

Matthew Thorne successful in Tulip Trading Limited v Bitcoin Association for BSV and others [2022] EWHC 141 (Ch)

The Court has now given important consideration to whether and when cryptocurrency can be used as security for costs. The Court earlier ordered the provision of security (as to which, see our case note on [2022] EWHC 2 (Ch)). [Matthew Thorne](#), instructed by O'Melveny & Myers, represents the successful defendants.

The Claimant sought to provide security in the form of either Bitcoin Satoshi Vision or Bitcoin Core, by transferring the relevant cryptocurrency, together with a 10% 'buffer', to its solicitors.

The Court first considered *Monde Petroleum v Westernzagros* [2015] EWHC 67 and *Infinity Distribution v Khan Partnership* [2021] EWCA Civ 565. The former states (*inter alia*) that “*In practice any such alternative form of security must be such as can properly be regarded in these respects as at least equal to, if not better than, security by payment into Court or provision of a first class London bank guarantee*”.

In refusing to allow security in cryptocurrency, the Court concluded that:

43. *The claimant accepts, and I can take judicial notice of, the high level of volatility in the value of Bitcoin. It does not, as security, meet the criteria in Monde Petroleum. Thus, even though the claimant claims that providing the usual form of security would impose a burden on it, this is not a case where all other things are equal.*

44. *The security offered by the claimant would not result in protection for the defendants equal to a payment into court, or first class guarantee. It would expose them to a risk to which they would not be exposed with the usual forms of security: namely of a fall in value of Bitcoin, which could result in their security being effectively valueless. The top-up provisions proposed by the claimant do not fully meet this risk, because if the claimant did not comply with the order, there would be a substantial risk that enforcement of the obligation could not be achieved before judgment in the jurisdiction applications. Furthermore, the draft order envisages any liability for costs to be satisfied by the transfer of the Bitcoin, which would be an additional occasion when the defendants would be subjected to the risk of a fall in value.*

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