SELBORNE CHAMBERS

Honey, I lost the Bitcoin!

Tulip Trading Limited v van der Laan and others [2023] EWCA Civ 219

In a ground-breaking case of the upmost importance to investors, and developers of cryptocurrencies and other blockchain assets, the Court of Appeal in **Tulip Trading Limited v van der Laan and others** have held that developers may owe fiduciary duties to the owners of bitcoin.

The Claimant (Tulip) is beneficially owned by Dr Craig Wright and his family. Dr Wright claims to be Satoshi Nakamoto, the presumed pseudonym of the person who created Bitcoin.

Tulip alleges that it is the owner of Bitcoin valued at over £4 billion (as at April 2021) which is said to be held in two addresses across four Bitcoin networks. Tulip claims that it cannot now access these assets or move them, because it "lost" the keys linked with the addresses after a hack was perpetrated against them.

In an attempt to re-gain access to the addresses, Tulip brought claims against numerous Bitcoin software developers, who it alleges are the developers or individuals that control the four Bitcoin networks. Tulip argues that it would be a simple matter for the Defendants to secure the "lost" Bitcoin and move them to another address that Tulip controls.

Tulip argue that the role the Defendants, as developers, have undertaken in relation to Tulip's bitcoin and the power that this role gives them, means that the developers should be recognised as a new class of fiduciary, owing fiduciary duties to the true owners of Bitcoin and that these duties should extend to implementing the necessary software solution to solve Tulip's problems and safeguard its Bitcoin from thieves.

THE JUDGMENT CAN BE ACCESSED HERE → http://www.bailii.org/ew/cases/EWHC/Ch/2022/667.html

Although the Court of Appeal recognised that for Tulip to succeed at trial would require it to establish a "*significant development of the common law on fiduciary duties*", the Court still overturned Falk J High Court decision and decided that Tulip's case on fiduciary duties was arguable. The Court made the following observations:

i. The developers of a Bitcoin network were a sufficiently well-defined group potentially capable of being subject to fiduciary duties.
ii. The role of a cryptocurrency developer involved taking on a significant amount of control and decision-making power over assets that had been entrusted into their care. For instance, a developer could decide what software changes (if any) to make if a bug was identified within the software.
iii. Bitcoin owners had a legitimate expectation that the developers would not exercise their authority in their own self-interest and would act in good faith to use their skill to fix bugs in the software.

Although there is doubt whether Tulip can establish the necessary facts to succeed at a full trial, the Court of Appeal's decision indicates a shift in the courts now potentially recognising that software developers owe fiduciary or common law duties to cryptocurrency investors.

JAMES NEWMAN