol BS1 6GR

Wednesday 14 February 2024

Before:

HIS HONOUR JUDGE RUSSEN KC
(Sitting as a High Court Judge)

B E T W E E N :

JOHANNES NICOLAAS LAMBERTUS MOOIJ — Claimant

- and -

(1) PERSONS UNKNOWN
(being the individuals or companies who obtained access to the Applicant's BTC between about 21 March 2023 and 31 May 2023 and carried out the transactions on or about the same dates as a result of which the cryptocurrencies held in those accounts were transferred to other accounts ("Transferred Assets"))

(2) PERSONS UNKNOWN
(Being the individuals or companies who own or control the accounts into which the Transferred Assets were transferred other than purchasers for full value)

(3) PERSONS UNKNOWN
(Being the individuals or companies who are innocent receivers who have no reasonable grounds for thinking that what has appeared in their account belongs to the Applicant/Claimant)

(4) THE OWNER OF, CONTROLLER AND/OR THE PERSONS CURRENTLY IN CONTROL OF THE RIGHTS AND ASSETS THAT WERE THE PROPERTY OF HUOBI GLOBAL LIMITED (a company registered in the Seychelles)

~~(5) BINANCE HOLDINGS LIMITED~~
~~(a company registered in the Cayman Islands)~~

~~(6) MEGAMARKETS TRADING LIMITED~~
~~(a company registered in England and Wales, Company No. 13842907)~~

(7) NEW HUO TECHNOLOGY HOLDINGS LIMITED, TRADING AS NEW HUO TECH (a company registered in the British Virgin Islands)

(8) HUOBI TECHNOLOGY EUROPE LTD
(a company registered in England and Wales, Company No. 11378832)

(9) HUOBIPAY (a company registered in Lithuania)

(10) HUOBI INTERNATIONAL PTE.LTD (a company registered in Singapore)

(11) BRTUOMI WORLDWIDE LIMITED (a company registered in the BVI) — Defendants

J U D G M E N T

(hearing via Microsoft Teams)

A P P E A R A N C E S

MR A. MAGUIRE (instructed by HCR Legal LLP) appeared on behalf of the Claimant.

THE DEFENDANTS did not appear and were not represented.

HHJ RUSSEN KC:

1 This is my *ex tempore* judgment on the two application before me today, each dated 24 January 2024, made by Mr Johannes Mooij against the first defendant, described as "Persons Unknown", and ten other defendants; although against two of those defendants, defendants 5 and 6, the claim has since been discontinued.

2 The applications before me today seek final relief in the form of judgment by way of summary judgment and continuation of what until now is to be categorised as pre-judgment interim relief: a freezing injunction by HHJ Pelling KC on 14 December 2023.

3 Before me today, at a remote hearing held via Microsoft Teams, Mr Andrew Maguire of counsel has represented the claimant, Mr Mooij. There has been no engagement with the proceedings by any of the defendants other than defendants 5 and 6 who have reached terms of discontinuance with the claimant.

4 Although Mr Maguire in his skeleton argument addressed them in the reverse order, the applications, in logical order I think, are therefore the first application for summary judgment against the remaining "live" defendants and the second application for a continuation of the freezing injunction granted by HHJ Pelling on 14 December 2023 but on the basis it is in support of execution rather than pre-judgment restraint on dealing with assets.

5 The circumstances of Mr Mooij's claim are set out in the introductory part of the Amended Particulars of Claim, at paragraphs 1 to 6 of that statement of case. I will not, in the interests of time, read out those paragraphs in full, but they should be taken as being read into this judgment. In essence, they summarise how it is that Mr Mooij says he has been defrauded of some 20.34-odd of bitcoin and also sums totalling €330,000 which he paid over to the alleged fraudsters in connection with what he hoped would either be the further investment in, or the realisation of an existing investment, in bitcoin.

6 Mr Mooij, in a first affidavit sworn in support of the freezing injunction application which was before HHJ Pelling, put some detail on the nature of the fraud. He explained, in paragraphs 23 onwards of that first affidavit dated 7 September 2023, how it was that he came to transfer his holding of bitcoin, from an entirely legitimate account held on a bitcoin exchange known as Kraken, to what has proved to be, on his evidence, an entirely bogus trading platform operating under the name of MegaMarkets. And how, having transferred his bitcoin to MegaMarkets he was not to see them or their proceeds again, unless of course the relief granted on this claim retrieves the position.

7 In paragraph 26 onwards of the first affidavit Mr Mooij also explains how by 7 payments he transferred the cash funds, the sums making up the €330,000, to a bank account controlled by MegaMarkets based in Spain - "the Spanish account" - and he gives details of the Spanish account. However, he recognises (and this is supported by a forensic report that he has obtained with the expert assistance of Mr MacGloin, who operates a firm known as CIRO) by reference to Mr MacGloin's analysis and forensic endeavours, that the €330,000 was never used to purchase bitcoin and – I am reading from paragraph 29 of the affidavit – did not in fact reach the Spanish account. I mention that because of a point that has exercised my mind which I have raised with Mr Maguire today in the course of exchanges with him about the appropriate relief to be sought and to be granted against the respective defendants.

