The four decisions

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Quoine v B2C2: the question left open

The first Singapore cryptocurrency trial arose from a malfunction on the Quoine exchange on 19 April 2017. After Quoine's market-making program stopped placing orders, the platform's margin engine executed trades under which B2C2's algorithm sold ether at roughly 10 bitcoin per ether, about 250 times the prevailing rate of 0.04. Quoine reversed the trades the following day, whereupon B2C2 sued in the Singapore International Commercial Court for breach of contract and breach of trust. Simon Thorley IJ found for B2C2 on both claims at first instance in March 2019. He held, among other things, that the bitcoin credited to B2C2's account had been held on trust by Quoine.[1]

The Court of Appeal, in a judgment delivered by Sundaresh Menon CJ on 24 February 2020, upheld the contract claim and reversed the trust claim. The trust reasoning is the part that matters here, since the majority surveyed the foreign authorities and academic commentary on whether cryptocurrency can be property. It then declined to decide the point with the words "It is not necessary for us to come to a final position on this question in the present case." Even if bitcoin were property capable of being held on trust, the claim failed for want of certainty of intention to create a trust.[2] The court held that segregation of a customer's assets in the exchange's records is necessary for a trust but never sufficient on its own, citing its earlier decision in *Vintage Bullion*. Quoine kept customer balances in an internal database while holding the underlying coins in commingled cold storage, which weighed against any inference of trust.[3]

Quoine therefore gave Singapore practitioners two things. It left the property question formally open at the highest level. It also decided, after full argument, that an exchange's standard arrangements for holding customer coins do not by themselves create a trust. The second holding has shaped every subsequent insolvency and is discussed in Chapters II and V.

CLM v CLN: property for the purpose of interim relief

The property question returned two years later in *CLM v CLN*, decided by Lee Seiu Kin J in March 2022 on ex parte applications heard in June and November 2021. The plaintiff, a United States national, said that 109.83 bitcoin and 1,497.54 ether worth about US$ 7.09 million had been stolen from his software wallets on 8 January 2021. His safe combination had been overheard and his recovery seeds taken. Blockchain analysis traced part of the assets to accounts at two exchanges with Singapore operations.[4]

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The judge granted a proprietary injunction and a worldwide freezing order against the unknown thieves, together with disclosure orders against the exchanges. To grant a proprietary injunction he had to find a serious question to be tried that the stolen coins were property. He applied the four criteria from Lord Wilberforce's speech in *National Provincial Bank v Ainsworth*. A right must be definable, identifiable by third parties, capable in its nature of assumption by third parties, and possessed of some degree of permanence or stability. Drawing on the New Zealand decision in *Ruscoe v Cryptopia*, he found each criterion arguably satisfied. The public key defines the asset while the private key identifies its controller, the asset is transferred daily, and the blockchain's consensus mechanism gives it permanence.[5] The judge was careful to say that he was deciding only that the proposition was seriously arguable. He noted that the Court of Appeal in *Quoine* had left the precise nature of the right open.[6]

The judgment is nevertheless the foundation of Singapore's asset-recovery practice in crypto cases. It confirmed that interim proprietary relief is available against persons unknown. It confirmed that exchanges in Singapore can be ordered to disclose account-holder information. It also confirmed that service out of the jurisdiction can be justified where stolen assets have been routed through Singapore platforms. Chapter IV returns to each of those remedies.

Janesh v Unknown Person: non-fungible tokens

In *Janesh s/o Rajkumar v Unknown Person ("CHEFPIERRE")*, the same judge extended the analysis to a non-fungible token. The claimant had bought Bored Ape Yacht Club NFT #2162 in August 2021 for 15.99 ether. He used it as collateral for loans on the NFTfi platform, whose standard terms barred the lender from foreclosing without notice or from taking ownership of the collateral. A lender known only by the pseudonym "chefpierre.eth" advanced 150,000 DAI in March 2022 and agreed an extension. He then foreclosed while the claimant was arranging refinancing and listed the ape for sale on OpenSea.[7]

The judge rejected the argument that an NFT is mere information. The token is encoded data with a unique and transferable relationship to a wallet on the blockchain. The image to which it points can be copied, but the token itself cannot.[8] Applying the *Ainsworth* criteria he found the NFT definable, identifiable through control of the linked wallet, capable of assumption by third parties and sufficiently permanent.[9] Again the finding was expressly interlocutory, since the court said that a different conclusion might follow from fuller submissions. It left open both the question whether an NFT is a chose in action and the Fry LJ problem of the tertium quid.[10] The case is remembered as much for its procedural orders as for its property holding, since it allowed service through the defendant's Twitter and Discord accounts and through the messaging function of the wallet address. It is also the first Singapore decision to grapple with the location of a digital asset for jurisdictional purposes, a problem taken up in Chapter VIII.

