

# CUBA

BRIEFS

Winter 2021



**#SOSCuba**  
**Patria y Vida**

# LEGAL ROUND UP

By ELLIOT B. KULA & W. AARON DANIEL & WILLIAM D. MUELLER

## **LEGAL ROUND UP by Kula & Associates, P.A.**

It is always our pleasure to keep the readers of CABA Briefs up to date with the most recent decisions of the appellate courts in the State of Florida. This installment is provided with Cuba—its fight for freedom and relief from oppression—foremost on our minds. We stand together in the plea for freedom for all Cubans from the oppressive Cuban regime.

### **Propose Only If You're Ready to Settle Down With... The Order**

*Castro v. Sun 'N Lake of Sebring Improvement District,*  
Case No. 2D20-1102 (Fla. 2d DCA Aug. 13, 2021)

Agreeing on a proposed order is often a point of contention among warring lawyers ... and for a good reason shown in *Castro*. The trial court granted a motion to dismiss without prejudice. The defendant prepared the order, and while it was silent as to whether it was “with or without prejudice,” it included the phrase, “go hence without day.” The plaintiff—and try not to groan here—agreed to the proposal.

Of course, the plaintiff filed suit again and the defendant quickly raised the issue of the involuntary dismissal—its language (“go hence without day”) indicative of its finality—and a defense of *res judicata*. Facing the prospect of having its action foreclosed for good, the plaintiff filed for relief from judgment in the original case (*i.e.* a Rule 1.540 motion) as having been procured by fraud. The trial court mercifully granted the motion.

But not so fast ... the Second District of Appeal reversed the vacatur order because the Rule 1.540 motion had not been filed within a year. Which is to say, the proposed order was reinstated and the plaintiff—who inadvertently agreed to the proposal—permanently lost their cause of action.

### **If Memory Lapses Were Sanctionable, We Would All Be In Contempt of Court**

*Cousins v. Duprey,*  
Case No. 4D19-3602 (Fla. 4th DCA July 21, 2021)

Not every opinion's holding can be reduced to a simple aphorism, but in *Cousins v. Duprey*, the Fourth District Court of Appeal offered this memorable, yet simple observation: “No one's memory is perfect.” Attributing the quote to Eleventh Circuit Court of Appeals' Judge Ed Carnes, the Fourth District reversed a sanctions order that awarded plaintiff's counsel over \$200,000 excusing a monumental shift on an essential fact in the case as the product of mere faulty memory.

Here's how it happened. A medical malpractice suit was filed against a doctor who performed surgery on a Crohn's disease patient, and purportedly

# LEGAL ROUND UP



removed diseased portions of the patient's abdomen and bowel. Sadly, the patient suffered a relapse, and it was then discovered that the doctor had failed to remove all of the diseased areas.

During litigation that ensued, in the midst of a testy deposition, the doctor affirmatively claimed he had removed that portion of the plaintiff's abdomen, but that was later determined to be untrue; and at trial, the doctor performed an about-face, then claiming that he had never removed that portion of the plaintiff's abdomen. The plaintiff (on proper objections) moved for sanctions, which the trial court granted following an evidentiary hearing.

The Fourth District reversed, finding the doctor's faulty memory at the earlier deposition should not condemn him to a large award of sanctions. He had performed the surgery several years prior, after all; and his deposition testimony mildly equivocated the truth. The Court concluded, relying on Judge Carnes yet again, "People forget things or get confused, and anyone can make an innocent misstatement or two." Innocence, in this case, appeared to be beyond subjectivity.

## Pursuit of Trial Fees is Not The Same as Appellate Fees—Getting One Does not Beget the Other

*Lenahan v. Lenahan,*  
Case No. 3D20-1436 (Fla. 3d DCA Aug. 11, 2021)

Siblings resolved a dispute by settlement agreement, which included an attorney's fee provision—good thing, too, because in sibling disputes you'll never hear the end of it. Sure enough, the brother filed suit and the sister countersued—but she neglected to request attorney's fees in her counterclaim. Hold that thought.

