

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA
Case No. 17-81370-cv-MIDDLEBROOKS/Brannon

ANDREW HODGES, individually,
VLADIMIR COOD, individually;
GAUTAM DESAI, individually;
JODY POWELL, individually;
JEFFREY HEBERLING (deceased), individually;
SHAMMI NABUKUMAR, individually;
ANTHONY SAJEWICZ, individually;

PLAINTIFFS,

vs.

MONKEY CAPITAL, LLC, a Delaware limited liability company;
MONKEY CAPITAL, INC., a foreign corporation;
DANIEL HARRISON, an individual;

DEFENDANTS.

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MOTION TO DISMISS

Wrongly Established Nature of The Complaint

1. The Claim cannot be represented as one single lawsuit due to the reason that every individual case for each PLAINTIFF is different and requires therefore an individual suit. This suit was originally filed as a Class Action, alleging “hundreds and maybe thousands” of potential loss-making victims, which were, in the eyes of the PLAINTIFFS, a direct result of the DEFENDANT carrying out the sales of MNY described in the first section of this Memorandum. However, only one, Anthony S., joined the Class Action, resulting in the less than required minimum number of PLAINTIFFS necessary to file such a lawsuit in the Florida Courts.
2. As a result, the original Class Action claim was slightly amended to be inclusive of what amount to seven separate individual suits. However, even despite the lacking number of potential PLAINTIFFS for such a Class Action, the Class Action would have failed the test on the grounds that every individual’s circumstances are materially and objectly different from one another. For example, Andrew Hodges traded with the DEFENDANT in two ways; he purchased COE over the Waves decentralised Exchange and directly via a series of pre-agreed over-the-counter trades with other

market participants wherein such trades were brokered by the DEFENDANT without commission or fee. In other words, the DEFENDANT did not profit from the transactions that he entered into with Andrew Hodges. Further still, Andrew Hodges was afforded a discount of at least 50% to the then market price of Coeval, meaning that there was no financial risk on the part of the buyer at least as far as the DEFENDANT ensured was the case. This was deliberate as the DEFENDANT did not wish to be responsible directly or accountable for any financial risk assumption on the part of any party that he brokered a transaction for.

Precedent To Find The Complaint False With Respect To Securities Claims

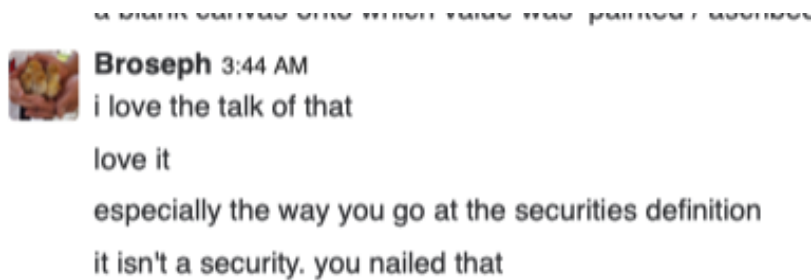
3. In SEC vs. Blockvest et al. (<https://drive.google.com/file/d/1SODrcousHIAKdFRd8Gj32U7IQc-DQX2X/view>) U.S. District Judge Gonzalo Curiel found that there was no securitisation claim present when either the injured parties purchased tokens off an exchange platform or when there was no assumption of financial risk. This Judgement has established precedent for the dismissal of the case against the DEFENDANT.
4. Both of these instances apply to the DEFENDANT's transaction with Andrew Hodges and to the other PLAINTIFFS, despite the materially different circumstances under which their alleged losses occurred. For a start, the DEFENDANT has only ever conversed socially and not in financial or investment terms with two of the PLAINTIFFS; the other four PLAINTIFFS are completely unknown to the DEFENDANT and bought or sold accordingly on an exchange completely unbeknownst to the DEFENDANT, who first heard of such individuals when the lawsuit was filed. All these PLAINTIFFS openly admit to having bought Coveal off Waves Decentralised Exchnage in transactions that could have been entered into with any of a wide number of parties, given that both Coeval and Monkey tokens had at the time in excess of 1,000 holders and a thriving, liquid market for trade.
5. As to the question of the nature of the products Coeval and Monkey specifically, they cannot possibly be classified as securities by the very nature of their non prefunctional characteristics as currencies with high and low supply bases that were designed in order to be played into software-based smart contract enabled trading systems with artificially-intelligent features.

