

Neutral Citation Number: [2026] EWHC 207 (Comm)

Case No: CL-2025-000503

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND & WALES
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 23/01/2026

Before:

Mr Justice Waksman

Between:

(1) NANCY CAROL SMITHERS
(2) ANGELINA KOSTYANTYNIVNA USANOVA

Claimants

- and -

(1) PERSONS UNKNOWN CATEGORY 1
(2) PERSONS UNKNOWN CATEGORY 2
(3) PERSONS UNKNOWN CATEGORY 3

Primary Defendants/Respondents

(4) PHOENIXFIN PTE LTD
(5) BYBIT TECHNOLOGY LIMITED (a Republic of Seychelles registered company),
BYBIT FINTECH FZE (a Dubai registered entity)
(6) KYRREX LIMITED (a Saint Vincent and the Grenadines registered company),
KYRREX UK LTD (an England and Wales registered company)
(7) NEST SERVICES LIMITED
(8) HTX (formerly HUOBI GLOBAL SA)

Information Order Defendants

Mr D MCILROY (instructed by CMS Cameron McKenna Nabarro Olswang LLP) for the
Claimants

Hearing dates: 23/01/2026

APPROVED JUDGMENT

MR JUSTICE WAKSMAN

1. This is the return day of a freezing injunction which, with associated relief, was granted on 13 November 2025 in respect of the wrongful removal of cryptocurrencies held by the Claimants.
2. A preliminary matter concerns what is accepted to be a material non-disclosure on the part of the Claimants. There is not, in fact, before me any application to discharge the original order or the subsequent order on 20 November (save in the context of what Binance has said, dealt with in paragraphs 11 and 12 below), but it is a matter which affects the Court, so I need to deal with it. The problem that arose concerns the tracing methodology adopted by Mr Eastick of iSanctuary, which is the company which has been engaged by the claimants to ascertain the whereabouts of the relevant cryptocurrency, which the claimants say they were deceived into parting with by, at the moment, the first unnamed primary respondents.
3. The efficacy of the last-in-first-out (“LIFO”) tracing methodology depends on the particular cryptocurrency concerned. In relation to Bitcoin, which seems to have constituted the majority of the cryptocurrency which has been removed, as it were, the problem is that this would give rise to the risk that there were false positive private cryptocurrency addresses, in other words, private addresses relating to persons who in fact did not receive the relevant cryptocurrency. There have been some false positives which have been identified, which have therefore reflected the unreliability of the tracing methodology that was used.

4. Mr Eastick has given a very full and frank third witness statement describing all of this and explaining that the method which is regarded as more reliable, the UTXO method, takes more time and, given the urgency, he thought that he should use the LIFO for all cryptocurrencies. Unfortunately, he did not explain this to the claimants' legal team, so they were not able to disclose the matters which have now come out. The position therefore is that there are in theory some private addresses which would have been the subject of the relevant freezing orders granted on 31 October, except that, because of a lack of information, it is not actually known at the moment whether that has caused any loss to the false positives because if they were not doing anything with their cryptocurrency at the time, for example, they were not intending to transfer it at the relevant time, then it would have no impact on them. It is also possible that they may have decided to transfer the cryptocurrency anyway. On any view, this was an entirely innocent non-disclosure on the part of the Claimants who were not aware of the problem with LIFO.
5. It would have been much better if Mr Eastick had drawn the potential pitfalls with LIFO, so far as Bitcoin is concerned, to the attention of the legal team, who would undoubtedly have disclosed that to the Court. The Court would then have to make a decision as to whether that tracing methodology was correct or whether the preferable but slower methodology would have been used instead. In any event, at the moment it is not clear to me there has actually been any prejudice to the false positives, and what I am told is that it will be possible to communicate with them or communicate with their private addresses and deal with the relevant exchange so that they can be informed of what has happened, and of course they would have a right to damages under the cross-undertaking if they had suffered any.

6. It would seem to me to be entirely disproportionate if I should now discharge all or even part of the injunctions as a result of what has happened, so for the reasons set out in the skeleton argument and set out by Mr Eastick in his third witness statement, I do not propose to do anything about that non-disclosure other than record it and then just check with Mr McIlroy now about the means of communicating the right to damages.
7. I now turn to whether the existing order should be continued. Only the Seventh Defendant “Binance”) has made any representations and these were to the effect that the order should not be continued. Such presentations were made in a letter from its solicitors, Proskauer Rose (London) LLP dated 21 January 2026 (“the Proskauer Letter”). Binance did not appear at the hearing however.
8. In the Proskauer Letter, Binance took a position which was the reverse of where they seemed to be not long ago, where Proskauer had simply wanted various drafting points to be taken care of (and which have been fully taken care of), and made one point on undertakings. Binance now says in the Proskauer Letter that they will not be agreeing any order and have, in addition, said that it would be inappropriate, so far as they are concerned, for the continuation of the main order.
9. I go first to paragraph 7 of the Proskauer Letter. The first objection is that there was no justification for the original hearing to have been listed without notice. I do not accept that at all. This is the usual approach on the seeking of such injunction where there is urgency and/or a concern that putting the matter on notice may alert the substantive Defendants. I appreciate that Binance is a cryptocurrency exchange from which the primary relief sought is information and prevention of the movement of the relevant cryptocurrencies. However, such exchanges do not yet have the status of banks and do not operate in the

regulatory regime in which banks operate, and the Court does not have to treat them as banks, where it may have been appropriate to put them, at least, on notice. The fact that there had been some prior notice given to Binance in relation to these matters does not, in my judgment, mean that it was inappropriate to have a without notice application.

10. Then there is, secondly, a question of subject matter -jurisdiction. The point now being taken is that a possible lack of jurisdiction was not properly disclosed. However, there is jurisdiction on the face of it. There has not yet been a successful attempt to say that the Court in these circumstances has no jurisdiction to deal with cryptocurrency-related injunctions of this kind.
11. The third point is the non-disclosure point about the LIFO method which I have already dealt with, and the fourth point is the same thing.
12. The fifth point is one which suggests that the Claimants' legal team were in fact aware of the problem with the tracing methodology before it was disclosed to the respondent. There is no basis for that suggestion at all. It is of course clear that the first solicitors did not know about it, and the second solicitors, CMS, only found out on 14 January, at which point they made the position clear to the respondents.
13. Points are then made about the possibilities that innocent third parties may be affected by the order. It is of course possible, when one is dealing with cryptocurrency, that innocent parties will get caught up through nobody's fault, which is effectively what has happened to the false positives here, but they have their remedy under a cross-undertaking in damages if damages can be shown to have arisen. It is not correct that a breach of an obligation in relation to fair presentation inevitably means that the order is set aside. It all depends on the circumstances of the case and discretion of the Court.

14. So there is nothing in the Proskauer Letter even without looking at CMS's response to it, that entails the result that the order should not be continued against them, so I will continue the order.
15. So far as the terms of the order are concerned, for the reasons that have been set out at paragraph 32 of the Claimants' skeleton argument, I agree that it would be in the interests of justice here to permit them to disclose the basic details about the identities of those who are holding cryptoassets to the relevant law enforcement agencies, and we will look at their identities in a moment. There is no question of any privilege attaching to the disclosure of identities. It will, as we can see from how the Fourth Defendant exchange, KuCoin, has been approaching the matter, that such disclosure can potentially assist this claim because once the exchanges know that the enforcement agencies are involved, they are apparently more receptive to providing information which they otherwise may not be; and of course it assists or may assist the bringing of any appropriate proceedings by the enforcement authorities.