Causes of action

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Breach of trust and the constructive trust

Where a fiduciary misappropriates assets entrusted to her, the assets are held on constructive trust for the principal from the moment of the misappropriation. *ByBit* applied that principle to a payroll administrator who diverted USDT to her own addresses. The court declared an institutional constructive trust over the crypto and the fiat arising at the time of the fraud and described the exchange as "the legal and beneficial owner" throughout.[1] The same analysis applies to a thief who was never a fiduciary. English and Singapore law treat property obtained by theft as held on constructive trust for the victim, so that the victim can trace into its proceeds and assert priority over the thief's creditors.[2]

The constructive trust is the victim's best claim for two reasons. It is proprietary, so it survives the defendant's insolvency and binds anyone who receives the assets other than a bona fide purchaser for value without notice. And it allows tracing in equity, which permits the victim to follow value through mixed funds and substitutions. The weakness is the bona fide purchaser. A fraudster who sells stolen ether on an exchange to an innocent buyer for stablecoins passes good title to the buyer. The victim's claim then attaches to the stablecoins in the fraudster's hands and to whatever the fraudster does with them.

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Knowing receipt and dishonest assistance

Third parties who receive misappropriated assets or help the wrongdoer are liable in equity if their state of mind meets the relevant threshold. Knowing receipt requires that the recipient's knowledge makes it unconscionable to retain the benefit. Dishonest assistance requires dishonesty judged by the objective standard of ordinary decent people.[3] Both claims matter in crypto cases because stolen assets pass rapidly through intermediaries. An exchange that credits deposits to a customer account without knowledge of their origin is a bona fide intermediary and incurs no liability. An exchange that continues to process withdrawals after receiving a court order, a police notice or a credible demand with blockchain evidence may be exposed to a knowing receipt or dishonest assistance claim for the assets that leave after notice. Over-the-counter brokers who convert large sums of stablecoins to cash with minimal due diligence are the most frequent targets of such claims in the cases I have seen.

Unjust enrichment

Where assets are transferred by mistake, the sender's claim is in unjust enrichment. Singapore follows the "unjust factors" approach of English law. The claimant must show that the defendant was enriched at the claimant's expense and that an unjust factor, such as mistake or failure of consideration, is present.[4] A payment made under a mistake of fact is recoverable even if the mistake was careless, subject to the defences of change of position, bona fide purchase and ministerial receipt. In *Quoine*, the Court of Appeal rejected the unjust enrichment claim because the trading contracts were valid, so there was no unjust factor.[5] That holding illustrates the limit of the claim. Where the transfer was made under a contract that stands, the sender has no restitutionary claim.

Mistaken transfers to the wrong blockchain address raise a specific problem. If the address belongs to an identifiable person, the claim lies against that person. If the address is an exchange's omnibus deposit address and the sender forgot the memo or tag that identifies the account, the assets have reached the exchange, which is enriched. Most exchanges have recovery procedures and charge a fee for them.

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Where an exchange refuses, the sender has a claim in unjust enrichment against it. The exchange's defence that it has credited the assets to another customer fails unless it did so before notice and in good faith. If the address is unused and nobody holds the key, the assets are lost. No court order can recover them.

Deceit and conspiracy

Induced transfers give rise to claims in deceit against the fraudster and in unlawful means conspiracy against those who combined with him. These are personal claims for damages measured by the loss. They matter where a proprietary claim is unavailable because the assets have passed to bona fide purchasers. They also support a worldwide freezing injunction against the defendant's general assets. Singapore courts have treated the dishonesty inherent in a deceit claim as itself evidence of a real risk of dissipation for the purpose of granting Mareva relief.[6]

Notes

1. *ByBit* [2023] SGHC 199 at [42]–[44]. ↩
2. *Westdeutsche Landesbank Girozentrale v Islington LBC* [1996] AC 669 at 716 (Lord Browne-Wilkinson), accepted in Singapore in *CLM v CLN* [2022] SGHC 46 at [53] as a good arguable case. ↩
3. *George Raymond Zage III v Ho Chi Kwong* [2010] SGCA 4 at [20]–[32] on knowing receipt and dishonest assistance in Singapore law. ↩
4. *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve* [2013] SGCA 36 at [98]–[134], confirming the unjust factors approach to unjust enrichment in Singapore. ↩
5. *Quoine Pte Ltd v B2C2 Ltd* [2020] SGCA(I) 02 at [7]. ↩
6. *CLM v CLN* [2022] SGHC 46 at [54]–[55], treating the defendants' dishonest conduct and use of disposable digital wallets as evidence of a real risk of dissipation. ↩

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