

IN THE HIGH COURT OF JUSTICE  
BUSINESS & PROPERTY COURTS  
CHANCERY DIVISION

Neutral Citation Number: [2023] EWHC 3176 (Ch)

Case No: BL-2022-000911

The Rolls Building  
7 Rolls Buildings  
Fetter Lane  
London  
EC4A 1NL

21 February 2023

**Before:**

MR IAN KARET

SITTING AS A DEPUTY HIGH COURT JUDGE OF THE CHANCERY DIVISION

**B E T W E E N:**

**MR A. MANNARINO**

and

**(1) PERSONS UNKNOWN**

(being the natural and/or legal person(s), describing themselves as being or connected to 'FCAutomatic' and 'CapitalUsage' and/or who operated/owned/controlled and/or was associated with the website 'www.capitalusage.com' and/or the email 'alanbaart@capitalusage.com', who or some of who gave the apparent aliases "Alan Baart" and "A Philpott", and who participated in a scheme to induce the Claimant to mistakenly allow the First Defendant to transfer bitcoins to the Second Defendant between October 2020 and March 2021)

**(2) PERSONS UNKNOWN**

(being the natural and/or legal person(s) who operate/own/control the cryptocurrency wallet address "1PKdEaFUFX6rkFW7jH8e7dim8B6cYeYkED", hosted on www.huobi.com)

**(3) CAPITAL USAGE LTD**

**(4) WAVECREST (UK) LTD**

**(5) HUOBI GLOBAL LTD (T/A Huobi)**

MR C DE AZEVEDO (instructed by GIAMBRONE & PARTNERS LLP) appeared on behalf of the Claimant

The Defendants were not present and were not represented

## **JUDGMENT**

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## IAN KARET:

1. This is an application for judgment in default and relief from sanctions in a claim relating to an alleged Bitcoin fraud. The first defendant is Persons Unknown, being persons connected to organisations known as FCA Automatic and Capital Usage and an individual using the name Alan Bart or A Philpott.
2. In each case, it is alleged that Mr Bart participated in a scheme sometime between October 2020 and March 2021 to induce the claimant to allow the first defendant to transfer Bitcoin of the claimant to the second defendant.
3. The second defendant is Persons Unknown who operates a particular crypto currency wallet address and sent out the address, posted at huobi.com. The third defendant is Capital Usage Ltd. The fourth defendant is Wade Press UK Ltd. The fifth is Huobi Global Ltd.
4. The application follows an application for an urgent order made to Mr Justice Trower, which he made on 31 May 2022. The order was amended by Mr Justice Fancourt on 14 June 2022.
5. Those orders provided for a worldwide freezing order with ancillary disclosure and *Norwich Pharmacal* orders against the first, second and third defendants; a proprietary injunction against the first, second, third and fifth defendants; a *Norwich Pharmacal* order against the fourth defendant; and a *Bankers Trust* order against the fifth defendant, which is incorporated in the Seychelles. The orders also provided for alternative service.
6. The application is made on the basis that there has been no response from any of the first four defendants to the claim.
7. The alternative service by email was made on the first and second defendants. Service on the third defendant was by letter, it being a UK company. Service on the fourth defendant was by letter, by first class post, it again being a UK company.
8. Service on the fifth defendant was by email. He has acknowledged receipt of various emails but has not taken any step further than that acknowledgement.
9. The emails sent to the first and second defendant were met with various response messages indicating that either the recipient inbox was full, delivery was incomplete or that the message was not delivered. Those addresses were AlanEbart@capitalusage.com and a.bart@fcautomatic.com. I note that Capital Usage is the name of the third defendant.
10. The third defendant was at the time of the application before Mr Justice Trower in the process of being struck off the Company register. By letter dated 11 June 2022, the claimant's solicitors wrote to halt that process; that occurred on 14 June 2022.
11. Mr Celso De Azevedo, counsel for the claimant, told me that before Mr Justice Fancourt the Court considered the question of whether, in view of the email responses, service had been affected on the first and second defendants. Mr Justice Fancourt accepted that the service was effective for those purposes. The claimant had done everything possible to bring the proceedings to the attention of the defendants despite the messages received in reply.
12. Mr Justice Fancourt did not accept that the mere existence of the email addresses at the time of service, or their continued existence, was satisfactory to show that service had been achieved. It is apparent that the requirements for judgment in default set out in CPR Part 12 are met in this case, but the question remains whether there is or has been effective service of papers relating to this application.
13. I note the comment in *The White Book* at paragraph 6.15.1.1 that the service of the claim form should be by a method that can be immediately expected to bring the proceedings to the notice of all those within the definition of "Persons Unknown".
14. The note continues that, "If the requirements set out by the Supreme Court in *Cameron* cannot be met, permission for alternative service should be refused". In this case there

- already is permission for alternative service, and following the judgment of Mr Justice Fancourt it appears that sufficient efforts have been made to bring this application to the notice or attention of the first and second defendant.
15. The claimant applies for relief from sanctions for the late service of the particulars of claim on the first, second and fifth defendants. The reason for the late service was, I am told, difficulty experienced by the claimant's solicitors in obtaining instructions from their client who was in Italy. It appears that the service was made late and out of time. I was shown an email from the fifth defendant showing that it was some four or five hours late.
  16. I was shown an email from the fifth defendant by which it acknowledged receipt of the documents. As I have said there was no response from the first or second defendant or indeed any indication that the emails were received by them.
  17. The criteria for considering an application for relief from sanctions are set out in *Denton v White* [2014] 1 WLR 3296. In the context of this case, the breach by late service was neither serious nor significant. There was no indication that the first and second defendants would have responded in any event, given that they had not responded before. The fifth defendant also had not indicated that it would be involved with the proceedings.
  18. While it is not satisfactory for a party to fail to abide by the order of the court for a timely service, in the circumstances that has not had any substantial impact on the process, and I therefore conclude that it is appropriate to grant relief from sanctions.
  19. The rules for alternative service provide that notice through the presence of documents on the court file is a further method by which the defendants may be made aware of them. The claimant should thus also send similar notification to the WhatsApp addresses used in communication with the defendants.
  20. I also further note that the third defendant, Capital Usage Limited is an existing company and that the use of the email address at 'capitalusage.com' by the first defendant indicates a connection with the third defendant, which provides some further indication that that person may be aware of the proceedings.
  21. In view of the lack of response by any of first and third defendants by the making of a judgment in default, I will also make the orders against the fourth and fifth defendants for disclosure of information by way of *Norwich Pharmacal* and *Bankers Trust* orders; those will be subject to the usual cross-undertakings.
  22. The claimant submitted that following the decision of Mr Nigel Cooper KC in *Jones v Persons Unknown* [2022] EWHC 2543 (Comm) there should be no need for such an undertaking. However, in that case, it appears that the injunctions that were made final were proprietary injunctions and there were no information orders of the type in this case. Accordingly, the decision to release the cross-undertaking in damages in respect of those injunctions did not extend to the *Norwich Pharmacal* and *Bankers Trust* orders and the case is not authority for the proposition that I should not order the undertaking.
  23. It follows that I will order default judgment. The claimant should notify the first and second defendant by email at the addresses already used that the documents are available on the court file by CPR 6.27.
  24. I will consider counsel's form of order in due course.

### **End of Judgment**

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