Dispute Resolution

Singapore Court Issues First "Persons Unknown" Order in Decision Involving Cryptocurrency

Introduction

The cryptocurrency market has grown exponentially, with a global market value of about $2 trillion, and yet, its regulation and legal status continue to be subject to much debate and uncertainty. Are cryptocurrency assets considered to be property in the eyes of the law? Where does one even begin to seek legal remedy for stolen cryptocurrency in the borderless nature and anonymity of the internet? Whilst all cryptocurrency transactions are public and transparent, it is extremely difficult to identify the user of a particular wallet. There are often also difficulties ascertaining the exact entity operating cryptocurrency exchanges, and which countries have jurisdiction over them.

These were some of the novel issues before the Singapore High Court in *CLM v CLN and ors* [2022] SGHC 46 ("***CLM***"). In this exceptional case, the Singapore Court granted the first reported freezing injunction against "persons unknown" in Singapore for S$9.6 million worth of cryptocurrency assets stolen from the Plaintiff. In doing so, the Singapore High Court analysed jurisprudence across multiple jurisdictions and held that cryptocurrency could be classified as property that could be protected using proprietary injunctions. The Singapore High Court also considered that it had sufficient jurisdiction to grant ancillary disclosure orders against certain cryptocurrency exchanges in aid of the Plaintiff's efforts to trace and recover the stolen cryptocurrency.

The Plaintiff was successfully represented by our Fraud, Asset Recovery and Investigations team, led by Danny Ong and Jansen Chow of Rajah & Tann Singapore LLP.

Factual Background

The Plaintiff was the owner of more than US$7 million (S$9.6 million) in cryptocurrency assets, made up of Bitcoin ("**BTC**") and Ethereum. The assets were accessible through two separate digital "hot" wallets, controlled by applications on the Plaintiff's mobile phone. Both wallets, however, employed "recovery seeds" in the event his mobile phone was lost or destroyed.

In January 2021, the Plaintiff was on vacation in Mexico, when he needed some money. He thus called an acquaintance in the apartment to retrieve cash from his safe for him. Unfortunately, the acquaintance repeated the safe combination while others were in the same room. The Plaintiff subsequently accessed

his hot wallets, only to discover that the cryptocurrency assets had been withdrawn without his knowledge or consent.

At the time, the identity of the perpetrators was completely unknown to the Plaintiff. It was, however, suspected that the Plaintiff's recovery seeds had been obtained by accessing his safe; the perpetrators had likely then entered these seeds into a separate mobile device, accessed his private keys, and made off with the cryptocurrency assets. Against these unknown persons as a group (the 1st Defendants), the Plaintiff sought to convince the Court that it had jurisdiction to grant a worldwide freezing order. The Plaintiff also argued that cryptocurrency was property that could be the subject of a proprietary injunction.

Through investigations and tracing efforts, it was determined that these unknown persons had also dissipated the stolen cryptocurrency through a series of transactions. 15.0 BTC were traceable to a wallet address controlled by a cryptocurrency exchange (the 2nd Defendant), while another 0.3 BTC were traceable to a separate exchange (the 3rd Defendant). Disclosure orders were sought against the 2nd and 3rd Defendants who controlled the wallets.

Two persons (the 4th and 5th Defendants) amongst the group of perpetrators were ultimately identified. The Plaintiff also discovered that further portions of the stolen assets had been dissipated from the 3rd Defendant to two United States incorporated entities (the 6th and 7th Defendants), one that maintained a cryptocurrency exchange and another that provided financial and digital payment services. The Plaintiff thus also applied to join the 4th to 7th Defendants to the action.

The Court's Decision

The preliminary issue was whether the Court even had jurisdiction to grant interim orders, as the identities of the 1st Defendants were unknown at the time. Having reviewed the relevant English and Malaysian case law, the Court agreed that it had the requisite jurisdiction to grant the interim orders. It stressed, however, that the description of such unknown persons had to be sufficiently certain to identify both those who were included and those who were not, as had been done in this case.

