

COURT ORDERS TRACING REMEDY FOR CRYPTOCURRENCY - *COPYTRACK PTE LTD V. WALL*

19 October 2018

The decision of the British Columbia Supreme Court on September 12, 2018 in *Copytrack Pte Ltd v. Wall*^[1] is one of the first cases in Canada where a court-ordered remedy has been applied to digital currency, and it may have major implications for parties seeking relief in respect of digital currency in the future. This case demonstrates that courts will craft laws to meet the realities of the digital world economy.

The Plaintiff Copytrack was a Singapore company engaged in the business of digital content management. As part of its business it had created a cryptocurrency called "CPY Tokens" and offered investors an initial coin offering ("ICO"). The Defendant Brian Wall participated in the ICO and subscribed for 530 CPY tokens. Instead of transferring to Wall his 530 CPY tokens, Copytrack mistakenly transferred 530 tokens of the well-known and much more valuable Ether cryptocurrency. The 530 CPY tokens had a value of \$780 CDN, while the 530 Ether tokens had a value of approximately \$495,000 CDN.

Copytrack alerted Mr. Wall of the mistake but Mr. Wall failed to return them, claiming that a third party had taken them from his digital wallet without his knowledge or consent and so they were no longer in his control. Copytrack commenced an action in the British Columbia Supreme Court against Mr. Wall for the return of the Ether tokens, and moved for summary judgment.

Copytrack framed its claim in terms of the torts of conversion and detinue (aka wrongful detention). In the Court's view, whether Copytrack's claim could be framed in tort was one of the key issues in the proceeding, as was the issue of whether that question could be determined on a summary judgment application.

In what was ultimately an important twist, Mr. Wall unfortunately passed away before

Copytrack's summary trial application was heard. While the Court held that Mr. Wall's death did not have an impact on Copytrack's claim, it had certain practical implications. Specifically, the Court found that it was not clear what sending the matter to trial would accomplish since it would not result in further or better evidence on behalf of Mr. Wall. The Court also rejected Mr. Wall's submissions that the matter was not appropriate for summary trial, because his defence that a third party had taken the Ether tokens was not supported by any evidence and was no more than a bald assertion.

However, the Court was hesitant to proceed with the summary trial application without hearing further submissions from counsel on the critical issue of whether the torts of conversion and detinue could apply to cryptocurrency.

Copytrack initially took the position that the torts applied because the Ether tokens were clearly "goods", but with a lack of case law on point and various dictionary definitions that suggested cryptocurrency is not a good because it is a digital form of currency, the Court determined that this fact could not simply be assumed. In further submissions, Copytrack argued that the determination of whether cryptocurrency was a "good" was actually unnecessary. Copytrack cited various cases where claims in conversion and detinue had been advanced in relation to funds, shares, customer lists, accounts receivable, crops and mineral interests. Copytrack then referred to certain characteristics of the Ether Tokens that made the Ether Tokens amenable to claims in conversion and detinue, including:

- They are capable of being possessed, stored, transferred, lost and stolen;
- They were, at the time of the conversion and wrongful detention began, held in a digital wallet within the control of Mr. Wall;
- They are specifically identifiable and Copytrack had traced them to five wallets in which they were currently being held; and
- They can be used as a medium of exchange, a store of value, and a unit of account, like funds or currency.

Ultimately, the Court held that the evidentiary record was inadequate to permit a determination of the issue, and in any event it was a complex and as of yet undecided question that was not suitable for determination by way of a summary trial application.

However, given the practical implications of Mr. Wall's death and the undisputed evidence that the Ether Tokens were the property of Copytrack, were sent to Mr. Wall in error, and were not returned, the Court held that it was clear the Ether Tokens should be rightfully returned to Copytrack and it would be unjust to deny Copytrack a remedy.

Accordingly, the Court made an order that Copytrack be entitled to trace and recover the

530 Ether tokens received by Mr. Wall from Copytrack in whatsoever hands they may currently be held. The Court refused to grant the remedies of disgorgement or damages Copytrack had sought.

While the question of whether cryptocurrency can be the subject of traditional torts like conversion and detinue remains to be decided another day, this case demonstrates that courts now recognize the value of digital currencies even if they do not precisely fit into existing legal frameworks.

As is always the case when new precedents are forged, a number of important questions remain, particularly with respect to enforcement. While cryptocurrency by its nature is an immutable ledger of transactions, it is also anonymous. In this case, Copytrack possessed identifying information about the five wallets to which the Ether tokens had been distributed, but such information may not always be available. Moreover, identifying the person or entity affiliated with the wallet is a subsequent hurdle that will likely need to be addressed.

Even if the funds are locatable, extricating the funds may be challenging given the difficulties presented by encryption. Unlike judgment debts for fiat currencies, banks and other financial institutions are not available to assist with enforcement.

Furthermore, it remains to be seen how much extra-territorial reach an order such as this will have. Depending on how jurisdiction is determined with respect to wallet holders, foreign courts may be reluctant or unwilling to enforce an order of the BC Supreme Court relating to cryptocurrency.

[1] 2018 BCSC 1709

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