8 I should at this juncture say I have been greatly assisted by Mr Maguire, both in his comprehensive skeleton argument and his written and oral submissions. The nature of the hearing has been such, there being no engagement by the defendants at all, that it has been something of an inquiry by me on points which occurred to me in circumstances where the fundamental points made by Mr Maguire supporting the claim for judgment and injunctive relief were really indisputable and certainly sufficiently compelling to meet the Part 24 test for summary judgment. I will come back to that in a moment, but I am grateful to Mr Maguire for his assistance in me reaching a decision on these two applications.

9 I should now, with that introduction, explain the position of the remaining defendants, excluding defendants 5 and 6, the description of whom appears from the title to the proceedings. It is important to engage with these descriptions in view of one particular decision in another similar (though possibly materially different) case recently decided in the London Circuit Commercial Court.

10 The first defendant is described as "Persons Unknown", and they, in parentheses, are the individuals or companies who obtained access to Mr Mooij's bitcoin between about 21 March 2023 and 31 May 2023 and carried out transactions on or about the same dates, as a result of which the cryptocurrencies held in those accounts were transferred to other accounts. Together, but not expressly mentioning also the €330,000, those cryptocurrencies are described as the "Transferred Assets". In summary, therefore, on the unchallenged evidence before me, one might loosely describe this first category of defendant, persons unknown and not yet identified, as "the fraudsters", as I suggested to Mr Maguire.

11 The second category of "Persons Unknown" are described in parentheses as the individuals or companies who own or control the accounts into which the Transferred Assets were transferred and other than purchases for value. As emerged in exchanges with Mr Maguire, I believe I am justified in drawing the strong inference that those within the second category of Persons Unknown may well be the same as the first category of "Persons Unknown", because I would likewise summarise this second category as those who have benefited from the fraud. It cannot be said that the perpetrators of the fraud are necessarily the same as the beneficiaries of it, although, in most cases of fraud, that tends to be the case.

12 The third defendant named "Persons Unknown" are described in parentheses as being the individuals or companies who are innocent receivers and who had no reasonable grounds for thinking that what appeared in their account belongs to the applicant/claimant. So any such persons are genuine innocent recipients of the Transferred Assets. In that regard, no relief other than continuation of the freezing injunction is sought against them today and certainly no money judgment or proprietary-based compensatory or restorative relief is sought against them.

13 Taking account of the fact that defendants 5 and 6 are no longer live defendants, defendant 4 and defendants 7 to 11 are what Mr Maguire described as being within the 'Huobi ecosystem'. Defendant 4 is the owner or controller of and/or persons currently in control of the rights and assets that were the property of Huobi Global Limited, a company registered in the Seychelles. Defendant 7 is New Huo Technology Holdings Limited, trading as New Huo Tech, a company registered in the BVI. Defendant 8 is Huobi Technology Europe Limited, a company registered in England and Wales (its company registration number is given). Defendant 9 is Huobipay, a company registered in Lithuania. Defendant 10 is Huobi International PTE Limited, a company registered in Singapore. Defendant 11 is BIT or rather B-I-T Global Custody Limited, formerly known as Brtuomi Worldwide Limited, a company registered in the BVI.

14 Whereas I have loosely described defendants 1 and 2, respectively, as the fraudsters and the beneficiaries of the fraud, Mr Maguire's skeleton argument, and indeed the pleaded case in the amended particulars of claim, proceeds against the Huobi defendants (namely defendants 4 and 7 to 11 together) as receivers - maybe 'recipients' is a happier term for legal purposes - and holders of the claimant's bitcoin. He has drawn my attention to the fact that, in fact, the terms and conditions of the English Huobi company (that is defendant 8) it is described as a custodian of assets on its exchange; and that of course signals the fact that the Huobi defendants operate a Bitcoin Exchange. That is significant because the forensic evidence relied upon by Mr Mooij, both the principal report prepared by Mr MacGloin and his addendum to that report, shows that the 20.34 odd bitcoin transferred by Mr Mooij have ended up in what Mr MacGloin describes in the addendum report as "another Huobi controlled wallet", because there were previous wallets through which the bitcoin could be traced, or perhaps to express it more accurately in Chancery-speak, followed. Mr MacGloin then gives the long code number for that ultimate wallet which has been described in these proceedings as the "target wallet".

