



Cryptocurrency Recognized as Legal “Property”? British Columbia Supreme Court Opens the Door

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Over CND\$400,000 of cryptocurrency has been ordered by the British Columbia Supreme Court to be traced and recovered from “whatsoever hands the Ether Tokens [the cryptocurrency] may currently be held” following a decision on summary judgment in *Copytrack Pte Ltd. v Wall*, 2018 BCSC 1709. The Court found “it is undisputed that they [the cryptocurrency tokens] were the property of Copytrack [the plaintiff], they were sent to [the defendant] Wall in error, they were not returned when demand was made, and Wall has no proprietary claim to them”. The Court ordered the plaintiffs be entitled to trace and recover the tokens received by the defendant. However, the Court did not go so far as to determine whether cryptocurrencies are a “good” that could ground a claim in conversion and/or detinue, finding this to be “a complex and as of yet undecided question that is not suitable for determination by way of a summary judgment application”.

The decision in *Copytrack* is one of the first judicial considerations in Canada of digital currencies, and what remedies, if any, a defendant’s improper dealing with these kinds of assets could attract. Practically speaking, the decision—while not going so far as to find cryptocurrencies could be subject to traditional common law claims based in property—could provide support for future litigants to argue that cryptocurrencies are “property” enforceable through common law and through legislation such as various provincial *Personal Property Security Acts* (“PPSA”).

Courts have grappled with the characterization of intangible digital ‘assets’ for some time. For example, in *Tucows.Com Co. v. Lojas Renner S.A.*, 2011 ONCA 548, the Court of Appeal, as a matter of first impression, found a domain name could be “property”, and also “property in Ontario” that ought to be subject to that province’s *PPSA*. In particular, the Ontario court found in *Tucows* that a domain name had associated with it a “bundle of rights” that “satisfies the attributes of property” that was enforceable against others: it generated income; had value in relation to the defendant’s business; had associated exclusive rights (in that case, to direct traffic to the domain name’s corresponding website and to exclude others from using that domain name); and also that it was definable, identifiable by third parties, capable in its nature of assumption by third parties, and had some degree of permanence or stability. As cryptocurrencies become more popular and proliferate as an investment asset and method of monetary exchange, it will be important to watch how the decision in *Copytrack* is employed and whether it becomes relied on to advance a position similar to the domain names in *Tucows*, but with respect to the “property-ness” of cryptocurrencies. Unlike domain names, however, there is a tension with cryptocurrencies — should they be treated and regulated as intangible property or as currencies proper, in which case, they could be classified as a “good”. For example, courts at the Federal and provincial levels have both recognized money or investment funds could be subject to conversion claim. (see e.g., *Shibamoto & Co v Western Fish Producers Inc.*, (1991) 43 FTR 1 (FCTD); *Ast v. Mikolas*, 2010 BCSC 127; *Li v Li*, 2017 BCSC 1312). In *Copytrack*, the Court sidestepped this question, and issued the order so as to not deny the plaintiff a remedy.

The underlying action in *Copytrack*, was brought by Copytrack, a Singapore company engaged in the business of digital content management and automated copyright enforcement. Copytrack created its own cryptocurrency, Copytrack tokens (CPY), and mistakenly transferred another more valuable cryptocurrency, “Ether”, to the defendant investor instead of CPY. The Ether was then transferred to third parties. Copytrack sought the tracing and recovery of the “Ether”. In particular, Wall had subscribed to receive 530 CPY, worth about CND\$780, as part of Copytrack’s Initial Coin Offering (ICO). Rather than transfer 530 CPY to Wall, Copytrack mistakenly transferred 530 Ether tokens (ETH), with a value of about CND\$495,000 at the time. In its claim, Copytrack alleged it immediately asked Wall to return the Ether tokens, and that Wall refused to do



so. The Ether tokens were then transferred to third parties, and no longer resided in Wall's cryptocurrency account (known as his "Wallet"). In his defence, Wall claimed to no longer be in possession or control of the Ether tokens, and also that his account was hacked, which resulted in that further transfer to third parties. To complicate matters, Wall died during the course of the proceedings. The Court found Wall's death did not impact whether Copytrack's legal claim could continue (it could); however it did have "certain practical implications", as it made "trial untenable" and a solution more ripe for summary judgement since, in part, a trial would not result in further or better evidence on Wall's behalf as to what, in fact, occu

The Court characterized the issue of whether property law doctrines of conversion and wrongful detention could apply to cryptocurrencies as a "critical issue" and the "real issue on this application". Of note, the issue only arose during the oral submission phase of the motion, when, in passing, Wall's counsel challenged an assumption made by Copytrack in its written submissions and argument, that the Ether tokens were "goods". In fact, the Court commented that it would have been open to the Court to simply dismiss Copytrack's summary judgement motion on the basis of its failure to address this issu

In additional submissions requested by the Court, Copytrack made arguments that the Ether tokens should be subject to claims in conversion and detinue on the grounds that a "broad range of things", like funds, shares, customer lists, accounts receivable, crops, and mineral interests, could be subject to such claims—although they were not strictly "goods"—and relying on the decision in *Li v. Li*, 2017 BCSC 1312, where the BC Supreme Court followed a line of cases that found funds could be subject to a claim of conversion. Copytrack took the position that the tokens could be subject to property law claims as they shared the following characteristics with traditional forms or property:

- a) They are capable of being possessed, stored, transferred, lost and stolen;
- b) They were, at the time the conversion and wrongful detention began, held by Wall in his Wallet;
- c) They are specifically identifiable and have been traced to other Wallets in which they are currently being held; and
- d) They can be used as a medium of exchange, a store of value, and a unit of account, like funds or currency.

While not going so far as to rule on whether cryptocurrencies could, in fact, be subject to these specific property law claims, the Court found that "in the circumstances, it would be both unreasonable and unjust to deny Copytrack a remedy". As such, the Court ordered that Copytrack be entitled to trace and recover the wrongfully transferred tokens received by Wall from whoever now held those tokens, even if a third party. The request for the remaining relief sought by the plaintiffs, including dislodgement and/or damages, was dismissed by the Court on the basis they were not appropriate for summary judgment.

Additional practical and legal hurdles for Copytrack likely lay ahead, as it attempts to trace through and recover from third parties. For example, additional legal issues may be raised if the recipient of the Ether tokens claim they received the tokens with clean hands. Stay tuned.

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