The interim toolkit

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Proprietary injunction

A proprietary injunction restrains the defendant from dealing with specific assets over which the claimant asserts a proprietary claim. The test is lower than for a Mareva injunction: a serious question to be tried on the proprietary claim and a balance of convenience in favour of preserving the asset. No risk of dissipation need be shown, because the asset is said to belong to the claimant. In *CLM v CLN* the court granted a proprietary injunction over the stolen BTC and ETH and their traceable proceeds against the first defendants, who were persons unknown.[1] The order binds anyone with notice of it, including an exchange holding the assets in a customer account, which is why the order is served on the exchange immediately.

The proprietary injunction follows the asset through mixing. Where stolen USDT has been deposited into an omnibus wallet at an exchange, the claimant's proprietary interest attaches to the credit balance of the account holder to the extent of the traceable amount. The exchange is then restrained from allowing withdrawals from that account. Equity's rules of tracing through mixed funds apply. The Singapore courts have been willing to accept blockchain-analytics evidence of the flow as sufficient for interim purposes.

Worldwide freezing order

A Mareva injunction freezes the defendant's assets generally up to the value of the claim and requires a good arguable case together with a real risk of dissipation. The crypto context makes the risk element easy: assets that were moved through a chain of freshly created wallets within hours of the theft speak for themselves. In *CLM v CLN* the court granted a worldwide freezing injunction up to US$ 7,089,894.68 on exactly that reasoning.[2] The worldwide reach is important because the defendant's assets may be at exchanges in several jurisdictions. Once served on exchanges that have a Singapore presence, the order is observed by their group entities abroad.

Mareva relief is in personam and does not give the claimant priority on insolvency. It is therefore the secondary remedy where a proprietary claim is available and the primary remedy where the claim is purely personal, as in a breach-of-contract claim against a counterparty who still holds his own tokens.

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Disclosure orders

The disclosure order converts an address into a name. Three routes exist. Where the exchange is a party to the proceedings, as in *CLM v CLN*, the court may order disclosure as ancillary to the injunction under s 4(10) of the Civil Law Act 1909. That provision gives the General Division power to grant a mandatory order or injunction in all cases in which it appears just or convenient.[3] Where the exchange is not a party, the claimant applies for a Bankers Trust order or a Norwich Pharmacal order. The first compels a third party who has become mixed up in the wrongdoing to disclose information needed to trace and preserve the claimant's property. The second compels a third party to identify the wrongdoer so that proceedings can be brought.

The Singapore courts have accepted both forms in the crypto context. Bankers Trust relief is the natural fit for exchanges, because they hold the claimant's traceable property and are "mixed up" in the sense required. Norwich Pharmacal relief has been used against exchanges and against wallet-software providers to identify the person behind an address. The orders typically require disclosure of the know-your-customer file, the IP logs, the linked bank accounts and the transaction history of the identified account. Exchanges are entitled to their costs of compliance and are protected by the order against claims by their customer for breach of confidence.

Persons unknown

A claim cannot be issued against nobody. The Singapore courts have solved the problem by allowing claims against "persons unknown" described with sufficient certainty by reference to what they did. Examples are the persons who transferred the BTC from address X to address Y on a given date, or the user of the Twitter and Discord handles "chefpierre.eth" to whom the NFT was transferred. In *CLM v CLN* the court held that it had jurisdiction over persons unknown so described. In *Janesh* it held that the failure to name a defendant was at most a waivable non-compliance under the Rules of Court 2021.[4] Once the disclosure order produces a name, the claimant amends to substitute the real defendant.

Service

An injunction is useless if it cannot be served. The Rules of Court 2021 allow service out of jurisdiction with permission and substituted service where ordinary service is impracticable. In *Janesh* the court held that the list of methods in O 8 r 2 was not closed and granted leave to serve on the defendant's Twitter account, Discord account and the messaging function of his wallet address.[5] Service by sending a non-fungible token containing a hyperlink to the court papers to the defendant's wallet, first permitted in the United States and England, has since been accepted in Singapore practice. In *CLM v CLN* substituted service by e-mail was permitted on defendants who had registered e-mail addresses with the exchanges.[6]

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Checklist

The first seventy-two hours after a theft or fraudulent transfer decide most recovery cases. A claimant's lawyer in Singapore should: - obtain the transaction hashes, the victim's wallet addresses and screenshots of the platform or communications; - commission a blockchain-analytics report that follows the assets to the first exchange deposit addresses and identifies the exchanges; - send preservation letters to those exchanges, asking them to freeze the identified accounts voluntarily and to preserve records, citing the impending application; - file an originating claim against persons unknown and the exchanges, with an urgent ex parte application for a proprietary injunction, a worldwide freezing order and Bankers Trust disclosure, supported by the analytics report and an undertaking in damages; - obtain leave for substituted service by e-mail, social media and wallet message; - file a police report in parallel, so that the Anti-Scam Centre can make its own freeze requests, while recognising that the civil route stays in the claimant's hands; - prepare for the disclosure results by lining up foreign counsel where the identified account holder or his bank accounts are abroad.

Notes

1. CLM v CLN [2022] SGHC 46 at [36]–[49].
2. CLM v CLN [2022] SGHC 46 at [50]–[56].
3. CLM v CLN [2022] SGHC 46 at [57]–[60]: ancillary disclosure orders against the exchange defendants covering account balances, account-holder information and transaction details, granted under s 4(10) of the Civil Law Act.
4. CLM v CLN [2022] SGHC 46 at [23]–[35]; Janesh [2022] SGHC 264 at [37]–[42].
5. Janesh [2022] SGHC 264 at [86]–[92].
6. CLM v CLN [2022] SGHC 46 at [76]–[82].

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