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Singapore Decision on Enforceable Property Rights of Crypto Assets – High Court Grants Constructive Trust over Improperly Transferred Stablecoin

Introduction

Digital assets are increasingly common in financial transactions, with ever more businesses and regulatory authorities recognising their value and legitimacy. Due to the novel nature of crypto assets and their place at the centre of a growing number of legal disputes, the courts have been faced with the task of defining their identity as property and the legal rights associated with such assets.

In *ByBit Fintech Ltd v Ho Kai Xin and others* [2023] SGHC 199 ("**ByBit v Ho**"), the Singapore High Court determined whether the crypto assets in question are property capable of being held on trust and, if so, what type of property they are.

The crypto assets in this case were United States Dollar Tether ("**USDT**"). The Plaintiff alleged that the Defendant had improperly transferred the USDT in question and sought a declaration of a constructive trust over the USDT so as to trace the assets.

The Court granted the trust, holding that the USDT was property capable of being held on trust. In considering the type of property represented by the USDT, the Court held that it was a chose in action recognisable by common law as being enforceable in court. The Court thus granted the constructive trust over the USDT.

The Court's decision is significant as it is the first time that this issue has been decided in the Singapore courts. While earlier Singapore cases have recognised that there is at least a serious question to be tried that crypto assets are property capable of being held on trust, they had not determined whether such assets are things in action or a novel type of intangible property. Parties holding or dealing with crypto assets may thus hold greater certainty on the nature of their assets and their enforceability in law.

The decision also shines a light on the remedies available to claimants seeking the return or repayment of crypto assets. In finding a trust over the USDT, the Court granted the orders sought by the Plaintiff, including orders for the return of the traceable sums and tracing orders over the sums which had been converted.

This Update provides a summary of the Court's decision.



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Brief Facts

The Plaintiff, ByBit Fintech Limited, owned a cryptocurrency exchange. The Defendant was responsible for the payroll processing of the Plaintiff's employees.

The Plaintiff alleged that the Defendant, in breach of her employment contract, had abused her position to transfer quantities of USDT to addresses secretly owned and controlled by her, as well as a quantity of fiat currency to her own bank account. The Defendant's defence was that an alleged third party "Jason" stole the USDT from the Plaintiff without her knowledge.

The Plaintiff applied for summary judgment against the Defendant. The main relief sought was a declaration that the Defendant held both the USDT and the fiat currency on trust for the Plaintiff. The Plaintiff accordingly sought an order for the return of the USDT and the fiat currency or of its traceable proceeds, or for payment of a sum equivalent in value.

The Plaintiff's case was that "Jason" was an outright fabrication, and that the USDT was comprised of choses in action and was therefore property capable of being the subject matter of a trust.

Holding of the High Court

The Court granted summary judgment against the Defendant, as well as a declaration of trust over the USDT and the fiat currency. The Court also granted an order to repay the identified sums and a tracing order over the remaining sums.

Nature of crypto assets

The Court held that USDT is property capable of being held on trust, highlighting the following supporting factors:

- Crypto assets can be defined and identified by modern humans, such that they can be traded and valued as holdings.
- Crypto assets have been transferred for value and appear on company balance sheets, and the Monetary Authority of Singapore is developing payment services regulations that will implement segregation and custody requirements for digital payment tokens.
- General recognition has been given to cryptocurrency as property in the Rules of Court.

The Court further held that USDT, which may be transferred from one holder to another cryptographically without the assistance of the legal system, can nonetheless be classed in the category of things in action. Although there is no individual counterparty to the crypto holder's right, the Court highlighted that the category of things in action has expanded to include incorporeal rights. The Court therefore concluded that the holder of a crypto asset has in principle an incorporeal right of property recognisable by the common law as a thing in action and so enforceable in court.

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The Plaintiff also relied on the fact that USDT carries with it the right to redeem an equivalent in US Dollars from Tether Limited which may be enforced by way of suit, thus bringing it within the scope of things in action. The Court was of the view that this feature of USDT may constitute an additional thing in action that the holder of a USDT may have, but its presence was not necessary to its conclusion that the right represented by the USDT is itself a thing in action.

Summary judgment

The Court went on to grant summary judgment against the Defendant, finding that the Plaintiff had established a *prima facie* case, and that the Defendant could not establish a fair or reasonable probability of a real or *bona fide* defence. The Court found that, on a balance of probabilities, Jason did not exist (or at least did not play the role asserted by the Defendant).

The Court thus granted an institutional constructive trust over the USDT and the fiat currency, which in general arises over stolen assets at time of the theft, thus allowing for the remedy of tracing in equity. The Court highlighted that the constructive trust may operate even if the Defendant mixed the USDT with other USDT in the balances of the respective online wallets, or the fiat currency with other money in her bank account.

Remedies

The remedies granted by the Court include the following:

- A declaration of constructive trust over the USDT and the fiat currency;
- An order that the Defendant pay to the Plaintiff the value of USDT in two of the four identified wallets (Wallets 3 and 4);
- An order that the Defendant transfer all sums in Wallets 1 and 2 to the Plaintiff (up to the value of the USDT transferred to these wallets); and
- In respect of the USDT converted from Wallets 1 and 2:
 - An order that the Defendant give an account of this sum;
 - A tracing order in respect of this sum for the Plaintiff to trace and recover the assets or the proceeds thereof; and
 - An order for payment by the Defendant of all sums found to be due to the Plaintiff on the taking of the account.

The orders granted by the Court demonstrate the robust and comprehensive remedies available to claimants with regard to crypto assets. By granting the tracing orders, the Court allowed the Plaintiffs an avenue through which to recover the misappropriated USDT, even sums which had already been transferred or converted.

