

**CANADA
PROVINCE OF
PRINCE EDWARD ISLAND
IN THE PROVINCIAL COURT (CHARLOTTETOWN)**

BETWEEN:

LAALA JAHANSHAHLOO

APPLICANT

AND:

HER MAJESTY THE QUEEN

RESPONDENT

AND:

INSTACOIN ATM CANADA INC.

RESPONDENT

- AND -

BETWEEN:

INSTACOIN ATM CANADA INC.

APPLICANT

AND:

HER MAJESTY THE QUEEN

RESPONDENT

AND:

LAALA JAHANSHAHLOO

RESPONDENT

ORAL DECISION

OCTOBER 12, 2018 before Judge Nancy K. Orr

Jonathan M. Coady & Justin L. Milne

Counsel for Laala Jahanshahloo

Michael G. Drake

Counsel for Instacoin ATM Canada Inc.

Morgan Watts

Appearing for Her Majesty the Queen

BACKGROUND CIRCUMSTANCES:

[1] On February 26th and 27th, 2018, Laala Jahanshahloo was the victim of a sophisticated fraud, by an individual purporting to work for the Canada Revenue Agency(hereinafter referred to as the CRA). Over the course of those two days, she deposited a total of \$62,500 into a bitcoin machine owned by Instacoin ATM Canada Inc (hereinafter referred to as Instacoin) and located at 393 University Avenue, Charlottetown, Prince Edward Island. She did so in response to a telephone call from that individual, who indicated she had submitted false documents to the CRA and would be arrested and deported, if she did not pay the money owed.

[2] Sgt. Walter Vessey of the Charlottetown Police Service investigated the matter and obtained a search warrant for the cash and any transaction records in the bitcoin machine. With the co-operation of a representative of Instacoin, the search warrant was executed by the police on March 1st, 2018, and \$62,500 was seized, along with some transaction documentation.

APPLICATIONS:

[3] Two applications are now before me, with each claiming to be the lawful owner of the \$62,500 seized from the machine owned by Instacoin. Each is seeking an order that the \$62,500 in Canadian currency be returned to them.

[4] One application is by Laala Jahanshahloo, pursuant to section 490(10) of the Criminal Code of Canada, who seeks the return of the \$62,500 she deposited into the bitcoin machine.

[5] The second application is by Instacoin, pursuant to section 490(7) and (10) of the Criminal Code of Canada, claiming to be the lawful owner of the money seized from its machine.

[6] The Crown was served with each application, was present at the hearing, but took no position and made no submissions in respect of this matter.

LAW:

[7] The relevant section of the Criminal Code is section 490, which provides how seized property is to be held, pending completion of the proceedings for which it was seized. In particular, section 490(7) provides for an application for the return of the property by the person from whom it was seized, and section 490(10) provides for an application by a person who claims to be the lawful owner of the property.

[8] Sgt. Vessey confirmed, in his testimony, that his investigation is complete, and that he was unable to determine the identity of the person or persons who perpetrated the fraud

on Ms Jahanshahloo. As such, the Canadian currency he seized from the bitcoin machine is no longer required to be held by the police, and the first hurdle for these two applications to proceed has been met.

[9] While the Criminal Code does not provide any particular procedure to follow in considering these applications, both counsel filed detailed applications, as well as a brief of the law and materials to support each position.

[10] Ms Jahanshahloo testified on her own behalf and provided details of how the fraud was effected. Sgt. Walter Vessey was called as a witness and indicated the nature of his investigation. He also confirmed that many of the techniques used in this CRA fraud were ones he had seen in other fraud investigations. In particular, he noted that the fraudsters could be on the other side of the world but had software programs that enabled them to make telephone calls that appeared to be originating from valid numbers. Both were cross-examined by counsel for Instacoin.

[11] Filed in support of the application by Instacoin was the affidavit of Michael Lo Verso of Montreal, who is the President and Chief Compliance Officer of the company. Mr Lo Verso attended the hearing and was cross-examined by Ms Jahanshahloo's counsel.

BITCOIN:

[12] Bitcoin is a reasonably recent concept, and certainly one I was not very familiar with. The information on bitcoin in Mr Lo Verso's affidavit and in both application briefs was very helpful to assist in understanding this fraud.