15 Therefore, in broad terms, categories of defendant break down into the wrongdoers and the beneficiaries of the wrongdoing, defendants 1 and 2, and those who, at least on the pleadings, are identified as having received the claimant's property without themselves necessarily having perpetrated any wrongdoing. Certainly no wrongdoing on their part is pleaded, as at the time of the issue of the proceedings, though Mr Maguire draws my attention to the fact that the Huobi defendants have not been at all cooperative – contrast the other defendants against whom there has been discontinuance – in helping the claimant recover his bitcoin. But, nevertheless, as a matter of the pleaded case, which is of course the basis on which I must address the summary judgment application, there is a clear distinction between the two more general classes of defendant, as I have outlined.

16 I have emphasised that point because, as I have remarked in my exchanges with Mr Maguire, it does seem to me to be difficult to suggest, and the evidence does not seem to support, a case for defendant 4 and defendants 7 to 11 being accountable for the €330,000. As I have already hinted, Mr Mooij's evidence (supported by Mr MacGloin) indicates that, unlike the traceable bitcoin, the Euros disappeared into the ether almost the moment they were paid over; and certainly there is no basis for thinking that the sum of €330,000 or any part of it rests with one or more of the Huobi defendants in the same way the bitcoin is said to be traceable or followable into their hands.

17 Having given that explanation of the nature of the pleaded case against the respective defendants, I am entirely persuaded that this is a proper case for summary judgment against all those defendants, excepting defendant 3, in respect of whom the claimant seeks judgment. I deal with the particular issue over defendant 1 – the money judgment for deceit – below. I am persuaded of that because the evidence makes out a case of Mr Mooij having been unfortunately defrauded in significant sums and of his bitcoin and there is no evidence to suggest otherwise.

18 The directions granted by HH Judge Pelling on 14 December 2023, when he granted the freezing injunction, included provision for alternative service (including overseas) by a number of methods, which the court can and should presume to have been an effective means of service (they having been directed) in bringing to the attention of the respective defendants the existence of these proceedings. I return to that observation below. Therefore, I proceed on the assumption that, with notice of these applications, those defendants have decided nevertheless not to offer any resistance to the case against them.

19 In those circumstances there can in my judgment be no conclusion but that they have no real prospect of successfully defending the claim. They have given me no indication of any likely grounds of defence. Despite the serious nature of the allegations, certainly as against defendants 1 and 2, none of the defendants have offered even a hint that there is a real prospect of them being successfully defended. I am therefore persuaded that summary judgment in some form should follow, but questions arise as to which defendants are amenable to judgment and what should the respective judgments against them be.

20 As to amenability to judgment or susceptibility to judgment, Mr Maguire has very properly brought my attention to a recent decision of Mr Richard Salter KC, sitting as a Deputy Judge of the High Court in the London Circuit Commercial Court and the judgment given by him (in fact also on 14 December 2023) in a broadly similar type of case.

21 The decision of the learned deputy judge is that in *Boonyaem v Persons Unknown and others* [2023] EWHC 3180 (Comm). The case did not concern bitcoin but instead what were described as Tether tokens or "USDT" (or, as third formulation, the type of cryptocurrency usually referred to as "stablecoin") which in that case saw the digital tokens "pegged" to the US dollar. The claimant in that case claimed to have been defrauded of her investment in the USDT. Her claim was also supported by expert forensic evidence which showed that the USDT in which she had invested had been transferred from her Bitkub Thailand wallet to wallets under the control of the defendants. A worldwide freezing injunction had been granted, on both proprietary and non-proprietary bases, and an order for substituted service on the first two defendants by various means (which included transferring a non-fungible token to the relevant wallet addresses) had been made by Bryan J. There was also a third defendant, INGFX Limited, which was registered in the UK, been served in the conventional manner and against whom Bryan J had also granted the freezing injunction. None of the defendants had acknowledged service in the time permitted. The claimant's application before the Mr Salter KC was for summary judgment on her proprietary claim in respect of the traceable proceeds. As in the present case, the defendants did not appear and were not represented at the hearing before him.

22 The decision in *Boonyaem* is material for present purposes because of what the judge said in his conclusion not to grant judgment under Part 24, summary judgment, against one defendant (or class of defendant) of "persons unknown".

23 Like me, the judge in *Boonyaem* had before him different categories of defendant identified as 'Persons Unknown' (categories A and B). He addressed their description and categorisation at paragraphs [28] and [29] of the judgment, and I shall not read out at great length what the judge said about them but, in broad terms, the first defendant – "Persons Unknown Category A" – was equivalent to the present defendant 1 in the case before me. In essence, the persons who had defrauded Ms Boonyaem. The second category – "Persons Unknown Category B" - were broadly equivalent to the defendant 2 in the case before me; namely what I have loosely described as the beneficiary of the wallets to which the claimant's investment has been misappropriated.