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While these remedies were deemed by the Court to be appropriate for the claim, courts in Singapore and other jurisdictions dealing with claims involving crypto assets have had to craft remedies catering to the facts of their specific cases.

The Court's approach in *ByBit v Ho* may perhaps be compared with the approach of the recent English High Court in *Joseph Keen Shing Law v Persons Unknown and Huobi Global Limited* [2023] 1 WLUK 577 ("**Joseph v Huobi**"), where proceeds of a fraud were traced to cryptocurrency in an account controlled by the defendants and maintained by a cryptocurrency exchange based outside England. The English High Court ordered that either (a) the cryptocurrency exchange convert the cryptocurrency held in the relevant account to fiat currency and transfer the funds onshore to England and Wales (to the claimant's solicitors) for payment to the Court Funds Office; or (b) the cryptocurrency exchange deliver up the cryptocurrency held in the relevant account to the claimant's solicitors, who were to convert the cryptocurrency to fiat currency and pay the funds to the Court Funds Office.

By way of distinction, the Court in *Joseph v Huobi* was dealing with a claim against persons unknown, and was seeking to transfer the equivalent funds to England and Wales (within the Court's control) to protect against a situation where the cryptocurrency exchange ceased to cooperate with the claimant. The decision demonstrates the scope of remedies available to claimants in scenarios that may differ from *ByBit v Ho*, including cases involving foreign exchanges and unknown defendants.

This may also be compared to the approach in the Singapore High Court decision in *Algorand Foundation Ltd v Three Arrows Capital Pte Ltd* (HC/CWU 246/2022), where the Court held that a debt denominated in cryptocurrency could not be regarded as a debt in money, and thus could not form the subject matter of a statutory demand. For creditors who hold debts denominated in cryptocurrency, this represents a restriction in their ability to seek the winding up or bankruptcy of the debtor. It also raises the question of whether such a creditor may be able to obtain a garnishee order against the debtor where the debt in cryptocurrency is not deemed to be a money debt.

Concluding Words

Crypto assets such as stablecoins are unarguably part of the global financial system, and the Singapore courts have demonstrated the judicial dexterity to comprehend and define their legal identity and the associated rights. This is especially important in cases where crypto assets form the subject of dispute, and where tracing of such assets is a vital step in obtaining remedy.

This decision is thus an important pronouncement of crypto assets as a form of property, confirming that such assets are indeed property capable of being held on trust, and fall within the category of chose in action. It also demonstrates the scope of remedies available for claims involving crypto assets.

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

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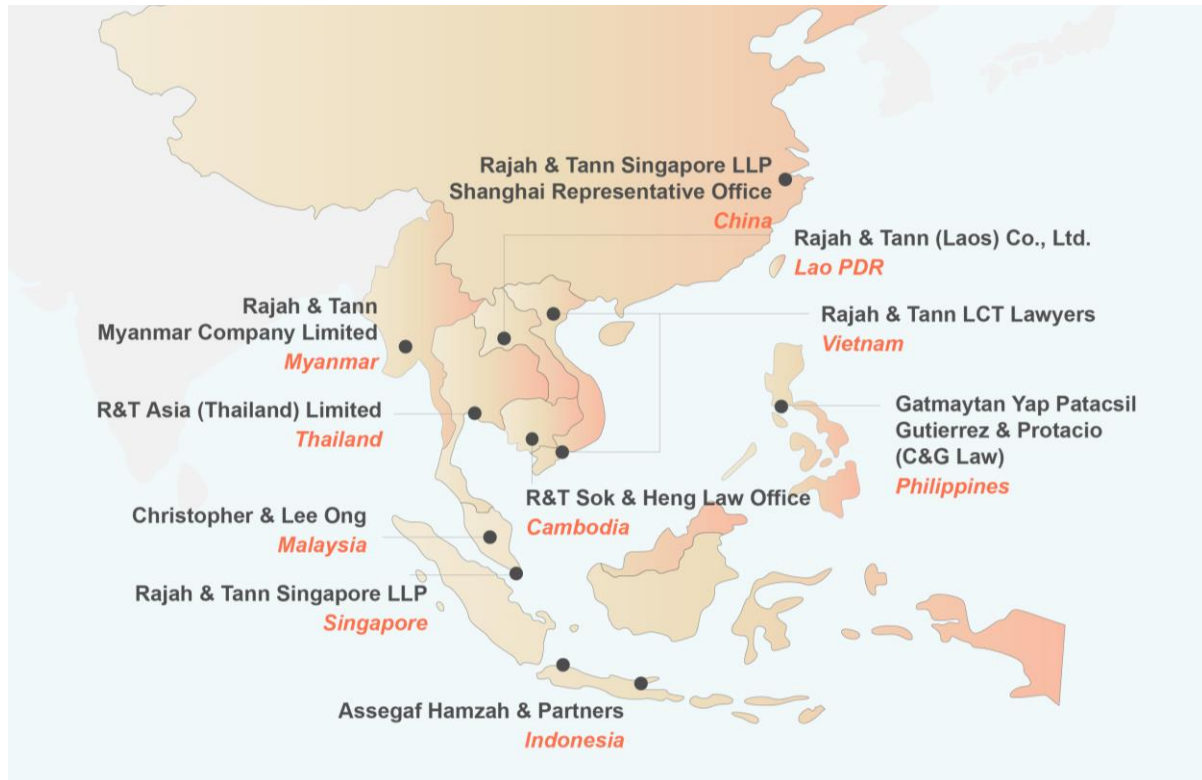
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