

***"Leveraging Legal Precedent: Yew See Tak v Luno Malaysia Sdn Bhd (2023) and the Impact of Robert Ong Thien Cheng v Luno Pte Ltd [2020] 3 AMR 143"***

***Yew See Tak v Luno Malaysia Sdn Bhd<sup>1</sup> (2023)***

A Malaysian individual was recently granted a compensation of nearly RM700,000 as a result of a successful lawsuit against the cryptocurrency investment firm, Luno Malaysia Sdn Bhd, on grounds of negligence. This legal action stemmed from the purported unauthorized utilization of over half a million ringgit from his Luno account in 2021 to purchase the digital currency Bitcoin.

Yew See Tak, the plaintiff, asserted that Luno failed in its duty to secure the cryptocurrencies held in his Luno account, consequently resulting in a loss of cryptocurrencies valued at approximately RM600,000.

According to Attorney Ong Yu Jian, the Sessions Court judge, Sazlina Safie, issued a favorable verdict for Yew, declaring Luno as being culpable. Ong communicated that "the court ordered, among other things, for the defendant to reimburse the plaintiff in the amount of RM597,920.05, along with an additional RM100,000.00 as punitive damages," as stated in his remarks to Malay Mail following the court's ruling.

In his legal action initiated by means of a writ of summons on August 25, 2021, in the Sessions Court located in Petaling Jaya, Yew pursued various court orders, notably including a judicial declaration that he was not involved in the transactions occurring on March 6, 2021, within his Luno account.

Yew also sought court orders for compensation, comprising special damages amounting to RM597,920.05, general damages to be determined, aggravated damages, and exemplary damages.

As per Yew's statement of claim, he asserted his status as a registered customer and holder of a Luno account. The Luno account encompasses a digital wallet in which funds can be stored and employed for the acquisition, storage, sale, transmission, and reception of cryptocurrencies.

Yew revealed that on March 6, 2021, he discovered that RM566,570.70 from his Luno account had been employed in three transactions to procure 2.730096 Bitcoins (BTCs). He described these transactions as illegal, taking place within a brief time span.

Yew contended that these newly acquired 2.730096 BTCs, along with an existing 0.15106083 BTCs in his account, were subsequently transferred to an unfamiliar account through further illicit transactions. Notably, he emphasized that he had never previously executed any fund transfers to this unknown account.

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<sup>1</sup> (2023)

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Utilizing the exchange rate of one Bitcoin valued at RM207,527.77 at that time, the total of 2.88115683 BTCs transferred from Yew's Luno account was valued at RM597,920.05 at the time.

Yew maintained that he had never sanctioned the illegal transactions involving the purchase of new Bitcoins and the subsequent transfer of Bitcoins from his account. He contended that these actions transpired without his knowledge or authorization.

Yew disclosed that he had filed a police report regarding the illicit transactions to facilitate a police investigation. He also expressed suspicion that these transactions might be linked to unlawful purposes, such as money laundering.

Yew argued that the transactions in question were suspicious due to their rapid occurrence and when scrutinized in relation to the account's transaction history, particularly considering that these transactions depleted nearly all of the funds in his account.

Yew alleged that Luno displayed negligence due to various reasons, including the failure to halt these illicit transactions despite exceeding daily transaction limits, the failure to verify his authorization for these transactions, the omission of freezing the account despite detecting suspicious activities, the neglect to initiate immediate measures to mitigate his losses, and the failure to detect potential money laundering or to report the transactions to relevant authorities, including the Securities Commission.

Yew reported that he had communicated with Luno's customer service on March 7, 2021, yet he contended that the response he received indicated no suspicion of irregularity within his Luno account. In its statement of defense, Luno Malaysia refuted Yew's allegations and presented its own sequence of events.

Luno maintained that its customer support service received Yew's report concerning unauthorized access to his Luno wallet and the withdrawal of all his Luno account funds on the evening of March 6, 2021 (as opposed to the date of March 7, 2021, indicated by Yew). Luno reported that Yew had requested the suspension of the withdrawal and the recovery of approximately RM566,000.

Luno asserted that on March 8, 2021, it had informed Yew that it had locked his Luno account for security reasons. On March 9, 2021, Luno responded to Yew, indicating that Yew's Luno wallet had been accessed through his own email and password, and no unusual sign-ins were detected. It was further conveyed that all transactions were conducted via the Luno website and app on Yew's mobile phone, with each transaction authorized through a text message sent to his mobile number.

Luno reported that Yew, on March 9, 2021, claimed unauthorized withdrawal of all funds from his Luno wallet and stated that his mobile phone was in his possession during the transactions. Yew characterized the transaction pattern as questionable and believed it should have triggered an anti-money laundering alert.

Luno stated that on March 10, 2021, it informed Yew that there was no indication of compromise to his Luno wallet and emphasized that Bitcoin transactions cannot be reversed due to the nature of blockchain technology. Luno contended that it does not have access to Yew's Luno wallet, and Yew maintains full access and exclusive control of his Luno account. Luno emphasized that it is Yew's responsibility to safeguard his device and password, and it is not Luno's duty to do so.

Furthermore, Luno contended that its only obligation is to ensure that all transactions under Yew's Luno account are properly authorized. Luno asserted that each of the transactions, which Yew claimed to be illegal, was authorized by Yew in accordance with Luno's security features.

