

Fraud, Asset Recovery & Investigations / Technology, Media & Telecommunications

How to Protect Your NFTs – Singapore Court Grants Landmark Injunction Over NFT

Introduction

The age of the crypto economy has brought about a marked shift in what the market ascribes value to. One of the more prominent examples of this is the non-fungible token ("NFT"). Once a niche investment, NFTs are now an increasingly ubiquitous digital asset. But as with all changes in technology, questions arise as to whether the existing laws are capable of accommodating its unique features – in particular, whether the law affords effective protection over ownership of NFTs.

In *Janesh s/o Rajkumar v Unknown Person* [2022] SGHC 264, the Singapore High Court issued a landmark decision granting an injunction over a Bored Ape NFT. In reaching its decision, the Court considered a slew of key issues – Do NFTs give rise to proprietary rights? Can an injunction be granted against a person known only by their pseudonym, and how should summons be served on such persons? When does the Court have jurisdiction over the matter?

The Court recognised that NFTs are capable of giving rise to proprietary rights which can be protected by an injunction. The Court chose to grant the requested injunction, finding that the NFT was sufficiently unique such that damages would not be adequate compensation for its loss.

The Court allowed the application despite the fact that the Claimant only knew the Defendant by his online handle, "chefpierre.eth". The Court further demonstrated the adaptability of its processes by allowing the summons to be served via the Defendant's Twitter, Discord, and cryptocurrency wallet address.

This decision follows the holding of the Singapore High Court in *CLM v CLN and ors* [2022] SGHC 46, in which the Singapore Court granted the first reported freezing injunction against "persons unknown" in Singapore for S\$9.6 million worth of cryptocurrency assets. The Plaintiff in that case was successfully represented by our Fraud, Asset Recovery and Investigations team, led by Danny Ong and Jansen Chow of Rajah & Tann Singapore LLP. For more information, please see our earlier Legal Update on the decision [here](#).



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Brief Facts

The Claimant was the owner of an NFT from the popular Bored Ape Yacht Club collection of NFTs ("**Bored Ape NFT**"). He was a regular user on NFTfi, which is a community platform functioning as an NFT-collateralised cryptocurrency lending marketplace. He began dealing with the Defendant, whom he knew only by the pseudonym "chefpierre.eth".

The Claimant put up the Bored Ape NFT as collateral for a loan from the Defendant, who subsequently agreed to provide refinancing, but later changed his mind and stated that he would exercise the "foreclose" option of the NFTfi's Smart Program if the loan was not fully repaid.

The Claimant was unable to find sufficient funds. The Defendant then exercised the "foreclose" option and the Bored Ape NFT was transferred into his cryptocurrency wallet. The Claimant tried to make part payment but the Defendant refused to discuss the matter further. Since then, the Claimant discovered that "chefpierre.eth" had listed the Bored Ape NFT for sale on OpenSea.

The Claimant filed a suit against the Defendant for the tort of conversion, breach of contract, and unjust enrichment, alleging that they had agreed on certain terms regarding the foreclosure and sale of the Bored Ape NFT. Given the real risk of dissipation and disposal of the Bored Ape NFT, the Claimant made an urgent application to Court for a proprietary injunction prohibiting the defendant from dealing with the Bored Ape NFT.

The Claimant also sought leave to serve the claim and the summons for injunction on the defendant by the following means: (i) on the Defendant's Twitter Account; (ii) on the Defendant's Discord Account; and (iii) on the messaging function of the Defendant's cryptocurrency wallet address.

Holding of the High Court

The Court allowed the Claimant's application, granting the injunction over the Bored Ape NFT and leave for substituted service. In reaching its decision, the Court considered the following issues:

- (a) Whether the Court had jurisdiction to hear the application;
- (b) Whether the Court could grant the injunction against an unknown person;
- (c) Whether NFTs can be the subject of an injunction;
- (d) Whether to grant the injunction in this case; and
- (e) Whether to allow substituted service.

Jurisdiction of the Court

The Court held that it had the jurisdiction to hear the present application.

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While the Court acknowledged that the decentralised nature of blockchains may pose difficulties when it comes to establishing jurisdiction, it highlighted that there had to be a court which had the jurisdiction to hear the dispute. In the present case, based on the available facts, that court was the Singapore court. The primary connecting factor was the fact that the Claimant was located in Singapore, and carried on his business here.

Injunction against an unknown person

The Court held that it had the jurisdiction to grant the interim orders sought against the Defendant despite the fact that he was an unknown person, known only to the Claimant as "chefpierre.eth".

The Court acknowledged that it is possible to have concluded a contract with someone online, where both parties have concealed their true identities using pseudonyms, and that a claimant should not be prevented from seeking interim relief or bringing a claim, even if he is only able to use the defendant's pseudonym.

Here, the Court was satisfied that the Claimant's description of the Defendant was sufficient pursuant to the Rules of Court. In any event, even if the description was not compliant with the Rules of Court, the Court was prepared to waive this instance of non-compliance.

Injunctions over NFTs

The Court held that NFTs are capable of giving rise to proprietary rights which could be protected by an injunction.

The Court applied the test in *National Provincial Bank Ltd v Ainsworth* [1965] AC 1175 ("**Ainsworth**"), which has been used in prior decisions to determine whether crypto assets are property. However, the Court highlighted that it accepted the application of *Ainsworth* in the context of interlocutory proceedings, and that a different conclusion could be reached with fuller submissions.

The Court found that NFTs satisfy the criteria in *Ainsworth* for recognition as property.

