Final relief and the constructive trust

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ByBit as the model

The *ByBit* decision shows the full arc. An employee of a payroll contractor caused about 4.2 million USDT and some fiat to be paid to wallets and accounts she controlled. ByBit obtained interim relief, identified the recipient and moved for summary judgment. Jeyaretnam J held that the USDT was property and that the defendant held it on an institutional constructive trust arising from her fraud at the moment of receipt. The trust followed the assets into mixed funds. He granted a tracing order, an account, orders for payment of the US dollar and Singapore dollar sums with interest at 5.33 per cent, and costs.[1]

The institutional constructive trust is the key. Because the trust arises at the moment of the fraudulent receipt, the claimant's beneficial interest exists before any court order and ranks ahead of the defendant's unsecured creditors. If the defendant is bankrupt or the recipient exchange account belongs to an insolvent intermediary, the claimant recovers the traceable assets in specie. A Swiss claimant has no such

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remedy. Swiss law gives the defrauded party a claim in unjust enrichment under Art. 62 ff. CO and a claim in tort under Art. 41 CO, both personal, and vindication under Art. 641 CC fails because the token is not a thing (see Part D, Chapters I and II).

Tracing rules

Tracing through blockchain transactions is, in most respects, easier than tracing through bank accounts, because every movement is recorded publicly and permanently. The difficulties arise at three points. Mixers and privacy protocols break the chain, in which case the court may accept a "first in, first out" or pro rata attribution if the analytics evidence supports it. Bridges and wrapped tokens change the asset, in which case the claimant must argue that the wrapped token is the traceable substitute of the original. And omnibus exchange accounts mix the stolen assets with those of innocent customers, in which case the claimant traces into the credit balance of the account holder, with the exchange's internal ledger as the evidence of what that balance is.

Singapore applies the equitable tracing rules developed in English law, including the lowest intermediate balance rule and the presumption against the wrongdoer where mixing is by the fraudster. The courts have not yet decided whether the common-law rules, which stop at mixing, or only the equitable rules, which require a fiduciary relationship, apply to tokens. *ByBit* avoided the point by finding an institutional constructive trust, which supplies the fiduciary element. A claimant should therefore always plead a proprietary basis that generates a trust.

Notes

1. ByBit Fintech Ltd v Ho Kai Xin [2023] SGHC 199 at [42]–[47]. ↩

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