The sister prevailed at trial, and defeated her brother's appeal. The Third District Court of Appeal along with affirming, granted the sister's motion for *appellate* attorney's fees based on the settlement's attorney's fees provision and pursuant to Florida Rule of Appellate Procedure 9.400 which "governs the procedures applicable for parties seeking appellate fees." So, all good on appellate fees.

Back in the trial court, the sister went after her *trial* fees; but now recall, she had never requested attorney's fees in her counterclaim. She tried to bridge the gap by relying on the Third District's *appellate* fee order. And it worked. But not for long. Back up on appeal, the Third District reversed the fee judgment, explaining that *trial* fees and *appellate* fees are procedurally different. Thus, while you may accidentally waive your attorney's fees at the trial level by failure to plead, appellate fees are still available if you timely move under Rule 9.400.



Appellate attorney **Elliot B. Kula** of Kula & Associates, P.A., works collaboratively with great trial lawyers to provide appellate services and trial strategy consultation. Visit the Firm's website at [www.KulaLegal.com](http://www.KulaLegal.com).



Appellate attorney **W. Aaron Daniel** of Kula & Associates, P.A., works collaboratively with great trial lawyers to provide appellate services and trial strategy consultation. Visit the Firm's website at [www.KulaLegal.com](http://www.KulaLegal.com).



Appellate attorney **William D. Mueller** of Kula & Associates, P.A., works collaboratively with great trial lawyers to provide appellate services and trial strategy consultation. Visit the Firm's website at [www.KulaLegal.com](http://www.KulaLegal.com).

**Think Global, Act Local, Augusto Perera, PA  
Intellectual Property Law Firm  
Based in Coral Gables**

Call Augusto Perera, P.A. for all your intellectual property rights needs. We can help you with:

- Copyright registration.
- Trademark protection, national and international.
- Trademark disputes.
- Terms and conditions and privacy policies for websites and mobile apps.
- Trademark and copyright recordings with Customs authorities (CBP).
- Intellectual Property Licensing and contract review.



121 Alhambra Plaza, Suite 1500,  
Coral Gables, FL 33134  
O: 305-489-1901  
F: 305-721-1532  
M: 786-200-8674  
E: [ap@tmmiami.com](mailto:ap@tmmiami.com)  
W: [tmmiami.com](http://tmmiami.com)



**Augusto Perera, P.A.**

Intellectual Property, Business & Legal Affairs



**KULA & ASSOCIATES, P.A.**

*APPEALS AND LITIGATION SUPPORT*



Aaron



Elliot



William

We celebrate and proudly support the  
**Cuban American Bar Association**  
for its passionate commitment to equal justice!

# BITCOIN FOR CUBA

## Cuba: A Country Primed for Bitcoin Adoption.

By William Mueller and W.Aaron Daniel

Cuba's economy is imploding due to a pandemic-induced halt on tourism and a precipitous drop in remittances from abroad (both of which were papering over the dysfunction inherent in Cuba's centrally-planned economy). Now, "many Cubans are looking for a way to both receive money from abroad and preserve the value of their savings," observes Boaz Sobrado, an entrepreneur and activist with experience doing business in Cuba.<sup>1</sup>

Because Bitcoin elegantly solves these two problems, Cubans are increasingly using it as a lifeline. Increased adoption on the island could serve as a bulwark against the Cuban authoritarian regime's financial tyranny — and perhaps even sow the seeds of future freedom.

### Why Bitcoin?

"Bitcoin is a peer to peer electronic cash, a new form of digital money that:

1. can be transferred between people or computers without any trusted middleman (such as a bank), and
2. whose issuance is not under the control of any single party."<sup>2</sup>

As explained below, these two properties make Bitcoin a uniquely effective solution to Cuba's economic woes.