24 When it came to the consideration of the claimant's application for summary judgment, in similar circumstances of the present defendants' non-engagement with the summary judgment application, the deputy judge observed that the claimant's evidence was uncontradicted by any evidence of the defendants. As her evidence was not obviously incredible it was to be accepted in establishing been a victim of a fraudulent scheme to deprive her of her tokens. Therefore, in principle, they were traceable and recoverable by the claimant. On that basis, he was persuaded to grant summary judgment against the

category B persons unknown and against the clearly identified third defendant company who, so the evidence established, had played a central part in the fraud upon the claimant.

25 The judge was prepared to grant judgment against the second defendant on the basis that, though presently unidentified, they would have to come forward and identify themselves if they wished to lay claim to the content of the relevant wallets (the "last hop wallets" described in *Boonyaem* being the equivalent of the "target wallet" in the evidence before me): see paragraph [36]. He was initially inclined to the view that the claimant should first have used the *Bankers Trust* jurisdiction to obtain from a third party or parties the names of those constituting the second defendant before seeking judgment but concluded that would be at odds with the requirements of the overriding objective in CPR 1.1(2). His particular focus was upon the delay and cost that such an exercise would entail: paragraph [33].

26 However, he was not prepared to give final judgment against the first defendant – "Persons Unknown Category A" (i.e. the unidentified fraudsters) – because that labelling did not "describe any identifiable person against whom judgment can properly be given": see paragraphs [34] and [35]. This also applied to the person (within that category) who had given the name Suthep Chansudarat ("SC") in dealings with the claimant but whom the claimant had never met and instead only dealt with online via Facebook or by phone messaging.

27 Nor was the judge prepared to continue the worldwide freezing injunction against the first defendant, on any basis, which was continued on both the proprietary and non-proprietary bases against the second and third defendants in support of the judgment against them. This was because the first defendant "cannot be identified with sufficient certainty to make such an order enforceable": see paragraphs [44] and [45]. Although such protection as the interim injunction gave the claimant would be lost in the meantime, the deputy judge adjourned the application for summary judgment against those 'Persons Unknown Category A' so that they could be identified and also so that the claimant could properly particularise her loss on the non-proprietary claim. He said the latter could not be done until she had enforced her proprietary claim or, I suppose, at least attempted to enforce it.

28 Mr Salter KC had earlier noted, at [34], that the disclosure order within the initial freezing injunction granted by Bryan J had produced no useful results in revealing the identity of the category A fraudsters; nor, I infer, the true identify of SC (if not as represented in his dealings with the claimant). I have already noted that, likewise, the identity of the category B defendants was not known but the judge was persuaded to give judgment against them.

29 On that point, it is important to note that, even though it appears from paragraphs [4] and [41] of the judgment in *Boonyaem*, that the application was for summary judgment on both the claimant's proprietary and non-proprietary claims, the judge clearly drew a distinction between the two in addressing his willingness to grant it. The key point in drawing that distinction is the one I have mentioned above – see paragraph [36] of *Boonyaem* - about the self-identification (as I would put it) required of any defendant who might choose to resist

enforcement of the claimant's proprietary claim by advancing a competing claim to ownership.

30 Saying the tokens claimed by the claimant belonged to "someone else", without saying who and why, would not of course be good enough to defeat either Ms Boonyaem's or Mr Mooij's claim for delivery-up. That is not a factor which arises in the ostensibly fruitless exercise of attempting to enforce a money judgment against persons unknown who will obviously keep their heads down in evading such enforcement.

31 It appears that, alongside the other defendants, the category A defendants in *Boonyaem* may well also have been co-defendants to a proprietary claim. I infer this from the way Mr Salter KC described the nature and basis of the earlier order for substituted service on *all* of the defendants by reference to their control of the "last hop wallets" and the earlier proprietary-based (as well as non-proprietary) freezing relief against all of them. As in the case before me, there is no doubt a question about the likely overlap in the true underlying identity of the first and second defendants in that case.

32 Nevertheless, as I read it, *Boonyaem* is authority for the proposition that the court should not give judgment for any non-proprietary relief (not even for damages to be assessed) where the identity of "persons unknown" remains unknown at the time when the court is asked to do so.

33 On the summary judgment application before me today Mr Mooij seeks summary judgment not only in the form of proprietary relief against defendants 4 and 7 to 11 (with an order against them for delivery up of his bitcoin and a recital as to the basis of his entitlement) but also non-proprietary relief against defendants 1 and 2. In addition to an order for delivery up of the claimant's bitcoin and the return of the €330,000, the proposed order seeks a money judgment against them for the value of the bitcoin (with provision for calculation of its sterling equivalent) and for the €330,000. It contemplates that money judgment and any costs ordered against them may be satisfied by the transfer of non-specific bitcoin, again with provision for determining value by conversion rates, and for interest to run on any unsatisfied balance of the judgment.

