

One Way or Another: Non-U.S. Crypto Customers Will Have to Face Celsius Preference Lawsuits

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Why You Should Read Terms Before You Click or Check the Box with “I Agree”

As Blondie sings:

*One way, or another, I'm gonna find ya
I'm gonna get ya, get ya, get ya, get ya
One way, or another, I'm gonna win ya
I'm gonna get ya, get ya, get ya, get ya*

Earlier this summer, the Bankruptcy Court for the Southern District of New York rejected a challenge to the Litigation Administrator, Moshin Y. Meghji, lawsuits against Celsius Network LLC customers. The challenge was based on, among other grounds, lack of personal jurisdiction over defendants who resided outside of the United States and undertook transactions with Celsius online. The litigation administrator asked the Bankruptcy Court to hold that the foreign defendants were subject to personal jurisdiction, and that the preferential transfers they received were domestic transfers for the purposes of the preference avoidance provisions of the Bankruptcy Code, or, in the alternative, that these provisions of the Code applied extraterritorially.

The foreign defendants argued that jurisdiction cannot be decided without a factual record, given questions about which entity owned the crypto, inconsistent Terms of Use provisions, potential fraudulent inducement, and the heavy burden on foreign defendants to litigate in the U.S.

In his July 29 decision, Judge Glenn held that a bankruptcy court may exercise jurisdiction over a foreign defendant if the defendant has minimum contacts with the United States as a whole. The court further found that, as to all customers, the transfers were domestic and involved a domestic application of the Bankruptcy Code. Because the transfers are domestic in nature, the court did not reach the issue of extraterritoriality^[1]. The court held that the transfers were domestic in nature because they were made from a Delaware company via LLC-designated frictional wallets and workspaces.

The court's analysis meticulously followed the textbook test for exercising specific personal jurisdiction over a non-resident defendant. Judge Glenn reviewed the three requirements that must be satisfied: “(i) a defendant must have purposefully availed itself of the privilege of conducting activities within the forum State or have purposefully directed its conduct into the forum State, or the United States when the issue arises in adversary proceedings in bankruptcy courts; (ii) the plaintiff's claim arises out of or relates to the defendant's forum conduct; and (iii) the exercise of jurisdiction must be “reasonable under the circumstances.” *U.S. Bank Nat'l Ass'n v. Bank of Am. N.A.*, 916 F.3d 143, 150 (2d Cir. 2019).”

Why the Court Found There was Personal Jurisdiction

All non-US customers were bound by the Terms of Use, which contained a New York choice of law provision and a forum selection clause requiring litigation in New York courts, and that had shifted Celsius' primary business operations, relationships, and obligations away from a U.K. entity to a U.S. company. Accordingly, the Bankruptcy Court found that the foreign defendants' decision to contract with the U.S. company manifests an intent to purposefully direct their activities at the forum. Defendants have contracted to open accounts in a U.S.-based entity and signed a contract subject to the laws of the State of New York. The transfers were made by a U.S. entity to the foreign defendants accounts. “[A] contract with a New York choice of law provision is “a significant factor in a personal jurisdiction analysis because the parties . . . invoke the benefits and protections of New York law.” *In re Celsius Customer Preference Actions*, No. 24-04024 (MG), 2025 WL 2125270 (Bankr. S.D.N.Y. July 29, 2025) citing *Sec. Inv. Prot. Corp. v. Bernard L. Madoff Inv. Sec., LLC*, 460 B.R. 106, 117 (Bankr. S.D.N.Y. 2011), *aff'd*, 474 B.R. 76 (S.D.N.Y. 2012). These principles, Judge Glenn, emphasized also apply to clickwrap agreements. *Id.* at 12 citing *Zaltz v. JDATE*, 952 F. Supp. 2d 439, 451–55 (E.D.N.Y. 2013) (finding plaintiff assented to defendant's terms of service when she clicked a box agreeing to the defendant's terms of service).

Additional analysis of the forum selection clauses also supported the finding of personal jurisdiction over the foreign defendants. The Terms of Service included the following language:

[t]he relationship between you and Celsius is governed exclusively by the laws of the state of New York. . . . Any dispute arising out of, or related to, your Celsius Account or relationship with Celsius must be brought exclusively in the competent courts located in New York, NY and the U.S. District Court located in the Borough of Manhattan. . . .

Judge Glenn held that the Terms of Use were reasonably communicated to the defendants, the forum selection clause was mandatory, and the claims and parties involved in the litigation were subject to the forum selection clause.

Lastly, the court held that the foreign defendants have not demonstrated a strong showing to rebut the presumption of enforceability. The court was not persuaded by the argument that an individualized determination with respect to each defendant was necessary, and the court could not rule on the defendants “en masse,” because the defendants did not dispute that the Terms of Use that were active during the preference period contained a forum selection clause. While allegations of fraudulent inducement and other defenses may be addressed in future proceedings, the court concluded that the litigation administrator had made a prima facie showing of personal jurisdiction over all defendants.

In summary, Judge Glenn’s decision reinforces a clear message: engaging with U.S.-based platforms — even digitally — comes with legal obligations. The ruling not only affirms the reach of U.S. bankruptcy jurisdiction but also sets a precedent for how courts may treat cross-border crypto transactions going forward. The fine print matters!

[1] As Judge Glenn pointed out the presumption against extraterritoriality is a “basic premise of our legal system.” It provides that “[a]bsent clearly expressed congressional intent to the contrary, federal laws will be construed to have only domestic application.” *RJR Nabisco v. Eur. Cmty.*, 579 U.S. 325, 335 (2016) (citing *Morrison v. Nat’l Australia Bank Ltd.*, 561 U.S. 247, 255 (2010)). The two-step inquiry, when analyzing extraterritoriality issues, requires to ascertain if a statute gives a clear indication of an extraterritorial application and if there is no such clear indication of an extraterritorial reach then a court has to examine the statute’s ‘focus’ to determine whether the case involves a domestic application of the statute.