

RECOVERING LOST CRYPTOCURRENCIES

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Imagine feeling on top of the world when you see the cryptocurrencies you purchased at a good price point rising in value, and the utter dismay when you find out, suddenly, that someone had hacked into your cryptocurrency digital wallet and withdrawn your cryptocurrencies without your knowledge or consent, or that the cryptocurrency exchange holding your cryptocurrencies had misused your funds by lending, staking or selling them off to third parties without your consent. What can you do?

Step #1: Gather information

First, the claimant should apply for a disclosure order to compel the defendant to reveal essential information: the current value of the disputed assets, supporting documents or information on its value, and details of all transactions involving the disputed assets. With this information, the claimant can verify whether his cryptocurrencies are still in the defendant's possession, ensure that notices can be duly given to and received by the defendant, and ascertain each specific transaction by examining the block height at which particular transactions were conducted. In *CLM v CLN and others* SGHC, the claimant commenced an action to trace and recover 109.83 Bitcoin and 1497.54 Ethereum that were allegedly misappropriated from him by unidentified persons, a portion of which had been traced to digital wallets that were controlled by cryptocurrency exchanges with operations in Singapore. The claimant sought the following interim reliefs: (1) a proprietary injunction prohibiting the defendant from dealing with, disposing of, or diminishing the value of the stolen cryptocurrency assets, (2) a worldwide freezing injunction prohibiting the defendants from disposing of their assets up to the value of the stolen cryptocurrency assets, and (3) ancillary disclosure orders to assist in tracing the stolen cryptocurrency assets and identifying the defendants. The Court granted disclosure orders ancillary to a freezing injunction because the disclosure orders sought were just and convenient. The claimant required the information sought to understand the details and whereabouts of the stolen cryptocurrency assets and to facilitate the identification of the defendants or any persons who may have assisted or acted in concert with them.

Regarding service of court documents on the defendants, like summons for injunctions and any consequential order made, local courts have granted substituted service out of jurisdiction when necessitated by the case's unique circumstances. For instance, in *Janesh s/o Rajkumar v Unknown Person ("CHEFPIERRE")* SGHC 264, the claimant applied for such service because he only knew the defendant ("Chefpierre") by the pseudonym "chefpierre.eth"; he did not know precisely who was behind the pseudonym. Accordingly, the High Court granted the claimant's request for substituted service out of jurisdiction by Chefpierre's Twitter and Discord accounts, and the messaging function of Chefpierre's cryptocurrency wallet address. In a separate and more recent case, the same Court granted an order permitting the claimant to serve court documents via substituted service on persons unknown by transferring a non-fungible token containing a hyperlink to a website containing Court papers to the cryptocurrency wallet addresses held by unknown persons.

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Step #2: Reduce the risk of your digital assets being dissipated

After the information-gathering stage, the claimant should use the information gathered to support his application for interim injunctions to reduce the risk of his digital assets being dissipated. Interim injunctions are crucial given the nature of cryptocurrencies—transferrable "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." In *CLM*, the High Court granted a proprietary injunction to prevent the defendants from disposing of the stolen cryptocurrency assets, and a worldwide freezing injunction (i.e. a Mareva injunction) prohibiting the defendants from disposing of their assets up to the value of the stolen cryptocurrency assets to ensure that the defendants would have sufficient assets in Singapore to satisfy an award for damages. The proprietary injunction seeks to preserve assets over which the claimant has a proprietary claim so that these assets can be turned over to the claimant should he succeed in his claim. Unlike a proprietary injunction, a freezing order is not specific to the disputed assets. It can be enforced against any of the defendant's assets, which may be used to satisfy judgment so long as the claimant has a claim against the defendant. The freezing order seeks to prohibit the defendant from dissipating his assets to frustrate execution of the claimant's judgment, whether immediately or in future.