[13] As indicated in the materials provided, bitcoin is a type of digital currency. Counsel filed an excerpt from the Government of Canada website on Digital currency (<https://www.canada.ca/en/financial-consumer-agency/services/payment/digital-currency.html>) and the most relevant aspects of that are the following:

*Digital currency is electronic money. It's not available as bills or coins.
Cryptocurrencies are a type of digital currency created using computer algorithms. The most popular cryptocurrency is Bitcoin.
No single organization, such as a central bank, creates digital currencies.
Digital currencies are based on a decentralized, peer-to-peer (P2P) network. The "peers" in this network are the people that take part in digital currency transactions, and their computers make up the network.*

Using digital currencies:

You can use digital currencies to buy goods and services on the Internet and in stores that accept digital currencies. You may also buy and sell digital currency on open exchanges, called digital currency or cryptocurrency exchanges. An open exchange is similar to a stock market.

To use digital currencies, you need to create a digital currency wallet to store and transfer digital currencies. You can store your wallet yourself or have a wallet provider manage your digital currency for you.

...

Automated exchangers (Bitcoin ATMs):

Automated exchangers are commonly referred to as Bitcoin ATMs. They are vending machines that allow you to insert cash in exchange for bitcoins, and in some cases bitcoins for cash.

Unlike traditional ATMs, they are not connected to your bank, credit union or the Interac network. You may be charged a transaction fee for using a Bitcoin ATM. Shop around as exchange fees vary and you may be able to get lower rates elsewhere.

Generally, when you use a Bitcoin ATM, the machine:

- reads the bills you insert*
- converts the amount into an amount of bitcoins*
- sends the equivalent of bitcoins to the Bitcoin address you enter*

Risks of using digital currency

Using digital currency has certain risks.

You may have fewer protections

You may not have access to a complaint-handling process like you would with other payment methods, such as debit and credit cards.

Even if you use a wallet provider to help you manage your digital currency, the provider does not have to help you get your funds back if something goes wrong with your transaction.

Your deposit is not insured

It's your responsibility to protect your digital currency wallet.

Federal or provincial deposit insurance plans don't cover digital currency.

...

Merchants don't have to accept digital currencies as payment. They don't have to exchange digital currencies for traditional currencies, such as the Canadian dollar.

You may be exposed to fraud

Digital currencies may be vulnerable to fraud, theft and hackers.

All transactions are recorded to a public ledger or "blockchain". The blockchain may include information such as transaction amounts, wallet addresses and the public keys of the sender and recipient.

Digital currencies are also sometimes used to support illegal activities.

Transactions are not reversible

Purchases and transactions made with digital currencies are not reversible.

This means:

- you can't reverse the charges if you didn't receive the product*
- you can't get your money back unless the seller agrees*
- you might not be able to stop a payment*

[14] Nowhere on the Government of Canada website does it say you should not use bitcoin. To the contrary, it provides "*Tips for using digital currency*".

[15] Although counsel provided an excerpt from the Senate Committee hearings in 2015 that was studying the use of digital currency and its potential risks, to date there are no federal regulations in respect of digital currency.

INSTACOIN:

[16] Instacoin is a federally incorporated company, with a head office in Montreal. It owns and operates machines that accept Canadian currency for Bitcoin. One such machine is located at 393 University Avenue, Charlottetown, P.E.I. and is the one used in this matter.

[17] At paragraph 5 of his affidavit, Mr Lo Verso explains the process this way:
Put simply, the BTM is a kiosk at which individuals can purchase from Instacoin the cryptocurrency known as Bitcoin, using Canadian currency and must to complete the transaction direct that the Bitcoin be transferred to the purchaser's account or the account of a third party. By way of analogy the BTM is a "vending machine" for Bitcoin and receives cash only against the delivery of the bitcoin purchased."

[18] The Canadian currency remains inside the machine until it is picked up by an agent of Instacoin. In this case, Sgt. Vessey was able to determine that no one had picked up the cash after Ms Jahanshahloo had put her money into the machine, and thus it was available for seizure with the warrant. It should be noted that Mr Lo Verso co-operated with the police in executing the warrant and arranged to open the machine, so that the contents could be provided to the police.