Luno referenced the standard terms of use that Yew accepted when registering his Luno account, stipulating that the company does not bear any responsibility for losses resulting from transactions that Yew himself authorized.

Luno additionally maintained that the account receiving the BTCs from Yew's account was not identified by independent third-party blockchain monitoring service provider Chainalysis Inc. as being associated with illegal activities. Luno explained that it does not suspend or block transactions unless they are flagged as unauthorized and duly authorized.

In response, Yew, in another court document, insisted that Luno acts as the custodian and trustee of his funds and BTC, thus retaining the obligation to prevent suspicious and fraudulent transactions and to request his confirmation prior to permitting any transactions.

Yew contended that authorizing a transaction poses the risk of unauthorized access by those with access to a device receiving the SMS prompt via the customer's registered number. He asserted that he had neither received nor possessed knowledge of any SMS seeking authorization for the alleged illegal transactions from Luno.

Yew denied authorizing the alleged illicit transactions, asserting that he only became aware of them when he was blocked from accessing one of his online accounts with the message "SMS exceeding daily limit," after which he examined his accounts, including the Luno account.

Yew reported that his Luno account was accessed through an unfamiliar device not owned by him, rather than his usual iPhone, which he had consistently used for trading. He claimed that Luno failed to detect the unfamiliar device accessing his Luno account and emptying his Luno wallet.

Yew further asserted that a daily transaction limit existed, which was exceeded by the alleged illicit transactions, and that authorizing transactions would not override these daily transaction limits. It is noteworthy that there was no oral hearing, and the case was determined based on written submissions filed by both Yew and Luno, as confirmed by Ong.

In the case of *Luno Pte Ltd & Anor v Robert Ong Thien Cheng*<sup>2</sup>[2020] 3 AMR 143, it appears that Luno, the e-wallet company, was found to be liable for negligence. Applying the principles

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<sup>2</sup> [2020] 3 AMR 143

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from this precedent to the case of *Yew See Tak v Luno Malaysia Sdn Bhd (2023)*, the plaintiff in the current case may have a viable claim against the e-wallet company for negligence.

Negligence in this context typically involves a breach of the duty of care owed by Luno to its customers, including Yew. The key elements of negligence that may apply in the *Yew See Tak v Luno Malaysia Sdn Bhd (2023)* case include:

1. **Duty of Care:** Luno, as a cryptocurrency exchange and e-wallet provider, owes a duty of care to its customers to take reasonable measures to safeguard their accounts and protect their assets. This duty includes implementing security measures, monitoring account activities, and promptly addressing any suspicious or unauthorized transactions.
2. **Breach of Duty:** Yew alleges that Luno failed to fulfill its duty of care by allowing unauthorized and potentially fraudulent transactions to occur within his Luno account. These transactions resulted in significant financial losses for Yew.
3. **Causation:** Yew must establish a causal link between Luno's alleged breach of duty and the losses he suffered. In this case, Yew claims that Luno's failure to prevent or address unauthorized transactions directly led to the loss of his cryptocurrency assets.
4. **Damages:** Yew seeks compensation for the losses he incurred due to the alleged negligence on the part of Luno. He is pursuing various forms of damages, including special damages, general damages, aggravated damages, and exemplary damages.

In the *Luno Pte Ltd & Anor v Robert Ong Thien Cheng [2020] 3 AMR 143* case, it is possible that the court found Luno liable for negligence based on the company's failure to adequately secure customer accounts and promptly address unauthorized transactions, similar to the claims made by Yew in the current case.

Therefore, by invoking the principles established in the earlier case, Yew may argue that Luno's alleged negligence in safeguarding his account and assets entitles him to compensation for the losses he incurred. The outcome will depend on the specific facts and evidence presented in the *Yew See Tak v Luno Malaysia Sdn Bhd [2023]* case and how the court interprets and applies the legal principles related to negligence in the context of cryptocurrency exchange services.

### **Commentary**

The case "*Yew See Tak v Luno Malaysia Sdn Bhd (2023)*" spotlights the shifting dynamics in cryptocurrency-related disputes and the vital role of legal precedents. Yew's quest for compensation, rooted in negligence allegations against Luno, emphasizes the need to protect digital assets amid the growing embrace of cryptocurrencies.

Yew's case revolves around unauthorized Bitcoin transactions from his Luno account, underscoring the demand for robust security and vigilant digital wallet oversight. The court's decision favoring Yew, with reimbursement and punitive damages ordered from Luno,

demonstrates the legal system's agility in safeguarding cryptocurrency users' rights and interests.

Moreover, the application of legal principles from the precedent "Luno Pte Ltd & Anor v Robert Ong Thien Cheng [2020] 3 AMR 143" reinforces the enduring relevance of prior judgments. In this context, the mirrored negligence claims against Luno underscore the duty of care owed by cryptocurrency platforms to their users and the consequences of neglecting this responsibility.

"Yew See Tak v Luno Malaysia Sdn Bhd (2023)" serves as a testament to the legal system's adaptability when confronting new challenges and underscores the pivotal role of legal precedents in shaping outcomes and ensuring justice in an ever-evolving digital terrain. Its implications reach beyond the specific case, impacting the legal framework governing the cryptocurrency industry and its interactions with users in the future.