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Teaching an old dog new tricks – Recovery of stolen crypto assets the old fashioned way

Does cryptocurrency give rise to proprietary rights, and can a court grant interim orders against unknown persons? These are two important questions that the High Court of Singapore addressed in a judgement released on 4 March 2022.

The key facts may be summarised as follows: unknown persons gained unauthorised access to the victim’s two cryptocurrency wallets and transferred 109.83 Bitcoin and 1497.54 Ethereum (with a combined value of US\$7,089,894.68) out of those wallets. Subsequently, 15.0 stolen Bitcoin was transferred into a wallet controlled by Exchange A and 0.3 stolen Bitcoin was transferred into a wallet controlled by Exchange B.

The victim asked the High Court to grant the following:

- A proprietary injunction that prohibits the unknown persons from dealing with, disposing of, or diminishing the value of the stolen cryptocurrencies.
- A freezing order that prohibits the unknown persons from dealing with, disposing of, or diminishing their assets up to the value of US\$7,089,894.68.
- An order for Exchanges A and B for to provide information to identify the holders of the wallets who received the stolen Bitcoin, balances in those wallets and relevant transaction records.

Can something without physical properties such as cryptocurrency give rise to proprietary rights such that it can be protected by a proprietary injunction? The High Court answered this in the affirmative, holding that a cryptocurrency can give rise to a proprietary right since it meets the classic requirements of being “definable”, “identifiable by third parties”, “capable of assumption by third parties” and possessing “some degree of permanence or stability”.

In relation to whether interim orders can be granted against unknown persons, the High Court also answered this in the affirmative but included the important caveat that the description of the “persons unknown” must be sufficiently certain as to identify both those who are included and those who are not. In practical terms, the courts can grant such interim orders if the victim is able to place these “persons unknown” in a clearly defined class.

The importance of these pronouncements cannot be overemphasised. Many victims of phishing scams have had to grapple with the problem of attempting to freeze the assets of fraudsters who either supplied fake identities or credentials. This judgement now removes a key impediment to obtaining freezing orders against unidentified fraudsters, which is an important weapon deployed in asset recovery efforts in fraud cases.

Notably, this judgement complements Project FRONTIER, an initiative of the Singapore Police Force and financial institutions to reduce the time it takes to freeze bank accounts implicated in fraud.

As many keen observers would have undoubtedly noted, the fundamentals relating to property rights, proprietary and Mareva injunctions remain unchanged; this legal development, while novel and very much needed, is in many ways, a case of teaching old dog new tricks.

As a lawyer practising in the areas of commercial investigations and asset recovery, I truly applaud this judgement; my legal arsenal has received a very welcome boost indeed.

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