[19] Mr Lo Verso further clarified at paragraphs 15, 18, and 20 of his affidavit how the cash is used:

15 It is imperative that the reader understand that a customer does not deposit cash in a BTM. Instead the cash is used to purchase bitcoin at the BTM. A BTM is not a bank machine.

18 Instacoin does not hold the funds used by customers to buy bitcoin in a deposit or other account on behalf of the customer. Rather in just the same manner as a common vending machine, currency is inserted in exchange for an equivalent value of Bitcoin.

20 As a network operator Instacoin does not monitor the transactions engaged in by its customers. When each customer purchases Bitcoin at an instacoin BTM, they direct where the Bitcoin which they have purchased will be

sent. It is up to the customer to send the bitcoin to the appropriate account.

[20] In his affidavit, Mr Lo Verso detailed the efforts that Instacoin has taken to be in his words “*a leader in regulatory compliance and foresight.*” He indicated that Instacoin is regulated by Quebec’s autorite des marches financiers and that the company applies a compliance policy which reaches the level “*to the extent possible*” of those applied by the Financial Transactions and Report Analysis Centre of Canada (commonly known as FINTRAC). He acknowledged that Instacoin is not subject to the requirements of FINTRAC, however.

[21] Mr Lo Verso indicated that the machines have warnings on them that customers should not buy bitcoin for people they do not know. Ms Jahanshahloo acknowledged that she saw such a warning but thought she knew who she was buying it for - as it was the CRA she believed she was dealing with.

[22] Machines are now outfitted with warnings about the CRA scam. This CRA fraud was not the first involving bitcoin and at least one of Instacoin’s machines in Ontario was used in such a fraud some months prior to this one in P.E.I. The warnings were only added after the P.E.I. fraud.

MS JAHANSHAHLOO:

[23] At the outset, it should be noted that no one disputed that Ms Jahanshahloo was the victim of a detailed and sophisticated fraud. A great deal of sympathy and empathy for the position she now finds herself in, was expressed by all.

[24] Ms Jahanshahloo was a citizen of Iran and in 2016, she cashed out her pension, sold her consulting company and immigrated to P.E.I. with her young son, under the federal skilled worker program. She is now a permanent resident of Canada. However, her experiences in Iran and her unfamiliarity with how things work in Canada contributed to her finding the fraudster’s threats to her as very realistic and help explain why she put her life savings into the bitcoin machine as directed.

[25] Without going into all the details of the fraud, it began by a message on Ms Jahanshahloo’s phone. It appeared to be from the CRA, alleging there was an issue with her tax return and that she was to call immediately, or face arrest. When she called the number provided, she was told by the fraudster that if she did not pay the money she owed, she would be arrested.

[26] When Ms Jahanshahloo indicated that her accountant had taken care of her tax return, the fraudster asked for the number to verify that, and then had, what purported to be her accountant’s office, call her. She was then told by the “alleged” accountant that his office had made an error and would reimburse her, but that she would have to immediately pay the account herself in bitcoin, and to make the arrangements with CRA to do so.

[27] Ms Jahanshahloo was not familiar with bitcoin. Over the course of 4 or 5 hours, she was on her cell phone with the fraudster, who sent her a bar code, and then directed her to go

to the bitcoin teller machine located in Charlottetown. She made several trips to various branches of her bank to withdraw the cash she needed for the bitcoin machine. She testified she followed the directions on the screen of the machine and used the bar code provided by the fraudster for the transactions. She put cash into the bitcoin machine until at some point it would not accept any more and she was directed by the fraudster to complete the transaction and then start a new one. This process was repeated numerous times until she had deposited the amount required by the fraudster.

[28] Later that day, being concerned her phone was being monitored, Ms Jahanshahloo used a pay phone to contact a friend and advised her of what had occurred. Her friend immediately advised her that she had been subject to a fraud and the police were immediately called. A Charlottetown City police officer attended and obtained the details of the incident and advised her that she would be contacted the following day for follow up.

[29] However, the following day Ms Jahanshahloo received a further call from the CRA fraudster, indicating that there was a problem with her husband's income tax return, and he would be arrested at the airport when he returned to Canada.