- (a) **The right must be definable** – Metadata, which is central to an NFT, distinguishes one NFT from another.
- (b) **The asset must have an owner** – For the requirement of an owner capable of being recognised by third parties, the presumptive owner of an NFT would be whoever controls the wallet which is linked to the NFT. Ownership is exclusive because one cannot deal with the NFT without the owner's private key.
- (c) **The right must be capable of assumption by third parties** – This requires that third parties must respect the rights of the owner, and that the asset must be potentially desirable. Here, the

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nature of the blockchain technology gives the owner the exclusive ability to transfer the NFT to another party, and such NFTs are clearly the subject of active trading in the markets.

- (d) **The right must have some degree of permanence or stability** – The NFT has as much permanence and stability as money in bank accounts.

Whether to grant the injunction

The Court decided to grant the injunction over the Bored Ape NFT as the balance of convenience lay in favour of granting the injunction.

The Court found that the Claimant would not be adequately compensated by an award of damages if the Defendant sold the Bored Ape NFT. The Court noted that the unique feature of the NFT was not the digital artwork itself, which could be copied and shared online. Rather, what was unique and irreplaceable was the string of code that represented the Bored Ape NFT on the blockchain. If this was transferred to third parties, the Claimant might never be able to recover it. Any proprietary remedy ordered by the Court in relation to the Bored Ape NFT would thus be a mere paper remedy.

Substituted service

The Court held that leave should be given for substituted service out of jurisdiction, in accordance with the means sought by the Claimant (by Twitter, Discord, and cryptocurrency wallet address). To find otherwise would be to deprive the Claimant of the only practical manner of effecting service on the Defendant.

Concluding Words

The Court's decision demonstrates its recognition of the value of an NFT as an asset. Similar to physical assets or financial assets, an NFT carries a series of rights that are capable of being protected by interim orders. Parties seeking the Court's aid in protecting such rights, or in tracing such assets, should be reassured by the approach taken by the Court.

The decision also shows the robust approach taken by the Court in procedural matters when NFTs or other digital assets are involved, such as the cryptocurrencies in *CLM v CLN and ors* [2022] SGHC 46. In such cases, it is common for the counterparty to be known only by their handle or username, and to be contactable only via online means. The Court recognised these challenges and acknowledged that they should not stand in the way of bringing a valid claim.

For further queries, please feel free to contact our team below.

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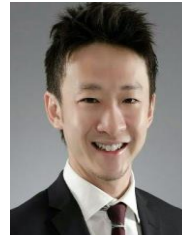
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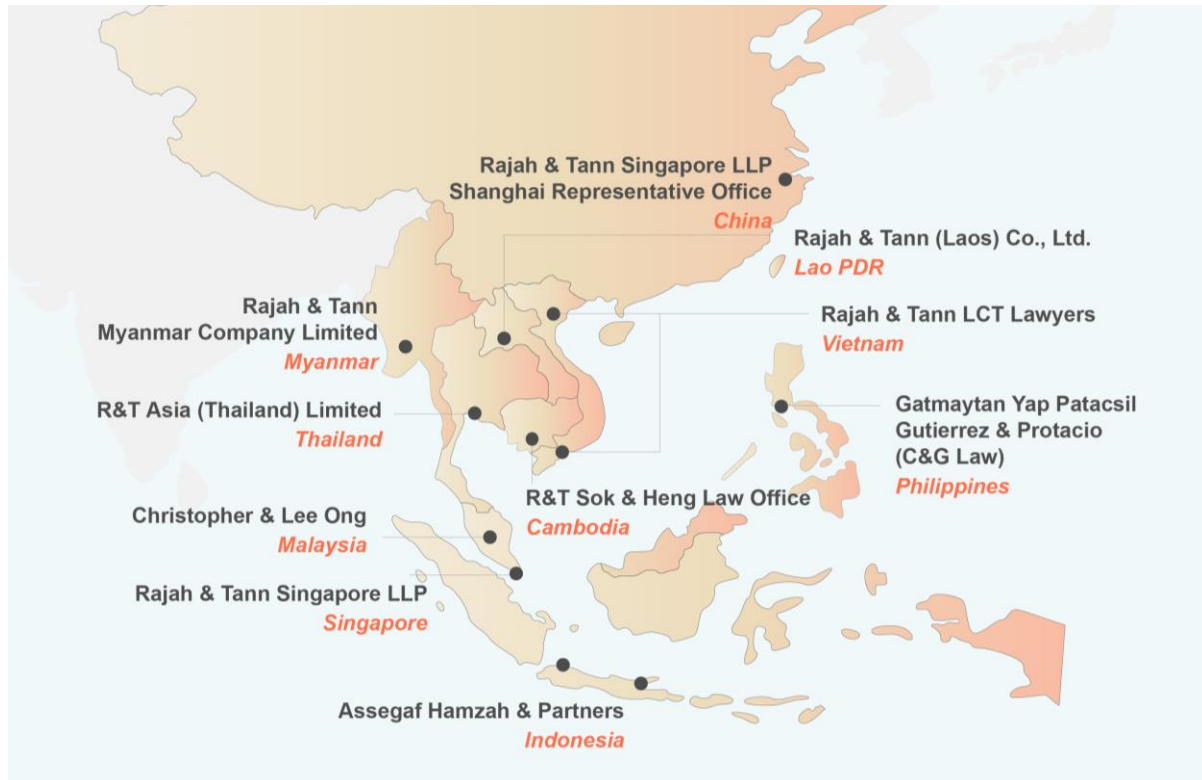
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