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ByBit v Ho Kai Xin: the thing in action

The decision that converted a series of arguable propositions into a reasoned holding is *ByBit Fintech Ltd v Ho Kai Xin*, decided by Philip Jeyaretnam J on 25 July 2023. The facts were those of an inside job by Ho Kai Xin, who worked for WeChain, the company that ran payroll for the ByBit exchange. She alone maintained the spreadsheets recording the wallet addresses to which employees' crypto salaries were paid. Between May and August 2022 eight anomalous transactions sent 4,209,720 USDT to four addresses she controlled or had inserted. About S$ 117,000 of fiat went into her own bank account. Her defence that a cousin named Jason had done it was rejected on the balance of probabilities. The court found that Jason either did not exist or played no such role.[11]

ByBit applied for summary judgment and for a declaration that Ho held the USDT on constructive trust. The court therefore had to decide, on a final application with the defendant absent, whether USDT is property capable of being held on trust. The judge held that it is, in reasoning that proceeds in three steps. First, crypto assets satisfy the *Ainsworth* criteria and have a physical manifestation in the blockchain even though human beings cannot perceive it directly.[12] Second, the Rules of Court 2021 already define "movable property" for enforcement purposes to include "cryptocurrency or other digital currency". The court treated this as a general legislative recognition that crypto is property even though the Rules prescribe no particular mode of enforcement.[13] Third, the category of things in action is broad enough to include the asset. This is the step that distinguishes Singapore law from the English Law Commission's approach. The objection that choses in action were historically rights enforceable against a counterparty rests on the origin of the category. The category has since expanded to include patents, copyrights and other rights enforceable against the world. The holder of a crypto asset has an incorporeal right of property recognisable by the common law as a thing in action and enforceable in court.[14]

The judge added two observations that matter for stablecoins in particular. He compared crypto assets to money, whose value rests on collective "mutual faith" in its acceptance. He noted that Tether's contractual redemption right under British Virgin Islands law may constitute an additional thing in action but is not necessary for the USDT itself to be one.[15] He also relied on the Monetary Authority of Singapore's response of 3 July 2023 to its consultation on segregation and custody of customer assets. That response proposed that licensed digital payment token service providers hold customer assets on trust, which the judge took as support for the view that crypto assets are identifiable and capable of being held on trust.[16]

The orders followed from that holding, as the court declared an institutional constructive trust over the USDT and the fiat arising at the moment of the fraud. It ordered the transfer of the balance of the first wallet up to US$ 3,561,840. It ordered payment of US$ 647,880 representing the value of the coins in two wallets that had been emptied. It granted an account and a tracing order for the remainder.[17] Chapter IV discusses those remedies.

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Notes

1. *B2C2 Ltd v Quoine Pte Ltd* [2019] SGHC(I) 03 (Simon Thorley IJ, 14 March 2019), in particular at [142] on cryptocurrency as property.
2. *Quoine Pte Ltd v B2C2 Ltd* [2020] SGCA(I) 02 at [144] (Sundaresh Menon CJ, with Andrew Phang Boon Leong JA, Judith Prakash JA and Robert French IJ. Jonathan Mance IJ dissented on the mistake issue).
3. *Quoine Pte Ltd v B2C2 Ltd* [2020] SGCA(I) 02 at [145]–[146], citing *Vintage Bullion DMCC v Chay Fook Yuen* [2016] SGCA 52 at [61] and *Korda v Australian Executor Trustees (SA) Ltd* [2015] HCA 18 at [11] (French CJ).
4. *CLM v CLN and others* [2022] SGHC 46 at [17]–[21] (Lee Seiu Kin J, grounds delivered 4 March 2022).
5. *CLM v CLN* [2022] SGHC 46 at [39]–[46], applying *National Provincial Bank Ltd v Ainsworth* [1965] AC 1175 at 1247–1248 and *Ruscoe v Cryptopia Ltd (in liq)* [2020] NZHC 728.
6. *CLM v CLN* [2022] SGHC 46 at [42]–[43].
7. *Janesh s/o Rajkumar v Unknown Person ("CHEFPIERRE")* [2022] SGHC 264 at [9]–[23] (Lee Seiu Kin J, grounds delivered 21 October 2022).
8. *Janesh* [2022] SGHC 264 at [57]–[58] and 79–80.
9. *Janesh* [2022] SGHC 264 at [69]–[72].
10. *Janesh* [2022] SGHC 264 at [67]–[68].
11. *ByBit Fintech Ltd v Ho Kai Xin and others* [2023] SGHC 199 at [7]–[12], 25 and 41.
12. *ByBit* [2023] SGHC 199 at [31]–[33].
13. *ByBit* [2023] SGHC 199 at [30], referring to O 22 r 1(1) of the Rules of Court 2021 and the Civil Justice Commission Report (2017).
14. *ByBit* [2023] SGHC 199 at [34]–[36].
15. *ByBit* [2023] SGHC 199 at [36] and [39].
16. *ByBit* [2023] SGHC 199 at [29], referring to MAS, Response to Public Consultation on Proposed Regulatory Measures for Digital Payment Token Services (Part 1), 3 July 2023.
17. *ByBit* [2023] SGHC 199 at [42]–[47].

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