### Digital Transfers Without an Intermediary.

Instead of funneling transactions through an intermediary, like Visa or Mastercard, that keeps a centralized ledger of debits and credits, Bitcoin uses a **decentralized** ledger that timestamps each transaction in the proper order (the blockchain). Bitcoin's decentralized ledger is maintained by thousands of computers connected in a global network, each running the Bitcoin protocol software that synchronizes all copies of the ledger.

But what's wrong with Visa or Mastercard? We trust intermediaries with our money every day.

Cuba, unfortunately, is a cautionary tale. For starters, most payment networks or processors are simply not available to Cubans due to sanctions placed upon the regime. Until 2020, almost \$3.5 billion was remitted to Cuba each year, much of that through Western Union.<sup>3</sup> But Western Union ceased operations on the island after a new round of sanctions from the United States government, painfully demonstrating how financial intermediaries are subject to ever-shifting geopolitics.

In addition to making everyday goods difficult to come by, sanctions and regime-imposed restrictions prevent "Cubans from doing the things we take for granted online,"

says Sobrado. "They have no way to pay for Netflix subscriptions or website hosting or a VPN (to avoid censorship), unless they use Bitcoin."

With centralized intermediaries closed, some Cubans are now using Bitcoin for remittances. A Cuban-based startup called BitRemesas is facilitating transfers to Cuba through the bitcoin network.<sup>4</sup> Someone in Miami can buy bitcoins and send them to friends and family on the island, who then sell them for Cuban pesos to buy goods, or use them for online services.

That brings us to another, more fundamental, reason Cubans stand to benefit from using Bitcoin's decentralized network: Bitcoin's decentralization allows Cubans to transact outside the permission of the regime.

"[P]ayment through intermediaries leaves the parties vulnerable to surveillance and bans by political authorities."<sup>5</sup> In contrast to the United States, where our trust in institutions is grounded in the rule of law, strong property rights, democracy, and (relatively) free markets, in Cuba such freedoms and protections are wholly absent. Political favorites receive preferential treatment in Cuba's financial system, including better exchange rates for foreign currency and cheaper services.<sup>6</sup> In contrast, the politically disfavored are subjected to predatory exchange

rates and live at risk of total financial exclusion. Bitcoin fixes this.

## Set Monetary Policy Beyond the Control of a Single Party.

Bitcoin's decentralization also makes its issuance rate practically immutable, thus eliminating the risk of inflation. Unlike fiat currencies (the U.S. dollar, euros, pesos, etc.), which are issued by central banks on a variable schedule at the whim of government bureaucrats often with very little notice, Bitcoin's code sets the issuance rate of new bitcoins and caps the overall supply at 21 million.<sup>7</sup> Thus, because no central authority can produce more bitcoins at will, Bitcoin is immune to the inflationary debasement to which fiat currencies are prone.

Consider Cuba's inflation rate, which is estimated to reach 500% by the year's end.<sup>8</sup> This inflation is largely a result of the regime's dual-currency system. Cuba's official currency is the peso, the CUP, which the regime issues to pay government employees (the majority of the population) and cover other obligations.<sup>9</sup> The peso can purchase basic, low-quality goods and services (which are often rationed), but not much else.<sup>10</sup> For "luxury" items, including quality foods, medicine, appliances, and other essentials, Cubans must use *moneda libremente convertible*, or MLC, which can only be purchased with hard foreign currency remitted from abroad — not the peso.<sup>11</sup>

This dual-currency scheme allows the regime to print pesos to cover its liabilities, while stockpiling hard foreign currency assets it seizes from its people through the MLC exchange. The regime is enriched, while its citizens are driven further into poverty through inflation.