34 Until my attention was drawn to *Boonyaem* my assumption, having read the evidence in support of the application and noted the non-engagement by the remaining defendants, was to entertain the summary judgment application without distinction between those remaining defendants, or by reference to the nature of the judgment respectively sought against them, having concluded it was appropriate to give the claimant permission to proceed with it under CPR 24.4(1) despite the absence of acknowledgments of service.

35 It seemed to me that the order for substituted service having been made by HHJ Pelling KC, by reference to which the absence of those acknowledgments of service and lack of engagement was to be gauged, gave me the necessary jurisdiction to do so. Mr Maguire had cited the decision of Mr Nigel Cooper QC, sitting as a Deputy High Court Judge, in *Jones v Persons Unknown and Huobi Global Ltd* [2022] 2543, a case in which Mr Maguire and his

present instructing solicitor also acted. In that case, on an application for summary judgment made in a case which was similar to the present both in respect of the underlying claim based upon the transfer of bitcoin to a fake trading platform and the relevant defendant's non-engagement with the proceedings, the learned deputy judge granted final judgment against 'persons unknown' based upon their deceit and unjust enrichment. Paragraph 20 of his judgment confirmed an entitlement to the return of the bitcoin transferred by the claimant or to their equivalent value in other bitcoin or relevant currency.

36 In addition to that authority, and others, Mr Maguire referred to the decision of the Court of Appeal in *Tulip Trading Ltd v Bitcoin Association for BSV* [2023] EWCA Civ in support of the analysis that bitcoin is to be analysed as property for the purpose of the court recognising Mr Mooij's proprietary claim and the availability of the relief of delivery up. In that case, Birss LJ, referred to the transferable and "rivalrous" attributes of bitcoin in concluding it is to be treated as property, both of which attributes are highlighted by the events giving rise to these proceedings and the nature of the claim now made in them.

37 However, Mr Maguire also having drawn my attention to the recent decision in *Boonyaem*, whilst observing (correctly in my view for the reasons given above) that the distinction between defendants 1 and 2 in this case may be blurred, I have inevitably paused to consider whether I am correct to proceed on the basis that both of those defendants are amenable to summary judgment on both the proprietary and money claims which are made against them.

38 In *Boonyaem*, Mr Salter KC drew a distinction between his category A and category B 'persons unknown' defendants by reference to the decision of the Supreme Court in *Cameron v Liverpool Victoria Insurance Co Ltd* [2029] UKSC 6; [2019] 1 WLR 1471.

39 By reference to what was said by Lord Sumption in *Cameron*, at [13], and also the later decision of the Supreme Court in *Wolverhampton City Council v London Gypsies and Travellers* [2023] UKSC 47; [2024] 2 WLR 45, the judge in *Boonyaem*, at [30], observed:

> "The procedural law of England and Wales recognises that, in certain circumstances, proceedings may be commenced, (and an injunction may be granted) against 'persons unknown'. For this purpose, the law divides 'persons unknown' into three categories. The first comprises defendants, such as most hit and run drivers, who are not only anonymous but who cannot even be identified. It is not possible to bring proceedings against such persons as unidentified parties, because it is not possible in principle "to locate or communicate with [them] and to know without further inquiry whether [they are] the same as the person[s] described in the claim form". The second category comprises individuals or entities who identifiable, but whose names are not known, as such squatters in a property. Persons in this group can properly be sued as 'persons unknown', provided only that it is possible to bring the proceedings effectively to their attention e.g. by one of the methods of alternative service. The third category

> (which is not relevant for the purposes of the present proceedings) comprises 'newcomers', i.e. those who are not identifiable as parties to the proceedings at the time when an order is made, but whom it is sought to bind by that order."

And his footnoted reference there, at the end, was to the very recent decision of the Supreme Court in *Wolverhampton CC v London Gypsies and Travellers*.

40 And then the judge went on, at [31]:

> "Broadly speaking, the persons whom the claimant seeks to sue I this case as 'Persons Unknown Category A' are SC----"

So that was the alleged fraudster with whom the claimant had communicated

> "-- and those who are said to have participated with SC in the fraudulent scheme perpetrated on the claimant. The difficulty is that the claimant does not know who those persons are. She never met SC and conducted all of her relevant exchanges either online or by telephone."

And I might interpose there that that is broadly the position in relation to the defendants 1 and 2 in the case before me.

41 The judge then recognised that interim relief disclosure orders had been made, including unfruitful orders to try and elicit the identity of the unnamed defendants, and said, at [34]:

> "This, however, is not an application for interim relief but for final judgment. The disclosure order made by Bryan J has produced no useful results. It has not assisted in identifying the persons who perpetrated the fraud on the claimant. In the circumstances, 'Persons Unknown Category A' does not describe any identifiable person against whom judgment can properly be given. The persons presently sued as the first defendants in this case fall into the first of the categories of 'persons unknown' identified in paragraph 30 above. Like hit and run drivers, they cannot properly be sued to judgment unless and until they can be identified. The fact that they perpetrated the fraud on the claimant is not, of itself, a sufficient identification. As Lord Sumption noted in *Cameron v Liverpool Victoria Insurance Co Ltd* [2019] UKSC 6; [2019] 1 WLR 1471:
>
> > "… One does not … identify an unknown person simply by referring to something that he has done in the past … The impossibility of service in such a case is due not just to the fact that the defendant cannot be found but to the fact that it is not

> known who the defendant is. The problem is conceptual and not just practical …"

42 The judge, Mr Salter KC, then said, at [35]:

> "I am therefore presently not prepared to give final judgment against the first defendants as 'Persons Unknown'."

