Interim remedies

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The proprietary injunction

A proprietary injunction restrains the defendant from dealing with specific assets to which the claimant asserts title. The test is whether there is a serious question to be tried on the proprietary claim and whether the balance of convenience favours the grant. There is no requirement to show a risk of dissipation. The injunction binds the specific assets and their traceable proceeds wherever they are.[1] In *CLM v CLN*, Lee Seiu Kin J granted the injunction over 109.83 bitcoin and 1,497.54 ether and their proceeds against the unknown thieves. In *Janesh* he granted it over a single NFT, restraining its sale or use as collateral pending trial.

The proprietary injunction is the appropriate first order in almost every crypto fraud case, because the victim's claim is to the assets themselves and because the order can be served on exchanges holding the assets. An exchange served with a proprietary injunction that nonetheless permits withdrawal risks contempt. In practice the order is accompanied by a letter enclosing the blockchain analysis identifying the deposit addresses, so that the exchange can freeze the relevant accounts.

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The worldwide freezing (Mareva) injunction

A Mareva injunction restrains the defendant from dealing with assets up to the value of the claim. It requires a good arguable case, assets within or outside the jurisdiction and a real risk that the judgment will go unsatisfied because of unjustified dissipation.[2] In *CLM v CLN* the court granted a worldwide freezing injunction up to US$ 7,089,894.68 alongside the proprietary injunction. It relied on the constructive trust claim as a good arguable case and on the dishonest conduct and use of disposable wallets as evidence of a dissipation risk. It also found it likely that the defendants had no sufficient assets in Singapore.[3] The two injunctions are complementary. The proprietary injunction protects the specific assets. The Mareva injunction protects the claimant's personal claims against the defendant's other assets, including those into which the stolen assets cannot be traced.

Persons unknown

Crypto fraudsters are seldom identifiable when proceedings begin. Singapore follows the English approach of permitting claims against persons unknown provided the description identifies, with sufficient certainty, who falls within and who falls outside the class. In *CLM v CLN* the first defendants were described as the persons who carried out the theft from the specified wallets on the specified date. In *Janesh* the defendant was described as the person behind the pseudonym "chefpierre.eth". The court treated the failure to name him as an irregularity that could be waived under the Rules of Court 2021.[4] Once identified, the fraudster can be substituted or joined. The exchanges that hold the assets are joined as defendants in their own right where disclosure is sought from them, which was the approach in *CLM v CLN*.

Disclosure against exchanges

Blockchain analysis will usually show that stolen assets have been deposited to an address controlled by an exchange. It will not show who the account holder is. The claimant needs the exchange's know-your-customer records, deposit and withdrawal history, IP addresses and linked bank accounts. Singapore offers three routes. Where

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the exchange is a party to the action, the court can order it to disclose information under s 4(10) of the Civil Law Act 1909. That provision empowers the court to grant a mandatory order in all cases in which it appears just or convenient. That was the route taken in *CLM v CLN*, where the judge held that it was unnecessary to rely on the *Bankers Trust* jurisdiction because the exchanges were defendants.[5] Where the exchange is not a party, the claimant can seek a *Bankers Trust* order, which requires strong evidence of fraud and a proprietary claim, or a *Norwich Pharmacal* order against a person mixed up in the wrongdoing who can identify the wrongdoer.[6] The third route is production of documents against a non-party under the Rules of Court 2021, which is available where the documents are relevant and necessary.

Two practical points arise. Exchanges will generally comply with a Singapore order where they have a Singapore entity, even if the contracting entity is offshore, because non-compliance exposes Singapore staff and licences. And the order should include a prohibition on informing the account holder, since tipping off defeats the purpose. Singapore courts grant such gagging provisions for a limited period as a matter of course where fraud is alleged.

Service

Service of proceedings on a pseudonymous defendant requires creativity. *Janesh* established that the Rules of Court 2021 do not contain a closed list of methods and that the court retains power to order substituted service by any means likely to bring the proceedings to the defendant's attention. The court permitted service through the defendant's Twitter and Discord accounts and through the messaging function of the wallet address holding the NFT.[7] In *CLM v CLN* the court permitted service by email on individual defendants whose whereabouts were unknown but who had used specific email addresses to open exchange accounts.[8] English and American courts have gone one step further and permitted service by airdropping an NFT containing a hyperlink to the court documents into the defendant's wallet.[9] No reported Singapore decision has yet ordered service by NFT airdrop, but *Janesh* leaves no doubt that the power exists.

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Service out of the jurisdiction follows the Rules of Court 2021. The applicant must show a good arguable case that Singapore is the appropriate forum, a sufficient nexus with Singapore through one of the gateways in the Supreme Court Practice Directions and a serious question to be tried.[10] The gateways that most often apply in crypto cases are that the claim concerns property located in Singapore, that the cause of action arose in Singapore or that the defendant has assets or an exchange account in Singapore. *CLM v CLN* found Singapore the proper forum because the exchanges holding the assets had Singapore operations.[11] Chapter VIII examines the location gateway in detail.

Notes

1. *CLM v CLN* [2022] SGHC 46 at [36]–[49] (proprietary injunction over the stolen bitcoin and ether). *Janesh s/o Rajkumar v Unknown Person ("CHEFPIERRE")* [2022] SGHC 264 at [79]–[81] (proprietary injunction over the NFT). ↩
2. *Bouvier, Yves Charles Edgar v Accent Delight International Ltd* [2015] SGCA 45 at [36]–[37] and [93]–[94] on the requirements for Mareva relief in Singapore. ↩
3. *CLM v CLN* [2022] SGHC 46 at [50]–[56]. ↩
4. *CLM v CLN* [2022] SGHC 46 at [23]–[35], relying on *Bloomsbury Publishing Group plc v News Group Newspapers Ltd* [2003] EWHC 1205 (Ch) and *CMOC Sales & Marketing Ltd v Persons Unknown* [2018] EWHC 2230 (Comm). *Janesh* [2022] SGHC 264 at [31]–[42]. ↩
5. *CLM v CLN* [2022] SGHC 46 at [57]–[60], ordering disclosure under s 4(10) of the Civil Law Act 1909 against the exchange defendants. ↩
6. *Bankers Trust Co v Shapira* [1980] 1 WLR 1274 (CA). *Norwich Pharmacal Co v Customs and Excise Commissioners* [1974] AC 133 (HL). Both forms of relief are recognised in Singapore, though the Court of Appeal in *Dorsey James Michael v World Sport Group Pte Ltd* [2014] SGCA 4 confined pre-action interrogatories against non-parties. ↩

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7. *Janesh* [2022] SGHC 264 at [86]–[92]. ↩
8. *CLM v CLN* [2022] SGHC 46 at [76]–[82]. ↩
9. *D'Aloia v Persons Unknown* [2022] EWHC 1723 (Ch) (service by NFT airdrop permitted in England). *LCX AG v John Doe Nos 1–25*, Supreme Court of New York, June 2022 (service by NFT). ↩
10. Rules of Court 2021, O 8 r 1 and Supreme Court Practice Directions 2021, para 63, as applied in *Three Arrows Capital Ltd and others v Cheong Jun Yoong* [2024] SGHC(A) 10 at [18]. ↩
11. *CLM v CLN* [2022] SGHC 46 at [69]–[75]. ↩

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