Final remedies

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Declarations, transfer and value

At trial or on summary judgment the victim seeks four things: a declaration of constructive trust, an order for transfer of the assets still held, an account and a tracing order for assets that have moved, together with a money judgment for the value of assets that cannot be recovered. *ByBit* granted each of these. The court ordered the transfer of the balance of one wallet up to US$ 3,561,840 and payment of US$ 647,880 representing the value of coins in two wallets that had been emptied. It added an account of the remainder with a tracing order and interest at 5.33 per cent per annum on the money sums.[1] The valuation date for the money judgment is contested in volatile markets. A claimant whose stolen ether has doubled in price since the theft wants the value at judgment, while a defendant wants the value at the date of loss. Equitable compensation for breach of trust is assessed at the date of judgment, which favours the claimant in a rising market. That is the better analysis where the claim is proprietary.[2]

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Enforcement

A money judgment is enforced in the ordinary way. A judgment for the transfer of tokens raises the question how the court compels a defendant who refuses to disclose or use the private key. The answer is contempt. The defendant can be committed to prison for breach of a mandatory order. That sanction has proved effective against defendants within the jurisdiction. Where the defendant is abroad, the judgment must be enforced where he is (Chapter VIII). The Rules of Court 2021 permit enforcement by seizure and sale of movable property, which is defined to include cryptocurrency, but the Sheriff cannot seize a token without the key.[3] Where the assets sit with a Singapore exchange, a garnishee-style order directing the exchange to transfer the balance of the account to the judgment creditor is the practical route, and exchanges comply with such orders.

Notes

1. *ByBit* [2023] SGHC 199 at [45]–[47]. ↩
2. *Target Holdings Ltd v Redferns* [1996] AC 421 at 437 (Lord Browne-Wilkinson) on the date of assessment of equitable compensation. ↩
3. Rules of Court 2021, O 22 r 1(1), referred to in *ByBit* [2023] SGHC 199 at [30]. ↩

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