[30] As part of the continuing fraud, she then received a phone call from what purported to be the RCMP detachment in Stratford, P.E.I., advising her that she had to comply with the CRA request, as she had only been dealing with a municipal police force and the RCMP was a superior police force.

[31] Unfortunately, Ms Jahanshahloo did not speak to her friend at this point, but instead put a further \$15,000 into the bitcoin machine in the same manner as the previous day, bringing her total loss to \$62,500. Only after she had completed those transactions did she see that a message had been left for her by Sgt. Vessey to follow up on her initial fraud complaint.

[32] As acknowledged in both applications, neither Ms Jahanshahloo nor Instacoin have committed any wrongdoing or illegal or criminal activity in this matter.

CASE LAW and ANALYSIS:

[33] Section 490 (9) of the Criminal Code provides that if the property seized is no longer required for the purposes it was seized for, then the relevant provisions indicate that the justice shall

(c) if possession of it by the person from whom it was seized is lawful, order it to be returned to that person, or

(d) if possession of it by the person from whom it was seized is unlawful and the lawful owner or person who is lawfully entitled to its possession is known, order it to be returned to the lawful owner or to the person who is lawfully entitled to its possession,

[34] The case law provided to me in this matter indicates that the lawful ownership of the \$62, 500 is to be determined on the balance of probabilities, the civil standard, as set out in

the Ontario cases of **Re Cannone**, 2010 ONCJ 219 (at paragraph 3) and **Re Application under s 490 of the Criminal Code**, 2015 ONCJ 424 at paragraph 4. These cases have been relied upon in **Re Conan**, 2014 ABPC 190 (at paragraphs 23 to 32).

[35] I will deal with the application of Ms Jahanshahloo first. Her application is pursuant to section 490(10) and she claims to be the lawful owner of the money.

[36] The cases of **Re Cannone**, supra, **Re Return of a Yamaha Venture RS Snowmobile**, supra, and **Re Conan**, supra, dealt with a dispute between the original owner of property and a subsequent innocent purchaser. In one, a rolex watch had been stolen and later sold to a jewelry shop. An innocent third party bought the watch from the store. In the other case, it was a vehicle that was stolen and sold to an innocent third party. As the thief could not pass on better title than his own, the items were returned to the original owner. Those cases have no application to this matter, other than setting out that the standard of proof on a application of this nature is the civil standard, of proof on a balance of probabilities.

[37] Instacoin is not a third party. Instacoin is the party that was dealt with directly by Ms Jahanshahloo in purchasing the bitcoin.

[38] Ms Jahanshahloo's application sets out various principles of contract law that are relied upon in support of her claim. Her application claims that any alleged contract between her and Instacoin is void because there was no meeting of the minds as to what the terms of the contract were. Furthermore, she claims any alleged contract is void for mistake, for duress and for unconscionability. If the contract is void, for any reason, then she claims title in the \$62,500 did not pass to Instacoin and that she is the lawful owner of it.

[39] The first question to be determined is what was the nature of the contract between Ms Jahanshahloo and Instacoin. At paragraph 32 of her application brief, counsel states:

In this case, it is expected that Instacoin will claim that there was a contract between Ms Jahanshahloo and Instacoin - to convert Canadian currency to Bitcoin and transfer Bitcoin to the CRA.

[40] That, however, is not what Instacoin claims. It claims that Ms Jahanshahloo put money into the machine in order to purchase bitcoin, which was sold to her as she requested. That was the basis of the contract between them. What she did with that bitcoin was solely her decision and nothing that was authorized or supervised or even known to Instacoin, given the anonymity of these transactions. Ms Jahanshahloo then directed where the bitcoin was to be transferred to, by the bar code that she provided to the machine. Instacoin had no input into that.

[41] There is no question that Ms Jahanshahloo thought she was transferring the bitcoin to CRA to pay the alleged debt, and not to a fraudster. There is no question she was under duress during the time she was dealing with the fraudster. However, there is no suggestion that that duress was anything that Instacoin was aware of, or in any way contributed to.

[42] The machine had a warning on it not to send bitcoin to anyone that you did not know. Ms Jahanshahloo acknowledged that she saw that warning, but did not consider it applied to her.