Bitcoin offers Cubans an exit from this predatory monetary policy. By accepting remittances in Bitcoin, rather than foreign currency or MLC, Cubans are denying the regime the hard assets that support it. And Cubans are increasingly

choosing to opt out of the peso/MLC system altogether by living on Bitcoin. Though services such as Bitrefill.com, Cubans can buy gift cards for goods and services directly with Bitcoin, including minutes for the popular cell phone service, Cubacel.<sup>12</sup>

## Conclusion: Hope for the Future.

Unlike other hard currencies or assets, **Bitcoin is unseizable**. Cubans who hold this emerging store of value stand to gain increased financial sovereignty by accumulating their wealth outside the reach of the current regime. In turn, that permissionless, private, and unseizable wealth can be used as "a tool that allows one to contribute to advocacy groups that have powerful political enemies," such as Archipelago or the San Isidro movement, and "that dissidents can use to resist authoritarian states."<sup>13</sup>

Which is all to say, Bitcoin provides hope for a free Cuba.<sup>14</sup>

<sup>1</sup> Boaz Sobrado, *Why Cuba Is Primed for Bitcoin Adoption*, DECRYPT.CO (Dec. 4, 2020), <https://decrypt.co/50491/cuba-bitcoin-adoption>.

<sup>2</sup> YAN PRITZKER, *INVENTING BITCOIN: THE TECHNOLOGY BEHIND THE FIRST TRULY SCARCE AND DECENTRALIZED MONEY EXPLAINED 1* (2019).

<sup>3</sup> *Hank Tester, With Western Union Offices Closed, Cubans Find Informal Ways to Get Cash to Relatives on the Island*, CBS MIAMI (Nov. 25, 2020), <https://miami.cbslocal.com/2020/11/25/with-western-union-offices-closed-cubans-find-informal-ways-to-get-cash-to-relatives-on-the-island/>;

<sup>4</sup> Andreas Knobloch, *Cuba's Digital Startups Sidestep US Remittances Blockade*, DW.COM (Dec. 12, 2020), <https://www.dw.com/en/cubas-digital-startups-sidestep-us-remittances-blockade/a-55793931>.

<sup>5</sup> Saifedean Ammous, *THE BITCOIN STANDARD* 170 (2018).

<sup>6</sup> Boaz Sobrado, *A Day Using Money in Cuba*, BOAZSOBRADO.COM (May 22, 2020), <http://boazsobrado.com/blog/2020/05/22/a-day-using-money-in-cuba/>.

<sup>7</sup> PRITZKER, *supra*, at 8.

<sup>8</sup> NIC CARTER & ROSS STEVENS, *BITCOIN NET ZERO* 8 (Sept. 2021), <https://nydig.com/research/report-bitcoin-net-zero>.

<sup>9</sup> See Sobrado, *A Day Using Money in Cuba*, *supra*. See also Alex Gladstein, *Inside Cuba's Bitcoin Revolution*, BITCOIN MAGAZINE (Aug. 11, 2021), <https://bitcoinmagazine.com/culture/cubas-bitcoin-revolution>.

<sup>10</sup> *Id.*

<sup>11</sup> Gladstein, *supra*.

<sup>12</sup> Gladsten, *supra*.

<sup>13</sup> See, e.g., JERRY BRITO, *THE CASE FOR ELECTRONIC CASH: WHY PRIVATE PEER-TO-PEER PAYMENTS ARE ESSENTIAL TO AN OPEN SOCIETY* 22 (Feb. 2019), <https://www.coincenter.org/app/uploads/2020/05/the-case-for-electronic-cash-coin-center.pdf>.

<sup>14</sup> For more information on Bitcoin, see BITCOIN IS HOPE, <https://www.hope.com> (last visited Nov. 3, 2021).



Appellate attorney **William D. Mueller** of Kula & Associates, P.A., works collaboratively with great trial lawyers to provide appellate services and trial strategy consultation. Visit the Firm's website at [www.KulaLegal.com](http://www.KulaLegal.com).



Appellate attorney **W. Aaron Daniel** of Kula & Associates, P.A., works collaboratively with great trial lawyers to provide appellate services and trial strategy consultation. Visit the Firm's website at [www.KulaLegal.com](http://www.KulaLegal.com).