Dubai Court rejects Bitcoin claim lacking proof of crypto-wallet ownership (and solutions for digital asset disputes in the UAE)

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Dubai Court rejects claim of loss of 608 Bitcoins for lack of evidence of crypto-wallet ownership.

Dubai Primary Court rules:

"…the plaintiff had transferred the encrypted currency "Bitcoin" to the defendant…did not indicate how to prove the ownership of the account to the defendant, noting that by referring to the page shown in the advisory report taken from the "blockchain" website, it became clear to the court that they are symbols…"

In brief, the Court found that cryptocurrency claims require a plaintiff to evidence crypto-wallet ownership by the alleged debtor.

Background

The plaintiff met the defendant in Dubai, and accepted making an investment in Bitcoin in return for "fantastic financial returns".

In January 2019, the plaintiff transferred 608 Bitcoins to the defendant.

The Bitcoins were transferred to the crypto wallet of an investment company in accordance with the terms of the agreement between the plaintiff and the defendant.

It was also agreed that after 15 February 2019, even if the project is not complete for any reason, the defendant and the company that owns the crypto wallet must return the Bitcoins to the plaintiff.

On 15 March 2019, the plaintiff demanded from the defendant and the investment company the return of the Bitcoins delivered to them.

The demand to return the Bitcoins was rejected by the defendant, and the defendant “disappeared”.

Claim and ruling

The plaintiff sued the defendant before the Dubai Primary Court claiming return of the 608 Bitcoins or their equivalent market value.

The plaintiff filed an expert report which evidenced the validity of the transfer by referring to a blockchain records website (public ledger) showing that the Bitcoins were held by a particular crypto wallet.

The Court commented that the expert report did not evidence that the crypto wallet belonged to the defendant nor the investment company as the only identification to the wallet’s ownership were “symbols”.

By “symbols” the Court is referring to the crypto wallet identification number.

In essence, the Dubai Court set a threshold for evidence of token possession by a wrongdoer.

Proof of identity of crypto wallets is an ongoing issue in digital asset disputes.

But solutions and remedies are available for claimants.

Solutions for digital asset disputes

Digital asset disputes – particularly involving the misappropriation of tokens – have resulted in innovative solutions in different jurisdictions using common law injunctive processes.

Mareva injunctions

A Mareva injunction is a worldwide freezing and asset disclosure order.

It extends to all a defendant's assets worldwide, limiting the defendant from utilizing those assets except for regulatory purposes (i.e., paying employment salaries) unless consent is granted by the plaintiff.

And requires the defendant to disclose its worldwide assets over a certain threshold value (i.e., over USD 10,000 or USD 50,000).

The Hong Kong High Court recently granted such remedy over Bitcoins that were fraudulently misappropriated in *Nico Constantijn Antonius Samara v Stive Jean Paul Dan*, freezing up to USD 2.6 million of the defendant's assets (including any digital assets).

Norwich orders

Norwich orders – or Norwich Pharmacal orders – are injunctive orders obtained against an innocent third party in order to identify a wrongdoer or details related to a potential wrongdoer.

A Norwich order compels an innocent third party (such as a cryptocurrency exchange) to disclose relevant information to a plaintiff/applicant.

In digital asset disputes, these orders have been used to compel exchanges to disclose details related to crypto wallets and digital assets.

The English High Court recently issued a Norwich order in *Mr Dollar Bill Limited v Persons Unknown and Others* – notably, the Norwich order was issued against cryptocurrency exchanges outside England compelling them to assist in identifying what had happened to the tokens in question.

Anton Piller orders

One increasing trend is the reliance on Anton Piller orders to access the digital assets of a defendant and investigate records that could prove the transfer of the tokens.

Anton Piller orders are a common law remedy which compels a defendant to permit a plaintiff to enter its property to search for and seize evidence and records, including electronic data and equipment.

An Anton Piller order in a cryptocurrency dispute was recently issued by the Ontario Superior Court of Justice in *Cicada 137 LLC v. Medjedovic* in relation to an alleged theft of CAD 15 million in digital assets from the plaintiff's crypto wallet.

Solutions in the UAE

The UAE has two common law court systems: the Abu Dhabi Global Market Courts (ADGM) and the Dubai International Financial Centre Courts (DIFC).

Both the ADGM and the DIFC have authority to grant Mareva injunctions, and the DIFC has historically granted several Mareva injunctions against parties in the UAE and otherwise.

The ADGM and DIFC may also consider applications for Norwich orders to compel third parties to provide evidence in support of a dispute.

Anton Piller orders before the ADGM and DIFC courts are possible, but there are no records of execution of such orders to date.

Digital asset disputes in the UAE

According to 'The 2021 Geography of Cryptocurrency Report' by Chainalysis, the UAE hosted USD 25.5 billion worth of cryptocurrency transactions between July 2020 and June 2021.

With a significant value of cryptocurrency transactions taking place in the UAE, plaintiffs need to carefully strategize any dispute process and make use of all domestic and cross-border remedies.

Relying on archaic means of pursuing claims in an industry that is incrementally complex may not be fruitful – and instead innovative tactics and strategies must be put in place.

The UAE has six court systems – each with their own utility – and the UAE has agreements and treaties with various international dispute resolution forums and courts, that claimants need to consider when pursuing digital asset claims.

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