[43] As noted there are no federal regulations regarding digital currency. Any regulations that Instacoin is required to adhere to under Quebec law would govern its activities in Quebec- not in P.E.I.

[44] There are no legal requirements in the Province of Prince Edward Island for Instacoin, or similar companies, to post warnings, set limits on individual transactions or set daily limits on the use of its bitcoin machines. Instacoin has done so of its own accord, to show it is a good corporate citizen, is responsible, to attract customers, to avoid regulation by self-regulating or for some other reason. Some of those self regulating actions were in place before this fraud while others have been implemented by Instacoin following it, and perhaps as a consequence of it.

[45] On the evidence before me, the contract in this case was between Ms Jahanshahloo and Instacoin for the purchase of bitcoin. The contract was not for the purchase of bitcoin to be transferred to the CRA. Instacoin had no idea what Ms Jahanshahloo wanted the bitcoin for.

[46] As noted in the materials submitted, bitcoin can be used for illegal activities, as well as for purchases from bona fide businesses. The attraction of it is the anonymity of it. Instacoin does not know who the bitcoin is being directed to - it is the purchaser who provides the bar code and who directs whether it goes into the purchaser's own account that has been established by the purchaser or whether it is forwarded to a third party.

[47] The cases that have been filed with respect to the issue of mistake, duress and unconscionability do not apply in respect of this matter. The contract between Instacoin and Ms. Jahanshahloo is a very simple one. They provided a service. She put her money in to obtain bitcoin, she obtained the bitcoin and then she transferred the bitcoin to the account for which she provided the information.

[48] As noted, Instacoin had no knowledge of who the recipient of the bitcoin was. The machine simply accepted the bar code she provided and the transaction was forwarded, as she requested. The contract was not to convert Canadian currency to bitcoin and transfer the bitcoin to the the C.R.A. That was not the nature of the contract.

[49] Ms. Jahanshahloo has not satisfied me on the balance of probabilities that she is the lawful owner of the \$62,500 that was seized from the bitcoin machine on March 1st, 2018. As such, her application is dismissed.

[50] I now must consider the provisions of Section 490(7) of the Criminal Code with respect to Instacoin's application. While there are two separate applications before the Court in

respect of this matter, the evidence upon which each of those applications is to be considered is the same. They were heard together by consent of counsel.

[51] As is noted in the case law, it is not a question of competing applications for the return of seized items. Each application has to be considered individually, and on its own merits.

[52] The evidence in this case establishes that Instacoin provided a service as requested by the customer, Ms. Jahanshahloo. There was a purchase and a sale agreement. The customer, Ms Jahanshahloo, then directed where the product that she purchased, was directed to. It was not Instacoin who determined where that product went.

[53] Ms. Jahanshahloo bought the bitcoin that she requested from Instacoin, by depositing the cash into the machine. She then determined where that product would be delivered, by providing the bar code, in order for the product that she had purchased from Instacoin to be delivered, unfortunately in this case, to the fraudster.

[54] The purchase and sale agreement was completed by the customer. The money was put in the machine. It paid for the transaction that she requested and she authorized, and it was a lawful transaction. Instacoin owns the machine in question. It rents the space where the machine was located and was used.

[55] In this matter, I'm satisfied on the balance of probabilities that Instacoin is the lawful owner of the \$62,500 that Ms. Jahanshahloo put in its machine on February 27th and February 28th, 2018 and subsequently subject to the seizure by Sgt. Vessey on March 1st, 2018.

[56] It is most unfortunate and most regrettable that Ms. Jahanshahloo was a victim of such a detailed and sophisticated fraud, but it is not at the feet of Instacoin that the blame for that fraud can be laid.

[57] Pursuant to Section 490(9) of the *Criminal Code*, I order that the \$62,500 be returned to Instacoin, as the lawful owner of that money.

[58] Finally, I would like to thank counsel for their detailed briefs and presentations to the Court in respect of this matter. As I noted at the outset, the subject matter of this application is not something that is well known, certainly not to me or in general. The assistance in providing that information and the background was extremely helpful in order to consider this application.

DATED at Charlottetown, Queens County, Prince Edward Island this 12th day of October, 2018.

Sgd NKOr

Nancy K. Orr
Chief Judge of the Provincial Court
of Prince Edward Island

