

Jurisdictional Lessons from Mt. Gox Cryptocurrency Litigation

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Last week, on the heels of a [significant decline in Bitcoin prices](#), Forbes reported that China's Central Bank is set to launch the world's first state-backed cryptocurrency. The cryptocurrency will be made available initially to seven of China's largest financial institutions, including three banks and two financial technology companies (including Alibaba). It is planned to eventually reach the virtual wallets of U.S. consumers, through relationships with Western correspondent banks.

Meanwhile, in the United States, litigation rages on against Mark Karpeles, the President and CEO of Mt. Gox. Formerly the world's leading bitcoin exchange platform, [Mt. Gox filed for bankruptcy protection](#) in Japan in 2014 amidst reports of rampant security breaches and refusal by its Japanese banking partner, Mizuho Bank, to process withdrawals for Mt. Gox users. Before its bankruptcy, Mt. Gox announced that 850,000 bitcoins valued at more than \$450 million had gone "missing," likely due to cyber theft.

In the aftermath, Mt. Gox account holders filed putative class actions against Karpeles and Mizuho in the Central District of California, the Northern District of Illinois, and the Eastern District of Pennsylvania, asserting causes of action for negligence, fraud, and tortious interference. In each action, both defendants filed motions to dismiss, claiming lack of personal jurisdiction due to their residences in France and Japan, respectively.

Earlier this year, [all three courts dismissed Mizuho](#) from the litigation, agreeing that the bank did not purposefully direct any activity at the forum states. Mt. Gox's bank accounts with Mizuho were located in Japan, the decisions not to process withdrawals from those accounts were made by Mizuho employees located in Japan, and all wire transfers were initiated or received in Japan.

However, all three courts denied Mr. Karpeles' motions to dismiss for lack of personal jurisdiction. Mr. Karpeles, a French citizen, argued that his contacts with the forum states were merely the incidental result of where some Mt. Gox users lived. The courts unanimously disagreed.

In the [most recent of these three decisions](#), the Eastern District of Pennsylvania, relying on the previous decisions by the courts in California and Illinois, held that it has specific jurisdiction over

Karpeles “because he availed himself of the privilege of conducting business in Pennsylvania through soliciting business from [a named plaintiff] and thousands of other Pennsylvania residents through the Mt. Gox website.” *Pearce v. Karpeles*, No. CV 18-306, 2019 WL 3409495, at *4 (E.D. Pa. July 26, 2019).

The Court applied the “sliding scale” test established by *Zippo Manufacturing v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1123-24 (W.D. Pa. 1997), which has been characterized as “a seminal authority regarding personal jurisdiction based upon the operation of an internet website,” to determine that Karpeles’ internet presence sufficiently gave rise to personal jurisdiction over him. *Karpeles*, 2019 WL 3409495, at *4-5. The Zippo scale “ranges from situations where a defendant uses an interactive commercial website to actively transact business with residents of a forum state (personal jurisdiction exists) to situations where a passive website merely provides information that is accessible to users in the forum state (personal jurisdiction does not exist).” *Id.* at *4. Under that Pennsylvania precedent, a defendant has purposefully availed itself of the privilege of doing business in the state if its website “repeatedly attracts business from a forum or knowingly conducts business with forum state residents via the site.” *Id.* at *5.

The Court held that Mt. Gox’s internet activity fell at the “interactive end of the Zippo spectrum.” *Id.* Mt. Gox’s website was interactive, allowing users to open and manage accounts, make purchases and trades, and transfer and deposit cash. *Id.* Further, Mt. Gox had knowledge of the residences of its users because at the time they opened accounts, they had to provide Mt. Gox with their addresses and other personal information. *Id.* Users could also purchase “Yubikeys” (a hardware authentication device that allows users to securely log into their accounts) to be sent to their physical addresses. *Id.* Approximately 4% of all Mt. Gox users (over 19,000 individuals) who registered with addresses were Pennsylvania citizens, making Karpeles’ interactions with the forum state neither random, isolated, nor fortuitous. *Id.* at *6.

The Court also rejected Karpeles’ assertion that it would be unfair to force him to defend in the United States since he is on probation in Japan and [prohibited from leaving the country](#), holding that the interests of the plaintiffs and the forum state justified any burden of defending in Pennsylvania. *Karpeles*, 2019 WL 3409495, at *8-9.

The increased use of cryptocurrency looks inevitable, with Facebook’s cryptocurrency, [Libra](#), poised to launch in 2020, and some economists [proposing](#) that a cryptocurrency backed by central banks throughout the world will one day replace the U.S. dollar as the world’s global reserve currency. As cryptocurrency proliferates, it is likely that so too will cryptocurrency litigation, bringing with it a host of jurisdictional challenges for litigants. The Mt. Gox-related orders provide valuable insight into how some such challenges may be resolved in the future.

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