43 As I have already explained, he went on in paragraph [36] to say that position of the second defendants was different because they operated the wallet at the address as identified by the claimant and they came squarely within the second of his categories identified in his paragraphs [30]. They are specific persons or entities who own and/or control these wallet addresses, they would have to come forward to identify themselves if they sought to lay claim to the contents of the wallets, and they are therefore identifiable; all that is not presently known is their names.

44 Before Mr Maguire assisted me with his further submissions on this point, I was troubled by what the deputy judge had said by reference to Lord Sumption's judgment in *Cameron* when applied at the judgment stage of proceedings. As I read *Cameron* the difficulty over the deputy judge's first category of unnamed defendants (which is in fact Lord Sumption's second category in *Cameron* at [15]) – i.e. those who are anonymous and cannot be identified – is that it not possible to establish *jurisdiction* over them. That is because, unlike the judge's second category (or Lord Sumption's first) they cannot be *served*; not even by a method of substituted service at a location by they may be identified or with which they can be associated.

45 For the reason explained by Lord Sumption, at [14], the appeal in *Cameron* directly concerned a proposed amendment of the claim form to substitute in place of the defendant owner of the car (who had not been driving at the time of the collision with the claimant) the unknown person who had been driving it. But the real issue was as to how such a claim form was to be served within the subsequent 4 months and determining that issue involved "*asking whether it is conceptually (not just practically) possible to serve it*" when "*[t]he court generally acts in personam*". On my reading of *Cameron*, at paragraphs [13]-[17], Lord Sumption was therefore addressing the impossibility of service, not even substituted service, on an unknowable and unidentifiable defendant. Such impossibility would mean that the court would have no jurisdiction over the defendant, or none that could be exercised in accordance with fundamental principles of justice. To put it another way, his lordship was distinguishing that class of defendant at the inception of the claim, for the purpose of establishing whether or not the court could properly assume *jurisdiction* over that defendant, rather than looking at the position at the stage reached in *Boonyaem* and also in this case, which is to consider whether and how to exercise a jurisdiction assumed to have been established.

46 In this case, the judge in the London Circuit Commercial Court in London, before its transfer to Bristol, made provision for effecting service on the first and second defendants, and indeed all the other defendants. HHJ Pelling KC was careful, with Mr Maguire no doubt presenting to him the submissions on a jurisdictional peg for service overseas and the means for alternative service upon them, to direct, at paragraph 7 of his directions order of 14 December 2023, the means by which service would be effected. So far as defendants 1 and 2 are concerned, there having been provision for serving other defendants by their respective email addresses, he said that service in relation to them and the other defendants should be by NFT (i.e non-fungible token) airdrop into the target wallet and, additionally, by filing the relevant documents at court. That last method of alternative service was one adopted by Bryan J in another case to which Mr Maguire has directed my attention: *AA v Persons Unknown* [2019] EWHC (Comm) 3556; [2020] 4 WLR 35, at paragraph [75]. The order of 14 December 2024 specified the period for filing an acknowledgment of service by the defendants to be 31 days. Unsurprisingly, there was no suggestion or contemplation that the substituted service would only be effective if it was later acknowledged by a self-identifying defendant. Such a direction would be perverse in signalling to a presently unidentified defendant that the best way to evade the court's jurisdiction would be to ignore it. It would make a nonsense of ordering substituted service in the first place.

47 Alternative service having been directed in this case, I therefore questioned whether the decision in *Cameron* did impact upon the summary judgment application before me. The only purpose of serving proceedings, including by any method of alternative service directed by the court, is so that the court has jurisdiction over the defendant, subject of course to any challenge to the jurisdiction that defendant might wish to intimate in any acknowledgment of service. The court assumes jurisdiction over parties for the purpose of making orders against them. This includes defendants who are deemed to have been served but who choose not to acknowledge the jurisdiction. The ultimate purpose behind the court's jurisdiction is so that it may grant judgment on the claim. In this case, as it had in *Boonyaem*, the court has already made an interim order against defendant 1. It has granted a freezing injunction against defendants 1 and 2, alongside the other named defendants, and, importantly, has done so by reference to the prospect – the good arguable case - that the claimant would obtain judgment against them.

