

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ERIK CROWL, KEITH WADE, ERIC
O'REILLY, ALTON PARKER, STEVEN
HEY, NATHAN COHEN, SAMUEL
GLICK, FARSHID SEPASSI, ROBERT
NEELY, ANTHONY WATSON, TYLER
HANDLEY, QWNTM CAPITAL
LIMITED LIABILITY LIMITED
PARTNERSHIP, DAVID WARD, ANDRE
PAEZ, and SALEM ALOBAID,

Plaintiffs,

v.

STRONGBLOCK, DAVID MOSS, BRIAN
ABRAMSON, COREY LEDERER,
KONSTANTIN SHKUT, AND JOHN DOE
DEFENDANTS 1-5,

Defendants.

Case No. 1:22-cv-7313-VSB

JURY TRIAL DEMANDED

PLAINTIFFS' OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS AND COMPEL ARBITRATION

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INTRODUCTION

Defendants’ Motion to Dismiss and Compel Arbitration should be denied because Plaintiffs neither had notice of nor assented to any agreement to arbitrate. Regarding notice, the purported agreement to arbitrate is buried in the middle of a Terms of Service that was never presented to Plaintiffs but was instead merely linked to via a dark blue link at the very bottom of a long list of other unrelated details on a black background on a node purchase page. Regarding assent, contrary to Defendant Moss’ declaration, the node purchase page changed over time and for a relevant period did not require node purchasers to agree to the Terms of Service, but rather merely read them. Defendants admit they do not collect any personal information from purchasers of nodes and, as a result, they cannot directly show that any Plaintiff agreed to arbitrate disputes.

Regardless, the January 16, 2021, Terms of Service agreement to arbitrate, which applies to Plaintiffs given they all purchased nodes after that date, is unenforceable because the choice of law clause in the Terms of Service states “the internal laws of the Cayman Islands without regard to choice-of-law rules” apply and application of that law would prevent effective vindication of Plaintiffs’ U.S. Securities Act claims given they are not recognized by Cayman Islands law.

BACKGROUND

A. The Strongblock Node Purchase Page

Plaintiffs purchased Strongblock nodes from Defendants by visiting the Strongblock website App located at <https://app.strongblock.com/>, connecting their electronic cryptocurrency wallet, and clicking on the “Create Node” button. Doing this displayed to Plaintiffs a “Create Your Node” page, which Plaintiffs will refer to as the “Node Purchase” page, as it is the page from which the purchase of nodes is completed.

In his declaration supporting Defendants’ motion, Mr. Moss provided a January 1, 2021, screenshot of the Node Purchase page. Doc. 24-1, p. 4. Relevant here are the facts that the page

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