Additional Evidence Provided By Circumstances Under Which The Complaint Falls

6. Because MNY and COE are clearly digital currencies designed to be played into artificially-intelligent software-based trading systems with various algorithms that keep them constantly liquid in trading terms, they cannot possibly be classed as securities. Specifically, MNY and COE are designed to pay for things with. At first, the idea was that the tokens would pay for their proxy equivalents that was issued from the smart contract-enabled trading devices as per the source code of the different trading machines. This would generate enough volume and market opportunity ultimately to make the currencies utilisable in a variety of contexts, specifically and most

importantly, as units of account for making investments with. Because of the limited supply and unlimited demand in the form of continuous payments being made into the trading devices, the currencies would naturally rise very strongly against Fiat values, making them very efficient purchasers of investments which they would over short periods rise at a much faster rate than themselves if timed for investment accurately. None of this description fits the description of an investment being made into a common enterprise that is then investing money on the token holder's behalf; rather, the token holder holds a unit of currency that the issuer is also using itself to make investments in projects that once profit-generating, are able to circulate such profits into expanding the core architecture, trading systems etc. of the artificially-intelligent trading device.

In fact, in conversations between PLAINTIFF Andrew Hodges and the DEFENDANT, the PLAINTIFF agrees with the DEFENDANT that the tokens are not in any way, shape or form securities:



7. The PLAINTIFF alleged that 50 BTC (about \$100,000 in mid-2017 money), which is the sum he requests to trade over-the-counter via the DEFENDANT's network of sellers was 5% of his entire portfolio, which the DEFENDANT found a reasonably minimal investment for what was a below-market over-the-counter transaction. Furthermore upon being told this was fine, the PLAINTIFF voluntarily increased his investment size:

It's in the interests of the community so I can justify it



Broseph 4:07 PM

Since I don't put more than 5% of my portfolio into any one thing I wouldn't be able to invest more than 20btc all together (~\$50k USD). Would you be able to do 20btc instead? Def wouldn't dump. Too much work and I know I can never beat the market. Learned that lesson in old economy.



dmhco 4:13 PM

Yes. Then it will be ... 400 COEVAL But if you agree not to dump 500

As I will also gift you 100 of my own

I really want long term size holders like you are suggesting you are so that is fine



Broseph 4:32 PM

If you can get 2000 coeval for 50btc. You have a deal. I will need 10 days maybe less to move

You should know how you may impact lives.

I will be buying 100 acres of land. Building a farm in order to build a sense of community where I live. I plan to make the business a landmark of the community that impacts everybody's life there. To the point where the community has a checks and a balances effect on all members like tribes use to...to make such an impact that mental health, dietary health, the desire for kids to learn, is created...and to build a family legacy in order for my family to stay close and be a home for more than just my immediate family.

Your sense of community is what is drawing my investment to you. But I want you to know that not all your investors dream for lambos and bitches. Some will try to make an impact much like you are trying to do. I want to ride your coat tails, but I hope to create something where somebody will ride my coat tails, hopefully for good.

8. Since it was agreed and understood by both parties this was not a securities transaction, no KYC or self-accreditation requirement was required to be fulfilled and this was discussed by both parties too:



Broseph 7:08 PM

I have not claimed any of my crypto assets so I have not had to get that status in the sec eyes.



dmhco 7:16 PM

Yah OK

9. The PLAINTIFF alleges several separate times that he is fully aware of all the risks, agrees with the DEFENDANTs approach to sell MNY into the market, which the DEFENDANT fully explained to him, said that he supported what the DEFENDANT was doing it and was fully aware the financial risk was his own:



Broseph 4:30 AM

Ur good man. U don't owe me anything.

I know what I did here.



dmhco 4:30 AM

I want to be really clear of the fact that I know this

I know you know this; I do too



Broseph 4:31 AM

I invested a lot, a lot for even me. So don't think I'm a mega rich dude just throwing weight around. I care.



dmhco 4:31 AM

I know

It's investors like you that keep me up



Broseph 4:31 AM

If it fails tho, I took the risk.



dmhco 4:31 AM

If it fails - it is on me (edited)

If it succeeds - it is on me

I HAVE to succeed

I can do ANYTHING I want in life if it does

The possibility is overwhelming

THAT means I will pull it together faster than most would



Broseph 4:33 AM

Do know I do have the risk tolerance for this. It is not the money that gets me pissed off. It is the potential your model might get kissed on by trolls





dmhco 4:33 AM


The prize is huge and the downside is a professional grave basically


I know you do


And I am levelling with you on the risk


 **dmhco** 4:00 AM
I didn't fuck up this time
I did it deliberately


 **Broseph** 4:00 AM
I'll take ur word


 **dmhco** 4:00 AM
I am more self-critical than anyone


 **Broseph** 4:01 AM
I understand you Dan. We are both INTPs

 **dmhco** 4:01 AM
But I cannot take a project being undermined by this rationale "this is not how ICOs are done."
That thinking is what we are fighting
But you should fight me in general
That is good
I like the battle
It is healthy and it actually gives credibility to the moves in the market