48 One of the principles underpinning any freezing injunction is the enforcement principle: to stop the disposal of property which could be the subject of enforcement if the claimant goes on to win the case. Therefore, leaving aside freezing injunctions in aid of foreign proceedings, the justification for the granting one is this court's recognition that it may later give judgment against the defendant. In a claim against persons unknown, I do not understand either the enforcement principle or the test for granting a freezing injunction (at the merits stage) to be further qualified by a requirement or even an assumption that their true identity must be established by the time the court grants judgment. The current anonymity of the owners or controllers of the frozen assets is not and obviously should not be a reason (at least not in a case of alleged fraud) for refusing the kind of relief granted by HHJ Pelling KC. The fact that, even by the later stage of giving final judgment in the proceedings, the defendants still cannot be named may well present an insurmountable problem in enforcing any money

judgment against them; there being no name to identify the money judgment liability with ownership of assets caught by the non-proprietary element of the claim. However, that is not a reason against the court exercising its jurisdiction to grant relief, including by the grant of a final money judgment, in the first place.

49 Therefore, in circumstances where the deputy judge in *Boonyaem* case expressed his unwillingness to grant final judgment by reference to a Supreme Court judgment about the impossibility of service, or jurisdiction *ab initio*, if you like, I was troubled about following his approach in refusing to grant a money judgment against defendant 1 in this case.

50 My reservations on that aspect have now been confirmed to the point that I do feel satisfied to reach a different conclusion to that reached in *Boonyaem* in relation to the grant of summary judgment against defendant 1: the fraudsters personally liable on a non-proprietary basis.

51 I am persuaded there should be judgment against defendant 1 by Mr Maguire drawing my attention during the course of the hearing to the more recent decision of the Supreme Court in the case of *Wolverhampton CC v London Gypsies* which I have already noted was relied upon by the judge in *Boonyaem* at [30]. Mr Maguire submitted that the judge had, however, failed to apply fully what the Supreme Court had said in the later decision.

52 Mr Maguire began, I think, at paragraph [115] in *Wolverhampton*. I would begin at paragraph [114], having had a chance to look at that during the unforeseen emergency fire drill which has interrupted and disrupted this hearing. At [114], the Justices state they do not question the decision in *Cameron*, nor do they question its essential reasoning, saying:

> "… that proceedings should be brought to the notice of person against whom damages are sought (unless, exceptionally, service can be dispensed with), so that he or she has an opportunity to be heard; that service is the means by which that is effected; and that, in circumstances in which service of the amended claim on the substituted defendant would be impossible (even alternative service being tantamount to no service at all), the judge had accordingly been right to refuse permission to amend."

53 The passage highlights the first point which distinguishes the situation in the *Cameron* case from the present case, because service has not been deemed to be impossible here; and indeed has been expressly authorised by way of alternative service. The Supreme Court in *Wolverhampton* recognised that the impossibility of service on the unknown driver in *Cameron* meant that even alternative service would be "*tantamount to no service at all*".

54 Having said they did not doubt the decision in *Cameron*, the Supreme Court, at [115] to [117], went on to express the difficulties with some aspects of Lord Sumption's analysis. In particular, and I will not dwell upon this for the purposes of this *ex tempore* judgment, to question, in paragraph 117, whether or not Lord Sumption's categorisation by reference to

earlier cases was a sound one. However, reading paragraph 115 in particular confirms my initial view that what Lord Sumption was looking at were cases where it was *impossible to effect any valid service* upon a defendant. That is a different issue from the one which arises where service has been effected and the defendant has been made subject to the jurisdiction of the court; a jurisdiction established either by the defendant's acknowledgment of service (even if that challenges the jurisdiction longer term) or in default of any such acknowledgment. It is not one which bears upon whether or not the court should grant final judgment against a defendant who has been served. At the end of paragraph 115, Lord Reed, Lord Briggs and Lord Kitchin, said:

> "……….. As this court explained in *Abela v Baadarani* [2013] 1 WLR 2043, para. 37, service has a number of purposes, but the most important is to ensure that the contents of the document served come to the attention of the defendant. Whether they have done so is a question of fact. If the focus is on whether service can in practice be effected, as we think it should be, then it is unnecessary to carry out the preliminary exercise of classifying cases as falling into either the first or the second of Lord Sumption's categories."

55 The court therefore questioned the need for Lord Sumption's categorisation and his distinction between those defendants who are both anonymous and unidentifiable and those who are presently anonymous but potentially identifiable. In paragraph [30] of the *Boonyaem* case the judge relied upon that categorisation to draw a distinction between his first and second defendants; and it seems to me that the ground beneath me is too shaky for me now to seek to draw the same distinction between defendants 1 and 2 in the case before me.