To obtain a proprietary injunction, the claimant must demonstrate on a balance of convenience that (1) there was a serious question to be tried (i.e., there was a seriously arguable case that the claimant had a proprietary interest in the assets in respect of which relief was sought), and (2) the balance of convenience lay in favour of granting the injunction. For the first limb, the High Court recognised that the stolen cryptocurrency assets could give rise to proprietary rights, which could be protected via a proprietary injunction. In assessing the balance of convenience under the second limb, the Court elaborated that the claimant must prove that if the injunction was not granted, there is a reasonable danger that the cryptocurrency assets in dispute would be dissipated to an extent whereby even if the claimant were to obtain a judgement in his favour, the said assets would be prevented from being recovered. In this regard, a proprietary injunction prevents the defendants from transferring the assets to another jurisdiction from where the misappropriation was committed or mixing the assets with other assets in a cryptocurrency wallet, which intentionally hinder attempts to trace the stolen assets.

To obtain a worldwide freezing order, the claimant must show that (1) he had a good arguable case on the merits of his claim and (2) there was a real risk that the defendants would dissipate his assets to frustrate the enforcement of an anticipated judgment of the court. Since a worldwide freezing injunction was sought, the court would require more exacting circumstances and consider whether the defendants had sufficient assets within Singapore to satisfy the prospective judgment. Such a freezing order is applicable where the assets cannot be traced successfully to be subject to a proprietary injunction, or the value of assets successfully traced is insufficient to satisfy the awarded damages.

Step #3: Gather people

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Though a discussion on the requirements and process of commencing representative proceedings is beyond the scope of this article, it is apposite to mention the feasibility and relevance of such proceedings briefly. In Singapore, where "numerous" people suffer from misappropriation of moneys by the same defendant, and so have a common interest in proceedings against the aforementioned defendant, they may sue as a group with one or more of them representing the group. Such representative proceedings are Singapore's equivalent to class action lawsuits in the United States ("US"). In the US, lawyers have filed 58 securities class actions against crypto companies since 2016, according to a report from the consulting firm Cornerstone Research and Stanford Law School. One recent class action lawsuit against failed US cryptocurrency exchange FTX even included Singapore state investor Temasek Holdings Pte Ltd as a co-defendant in the lawsuit, albeit in the context of conspiracy with FTX to defraud investors. Though representative proceedings are significantly less common in Singapore than class action lawsuits in the US, and non-existent in Singapore's cryptocurrency realm as yet, such an alternative to conventional individual lawsuits merits consideration in light of the potential cost savings and increased efficiency.

Conclusion

Should you be the unfortunate victim of cryptocurrency misappropriation, keep calm and after you have gathered all necessary information, including a copy of the documentation and correspondence (if any), you should see an appropriate lawyer for assistance in commencing legal action to try and recover your lost cryptocurrencies. Finally, consider whether it is feasible to commence representative proceedings instead of an individual lawsuit. Ultimately, remember not to miss the forest for the trees—evaluate whether the quantum of your claim justifies the legal expenses involved.

Where the claimant's cryptocurrency digital wallet was hacked and his cryptocurrencies withdrawn, the defendant would be the hacker. Where the cryptocurrency exchange misused the claimant's cryptocurrencies, the defendant would be the exchange itself.

Janesh s/o Rajkumar v Unknown Person ("CHEFPIERRE") SGHC 264 at .

Ibid at .

In that case, the claimant transferred cryptocurrency assets, valued at EUR 3 million, to a new ledger, which was subsequently stolen. The stolen assets were transferred to several unique wallet addresses, some of which were held by unknown persons. A similar order was previously obtained in the UK in *Osbourne v Persons Unknown* EWHC 39.

CLM v CLN and others SGHC 46 at . This was the first reported case of Singapore Courts recognising cryptocurrency as property and granting freezing junctions against persons unknown.

Ibid at .

Ibid at , citing *Bouvier, Yves Charles Edgar and another v Accent Delight International Ltd and another and another appeal* 5 SLR 558 at - approvingly.

Ibid at . However, the Court caveated its holding (i.e. that cryptocurrency could be considered 'property' capable of being subjected to a proprietary injunction) by clarifying that it did not engage in complex questions of law or fact at the interlocutory stage. This holding was subsequently cited approvingly by the same Court, in *dicta*, in *Janesh* at .

Ibid at .

Ibid at .

Ibid at .

See Order 4, Rule 6(1) of the Rules of Court 2021.

<https://news.bloomberglaw.com/business-and-practice/crypto-lawyers-bet-big-on-class-action-lawsuit-s-as-market-slides>.

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<https://www.straitstimes.com/business/temasek-and-other-investors-in-crypto-exchange-ftx-sued-in-us-class-action-case>.

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