 **Broseph** 4:02 AM
I see why u are making a market for the ICO
I like it

 **dmhco** 4:02 AM
Yah and also we would have timed out
we could have smashed this thing accedidentally

 **Broseph** 4:02 AM
And yes. I wanted to come at you hard in the slack but my friend said don't

 **dmhco** 4:02 AM
You should
That is freedom of speech
I won't take it persoally

10. The extremely short time period of the lawsuit, coming only months after the launch of the planned ICO, and brought forward by a PLAINTIFF who told the DEFENDANT he was a "long-term investor" (implying in most contexts a minimum holding period of a year to three years minimum) is also impractical and prejudiced the outcome of events against the DEFENDANT who nevertheless managed to overcome – at least partially – such events. Contrary to the Claim, PLAINTIFF in fact thoroughly researched the sell-off of Coeval and instructed and informed the DEFENDANT of such sell-off:

time to solve it



Broseph 5:12 PM

Until our mind goes somewhere else



dmhco 5:12 PM

Figure out what the fuck - bbut there is greater repsonsibility and no time to do that

But that wasn't essy to just leave it aside

I wanted to get distracted and find out who the motherfucker was and you know - it is just the discovery that would have given me satisfaction

I don't think I would have had much interest beyond that in what happened



Broseph 5:13 PM

Who are you trying to find?

Why the price crashed?

dmhco 5:13 PM



Nah I was thinking - who the fuck yah
Like DDF is most likely



Broseph 5:13 PM

That was a combo of things



dmhco 5:13 PM

Cause they had the incentive

Yah it probably was - you see - because you are objective on this one you have greater insight



Broseph 5:14 PM

From the \$1200 high is what you are referring to correct?



dmhco 5:14 PM

Yes



Broseph 5:14 PM

This I can shed light on

Since I looked at about 100+ wallets

Some patterns formed



dmhco 5:14 PM

OK ... cool ... oh yeah. What was it



Broseph 5:14 PM

Market expectation was 1



dmhco 5:14 PM

I am listening I am also packing though

Just FYI



Broseph 5:14 PM

People also expected a lower price

No problem



dmhco 5:15 PM

Right so they were buying in progressively cheaper?



Broseph 5:15 PM

The price was rising so fast the book was thin

As the price rose those set orders didn't follow

A wallet sold a chunk at .5

Wasn't a big wallet

Big the order filled a big portion of the book

The liquidity wasn't there above \$800

So when the order hit you actually we're doing your buy high sell low simultaneously

So market expectation was following that behavior

Which accelerated the fall.

The second crash..

Was your big supporters. During the peerchemist issue I saw some big wallets liquidate their entire stash


12 monkeys sold about \$300k in a few days


Remember that the price was down significantly at that point. Also khan sold everything..and a handful of other wallets.




dmhco 5:19 PM


It makes so much sense to me now


 **Broseph** 5:19 PM
So then you were left with hodlers. Why do hodlers suck in a market? Liquidity. The lack of liquidity will continue to drive the price down until you add participants


 **dmhco** 5:19 PM
Haha


 **Broseph** 5:20 PM
This is why we ant marketing so bad right now. We want anything


dmhco 5:20 PM


 12 monkeys made that money?


 **Broseph** 5:20 PM
Anything will move the needle


 **dmhco** 5:20 PM
I don't even wanna think about that
Fucker

 **Broseph** 5:20 PM
12 monkeys made almost half a million

 **dmhco** 5:20 PM
Fuck
It was the same guys yelling scam

 **Broseph** 5:20 PM
Yes
Bc they were out

 **dmhco** 5:20 PM
Well karma will deal with him

 **Broseph** 5:20 PM
They had nothing to lose anymore

Premature Filing of This Complaint

11. Investors were advised explicitly that the planned platform would take at least a minimum of 12 months to launch in a highly-publicized news article in which the DEFENDANT was quoted from the Monkey Capital Slack which was the medium by which investors were primarily updated with news announcements and pertinent information:

Link: <https://www.ccn.com/harrisonsons-vc-ico/>

Quote: “we are realistically going to have this company come together next year (because deals and things when they are done properly always take a year at least; and that is if you are super fast”

12. The news article was published on July 7, a full week after the DEFENDANT told all investors this was the case right at the very start. .

Request For Immediate Dismissal of Complaint

In light of the above and the information contained in the adjoining document MEMORANDUM OF LAW IN OPPOSITION TO MOTION FOR JUDGEMENT the DEFENDANT requests a dismissal of this Claim.

I hereby submit that this statement is truthful to the best of my knowledge.

Respectfully Submitted,

Daniel Mark Harrison
London, U.K.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was posted by mail with the Clerk of Court on this day of Tuesday 15th January 2019 and by e-mail to Judge Middlebrooks and to **DAVID C. SILVER** at DSilver@SilverMillerLaw.com.