56 As I repeat, if jurisdiction against the defendants, both defendants 1 and 2, has been deemed to be established by the alternative service directed by the court, then I cannot see any obvious reason why that jurisdiction should not culminate in the ultimate purpose for which the claimant invokes it, which is to obtain judgment. I cannot see that the jurisdiction of the court to grant a final judgment differs according to whether or not a 'persons unknown' defendant chooses to identify himself, whether that is done at the stage of acknowledging service or by him raising his head to resist enforcement of the judgment, or at some stage in between. The support which *Boonyaem* gives for me entering judgment against defendant 2, by reference to the prospect of self-identification *after* judgment in the endeavour of resisting its enforcement, in my view illustrates the point that up to and at the time of entering judgment there is no material distinction to be drawn between that defendant and defendant 1.

57 Therefore, I am persuaded to grant judgment against both defendant 1 and defendant 2 and, as I have indicated to Mr Maguire, the judgment against them on the evidence should be both in respect of Mr Mooij's bitcoin, the 20.34-odd bitcoin, and the €330,000. However, on the evidence and the pleaded case before me, as I have also indicated to Mr Maguire in the course of our exchanges, it seems to me that the judgment, at least at today's date and on the information and evidence the court has against defendants 4 and 7 to 11, can only be in respect of that which the evidence indicates they have received. That extends, therefore, to

the 20.34-odd bitcoin, but it does not extend to the €330,000, because, as I indicated in my brief summary of the facts, those Euros appear to have disappeared into the ether almost immediately, not resulted in the purchases of any bitcoin and therefore not resulted in any bitcoin which is held in a wallet under the custodianship of any of defendants 4 or 7 to 11.

58 So, for those reasons, I am prepared, subject to working through the order with Mr Maguire, to grant full judgment both in relation to the bitcoin and the €330,000 against defendants 1 and 2. It is plain that unless and until they can be identified - and there may be more of a prospect of identifying defendant 2 than defendant 1 to the extent there is any difference between them - there may be difficulties with enforcement. But that is not a reason not to grant judgment against them, and the judgment against D4 to D7 will be on the basis of delivery up of followable, I think is the correct way of putting it, as opposed to merely traceable, followable bitcoin to which Mr Mooij has the superior proprietary interest against the receiving/custodian defendants.

59 On that point, Mr Maguire has urged me to adjourn the balance of the claim, namely the claim for €330,000 as sought against the other defendants, defendants 4 and 7 to 11. It may be that some amendment to the Particulars of Claim, actually a re-amendment, is needed, though I suggest that with no great confidence, if they are sought to be made accountable in relation to the Euros sum of money. However, I am certainly prepared to adjourn the balance of the summary judgment application which, as an application, I think does cover both monetary and proprietary aspects of the claim as against them.

60 I will also continue the freezing injunction which, of course, as against all bar defendant 3, is a post-judgment freezing injunction. One of the submissions made to me, at least in the form of its inclusion in a draft minute of order, is that Mr Mooij should be released from his cross-undertaking in damages under a post-judgment freezing injunction. There appears to be some authority to the effect that, in certain circumstances, it might be usual to have a cross-undertaking in damages even in a post-judgment freezing injunction, but I query whether or not the injunction in such cases is one "usually" granted for the first time after judgment, because the reasoning appears to be that there may be third parties who could be affected by it.

61 In this case, defendant 3 is an innocent defendant and continuation of the injunction as against them is not on a post-judgment basis. That said, alternative service having been effected against defendant 3 as well as the other defendants, there has been no indication from anyone falling within the class of defendant 3 of a competing claim - an interest in the bitcoin - of a kind that the grant of injunctive relief may have worked financial damage. In the exercise of my discretion, it seems to me to be a proper case to continue the freezing injunctive relief, but without requiring Mr Mooij to give a cross-undertaking in damages in relation to any of the defendants. Subject to discussing this perhaps briefly further with Mr Maguire, it seems to me that the nature of the claim and the scope of the freezing injunction is such that a cross-undertaking in damages is not required so far as any other third party non-defendant interests are concerned. This does not seem to be a case where there is a risk of the injunction impacting upon the interests of non-parties, but I will discuss that with Mr Maguire when

working through the form of order or orders. But that is my judgment on the substance of the applications.

62 As I say, it is an *ex tempore* judgment. I knew it was going to take some time delivering it because of the need to summarise the evidence and the position of the defendants and to address the implications of *Boonyaem*. It will do doubt be replete with solecism and possible repetition and, of course, if it were necessary to obtain a transcript of the judgment, then I would reserve the right to make such refinements as a judge can properly make to an *ex tempore* judgment, without of course changing the substance of it.

LATER

63 Yes, Mr Maguire, I am proposing to summarily assess the costs to date in the sum of £106,528.94. I see no reason to discount them. I am approaching it as if on the indemnity basis. That gives you the benefit of the doubt in terms of reasonableness, and I have no doubts on any aspect of this, so I will summarily assess them in that sum.