

## 'We're Not Going Anywhere': Plaintiffs Plan to Appeal \$1.5M Partial Win in Alleged \$4M Bitcoin Fraud

"I understand that [under normal circumstances banks] should not be liable to non-customers, but this is as extreme a situation as I have ever seen, and I have litigated these types of cases, all of which have been settled [confidentially]," plaintiffs attorney Richard Robbins said. "But Wells Fargo has chosen to take this one to the mat and so be it."

April 06, 2023 at 03:44 PM

5 minute read

Cryptocurrency

**Alex Anteau**

### What You Need to Know

- While the court granted a \$1.5M judgment against one defendant, plaintiffs plan to appeal the court's summary judgement in favor of the other.
- Plaintiffs attorney Richard Robbins said he doesn't think his client's circumstances haven't yet been ruled on by a Georgia court.
- Robbins said he thinks there's a good chance the 11th Circuit will remove the case to the state Supreme Court.

Several years after their most recent appearance before a federal judge, three out of five defendants in an alleged \$4 million bitcoin fraud implicating an Atlanta lawyer and Hong Kong-based cryptocurrency company finally saw their day in court.

On March 22, Judge Michael Brown of the U.S. District Court for the Northern District of Georgia granted summary judgment in favor of defendant Wells Fargo, and the plaintiffs' lawyer said he plans to appeal that decision.

Bitcoin brokers Hugh and Brandon Austin of the Valkyrie Group are on the hook for a \$1.5 million judgment in favor of plaintiff GSR Markets, Inc. represented by **Richard Robbins** of Robbins Alloy Belinfante Littlefield.

GSR Markets sued the Valkyrie Group for fraud, conspiracy to commit fraud, conversion, unjust enrichment and attorneys fees when an attempted Bitcoin transaction went sour and their purchase money was stolen. The court granted the plaintiffs partial summary judgment on the count of fraud. GSR also sued Wells Fargo

Bank for aiding and abetting fraud and breach of fiduciary duty. The court was not convinced of these counts and granted a motion for summary judgment in Wells Fargo's favor.

**Richard L. Robbins, Robbins Ross Alloy Belinfante Littlefield**, Atlanta. (John Disney/ALM)

Robbins is unsatisfied with a partial victory and said he's made it clear to his opposing counsel that he plans on appealing the summary judgment in favor of Wells Fargo. Moreover, he said he had doubts regarding what his client would be able to recover from the Valkyrie Group.

"They're pretty dodgy people with multiple judgments against them, and have literally made physical threats against my clients when they talked with them about the missing money," Robbins said.

GSR Markets dismissed its claims against the other defendant, Diana McDonald, the attorney sued for allegedly transferring the \$4 million in bitcoin out of the clients' account, last year. Robbins said his client settled with McDonald for a confidential sum, but that a significant portion of the money his clients lost has not been recovered. McDonald has also been subject to bar proceedings but is in good standing as of this week.

"Considering what I've been through, I'm doing well," McDonald wrote to the Daily Report in an email.

Wells Fargo declined to comment on this suit or wherever they believe the plaintiffs have any chance at success in appealing the summary judgment in the company's favor. Although Brown ruled that there is no common law duty of care towards non-customers in Georgia, Robbins said his team plans to anchor their argument in their claim that Wells Fargo breached its fiduciary duty of care to GSR Markets.

Robbins said he thinks he'll be successful on appeal and that there's a good chance the case might be certified by the U.S. Court of Appeals for the 11th Circuit to the Georgia Supreme Court because the state's case law hasn't addressed this particular type of fact scenario before.

"The 11th Circuit ruled in favor of a non-customer in Florida, but said 'that's Florida, not Georgia law,'" Robbins said. "But I think it's very important that a bank has to have at least some duty of care when a non-customer reports and provides substantial evidence that there is fraud occurring in an attorney trust account maintained at the bank. This was not an ordinary customer, this was an IOLTA [interest on lawyers' trust account] and the bank was very aware of the special rules applying to IOLTA[s]."

The key question under consideration will be what duties a bank has to non-depositors when it is on actual notice that funds are being fraudulently withdrawn from a depositor attorney's trust account.

Robbins said he plans to file a notice of appeal next week and that the appeal will be rooted in his argument in favor of duty of care. He said he also plans on appealing the dismissal of his other claims but said their success or failure would be based on whether they win on negligence.

If the appeal fails, Robbins said that the consequence would be that banks would continue to not be held accountable for gross negligence involving accounts they maintain.

"I understand that [under normal circumstances banks] should not be liable to non-customers, but this is as extreme a situation as I have ever seen, and I have litigated these types of cases, all of which have been settled [confidentially]," Robbins said. "But Wells Fargo has chosen to take this one to the mat and so be it.

We're not going anywhere."

Wells Fargo declined to comment on why the company chose to litigate the issue.

*The case is GSR Markets Limited v. Diana McDonald et al., No. 1:19-cv-01005-MLB.*