On the proprietary injunction, the Court had to decide whether there was a seriously arguable case that the Plaintiff had a proprietary interest, and whether the balance of convenience lay in favour of granting the injunction. On the first limb of the test, the Court decided that cryptocurrencies satisfy the legal definition of a property right. In coming to this significant decision, the Court referred to the New Zealand decision of *Ruscoe v Cryptopia Ltd (in liq)* [2020] 2 NZLR 809, and the observations of the Singapore Court of Appeal in *Quoine Pte Ltd v B2C2 Ltd* [2020] 2 SLR 20 ("***Quoine***"). On the second limb, the Court held that the balance "clearly lay in favour of granting" the injunction with there being a real risk of dissipation of the stolen cryptocurrency. The 1st Defendants were thus prohibited from dealing with, disposing of, or diminishing the value of the stolen assets.

The Court also granted a worldwide freezing injunction to restrain the 1st Defendants. In doing so, the Court observed that the risk of dissipation was heightened by the very nature of cryptocurrency, which was "susceptible to being transferred by the click of a button, through digital wallets that may be completely anonymous and untraceable to the owner, and can be easily dissipated and hidden in cyberspace". The Court also agreed with the Plaintiff that the 1st Defendants were unlikely to have sufficient assets or hold all their ill-gotten gains in Singapore.

Disclosure orders against the 2nd and 3rd Defendants were granted on the basis that it was just and convenient to do so. The Plaintiff required the information to trace the stolen assets, and this would facilitate the identification of the perpetrators. In particular, the exchanges were ordered to disclose:

(a) The current balances in the accounts that were credited with the 15.0 BTC and 0.3 BTC respectively;
(b) Information and documents collected by the 2nd and 3rd Defendants in relation to the owners of the relevant accounts; and
(c) Details of all transactions involving the relevant accounts in the 2nd and 3rd Defendants from the dates on which the stolen assets were credited against the accounts.

In respect of the 4th to 7th Defendants, the Plaintiff was granted leave to serve the cause papers and relevant documents out of jurisdiction. Interestingly, the Court placed much weight on the fact that the 2nd and 3rd Defendants were based in Singapore and had complied with the disclosure orders, and the fact that the 6th and 7th Defendants, having wholly owned subsidiaries in Singapore, were likely to comply with the orders.

Finally, the Court allowed the Plaintiff to serve the cause papers on the 4th and 5th Defendants through substituted service – specifically, by way of email. It was found that it was impractical to serve the cause papers on them personally, as their physical whereabouts were unknown, and they had used Virtual Private Network services ("**VPNs**") seemingly to obscure their physical locations. The most important reason was also that the individuals had opened their exchange accounts through email. The email addresses were thus the operative contact point between them and the cryptocurrency exchanges, such that service by email would most certainly bring the Writ to their attention.

Concluding Remarks

CLM adds to the growing body of case law globally, where courts have sought to aid in attempts to trace and freeze misappropriated cryptocurrency assets. While fraudsters may shield themselves using various methods such as VPNs, the blockchain's public nature can and does allow one to trace the movement of the cryptocurrency. Importantly, *CLM* also shows how a court can exercise jurisdiction over cryptocurrency exchanges and subject them to court orders for disclosure of information.

Dispute Resolution

Locally, the decision marks a significant development, demonstrating that the Singapore courts are willing and able to provide remedies as against fraudsters in the cryptocurrency space. *CLM* also proves that in the appropriate case, the traditional legal rules can be adapted to suit the needs of cutting-edge modern technology, adding to the jurisprudence in *Quoine*.

Both landmark cases of *CLM* and *Quoine* were successfully argued by our Fraud, Asset Recovery & Investigations team, which in 2021 litigated cryptocurrency disputes involving over half a billion dollars. For further queries, please feel free to contact our team below.

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