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Singapore High Court Recognises Crypto Assets as Property Capable of Being Held on Trust

*ByBit Fintech Ltd v Ho Kai Xin
and others [2023] SGHC 199*

27 July 2023

LEGAL UPDATE

In this Update

In the recent decision of *ByBit Fintech Ltd v Ho Kai Xin and others* [2023] SGHC 199, the High Court held that crypto assets, like any other thing in action, are capable of being held on trust.

Our update discusses the High Court's reasoning in this decision.

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INTRODUCTION

KEYPOINT

In the recent decision of ByBit Fintech Ltd v Ho Kai Xin and others [2023] SGHC 199, the High Court held that crypto assets, like any other thing in action, are capable of being held on trust.

Our update discusses the High Court's reasoning in this decision.

BACKGROUND

ByBit Fintech Ltd (“**ByBit**”) engaged WeChain Fintech Pte Ltd (“**WeChain**”) to provide payroll services for ByBit and its related entities. Ho Kai Xin (“**Ho**”) was an employee of WeChain and was responsible for the payroll processing of ByBit's employees. As part of her duties, Ho maintained Excel spreadsheets which tracked the cash and cryptocurrency payments due to ByBit's employees each month. These Excel files list the “Addresses” designated by ByBit's employees for the receipt of cryptocurrency payments. Ho was responsible for updating the Excel files whenever ByBit's employees changed their designated Address.

In September 2022, ByBit discovered that eight unusual cryptocurrency payments were made into four Addresses between May and August 2022. ByBit took out this application for summary judgment. ByBit's case was that Ho, in breach of her employment contract, had abused her position to effect unauthorised transfers of cryptocurrency to Addresses owned and controlled by her, as well as a quantity of fiat currency to her own bank account. ByBit sought a declaration that Ho holds both the cryptocurrency and the fiat currency on trust for ByBit and sought an order for the return of the same or of its traceable proceeds, or for payment of a sum equivalent in value.

HIGH COURT'S DECISION

The High Court granted ByBit's summary judgment application, finding that it had established a *prima facie* case. The Court held that Ho had wrongfully transferred the crypto assets and declared an institutional constructive trust over them in favour of ByBit. The court also made ancillary orders, including tracing orders.

The Court held that the crypto assets in question (*ie* USDT) are property. The Court reasoned that crypto assets can be classed as things in action since the category of things in action is a broad and flexible one that is not closed. Over time, the category of things in action has been expanded and a diversity of things have been included such as documents of title to

incorporeal rights of property, and ultimately incorporeal rights themselves such as copyrights. Quoting Fry LJ's *dictum* in *Colonial Bank v Whinney* (1885) 30 Ch D 261 at 285, that "[a]ll personal things are either in possession or action", the Court reasoned that since crypto assets are not physical assets that can be possessed, they must be classified as things in action. Therefore, 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.

Accordingly, the Court held that the crypto assets in question are property that are capable of being held on trust. The Court declared a constructive trust over the crypto assets in favour of Bybit as they were stolen assets resulting from Ho's manipulation of the Excel files. The Court also granted a tracing order to recover the assets and ordered that Ho repay ByBit in fiat money the value of the crypto assets she had stolen.

COMMENTARY

The Singapore Court is once again at the forefront of making seminal decisions in respect of crypto assets. In reaching this decision, the Singapore Court has yet again demonstrated that it is capable of extending well-known principles to fit the unique nature of crypto assets, and do justice where the situation arises. This will no doubt provide assurances and certainty to any asset holders which may, in future, find themselves in need of seeking recovery.

Given the proliferation of crypto assets and the existence of increasing number of crypto-exchanges in Singapore, the incremental development of the Singapore law in this area and available legal remedies in Singapore is a necessary evolutionary step. As Singapore continues to establish ourselves as a regional hub for crypto assets and investments in the fast changing global digital economy, the Singapore Courts will have more opportunities to make judicial pronouncements to develop this area of law.

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