

EMERGING TECHNOLOGY ISSUES

A British Columbia court has come out with one of the first Canadian decisions directly addressing the enforcement of rights to ownership of cryptocurrency.

Copytrack Pte Ltd. v Wall, 2018 BCSC 1709, per Skolrood, J.

FACTS AND ISSUES:

Copytrack Pte Ltd. (Copytrack) was a Singapore-based company which launched a blockchain-based copyright registry coupled with a set of cryptocurrency tokens, to permit the tracking of copyrights using a blockchain ledger and payments using the blockchain-based cryptocurrency tokens.

Copytrack sold CPY tokens to members of the public as part of its new system. A Canadian, Mr. Wall, subscribed for and purchased approximately 530 CPY tokens from Copytrack, at a price of about CAD\$780. To settle this transaction, Copytrack was obliged to transfer 530 CPY tokens to Mr. Wall.

By mistake, Copytrack transferred 530 Ether tokens (rather than CPY tokens) to Mr. Wall's online wallet. The 530 Ether tokens were worth about CAD\$495,000. After detecting the error, Copytrack immediately contacted Mr. Wall, asking that the 530 Ether tokens be returned.

Mr. Wall did not return the Ether tokens. Mr. Wall argued that someone hacked into his online wallet and transferred the 530 Ether tokens out of his account. Since he lacked control over those units of cryptocurrency, he argued, he was unable to return them to Copytrack. Copytrack was able to trace the tokens to five other online wallets. To complicate matters, Mr. Wall died in May 2018, during the proceedings.

Copytrack sued in several causes of action but brought a summary judgment application limited to conversion and detinue.

The main issue was whether the cryptocurrency tokens qualified as "goods" for the purposes of the legal doctrines of conversion and detinue.

HELD: For Copytrack; Order granted allowing Copytrack to trace and recover the 530 Ether tokens "in whatsoever hands those Ether Tokens may currently be held."

The Court held that some issues on the application were capable of being resolved by summary judgment:

- a. The underlying facts were held to be undisputed.
- b. While the dispute involved some assessment of Wall's assertion that his cryptocurrency wallet had been hacked so that he no longer possessed the Ether tokens, the Court held that "given Wall's death, it is not clear what sending this matter to trial would accomplish since it would not result in further or better evidence on behalf of the defendant" and "there would be no practical utility in sending this matter to trial given Wall's death".

However, Skolrood, J. held that the issue of whether cryptocurrency should be characterized as a "good" or a form of digital currency was a legal issue which could not be resolved summarily:

[32] In the additional submission filed on behalf of Wall, it is submitted that the characterization of cryptocurrency, and whether cryptocurrency is subject to claims of conversion and/or detinue, is a pure question of law that cannot be decided on a summary judgment application.

[33] Various dictionary definitions are cited that suggest that cryptocurrency is not, in fact, a "good" but rather a digital form of currency. However, the defendant submits that cryptocurrency is distinguishable from the type of specific funds dealt with in cases like *Li*.

[34] In my view, the proper characterization of cryptocurrency, including the Ether Tokens, is a central issue in this case, and one that informs the analysis of whether Copytrack's claims in conversion and detinue can succeed. However, the evidentiary record is inadequate to permit a determination of that issue on this application, and, in any event, it is a complex and as of yet undecided question that is not suitable for determination by way of a summary judgment application.

That said, the Court held concluded that it would be unreasonable and unjust to deny Copytrack a remedy. It granted an order that Copytrack was entitled to trace and recover the 530 Ether tokens that Wall had received from Copytrack "in whatsoever hands those Ether Tokens may currently be held":

[35] . . . regardless of the characterization of the Ether Tokens, it is undisputed that they were the property of Copytrack, they were sent to Wall in error, they were not returned when demand was made and Wall has no proprietary claim to them. While the evidence of what has happened to the Ether Tokens since is somewhat murky, this does not detract from the point that they should rightfully be returned to Copytrack.

[36] In the circumstances, it would be both unreasonable and unjust to deny Copytrack a remedy.

COMMENTARY:

This was a summary judgment application and the court did not want to send this case to trial, in light of Mr. Wall's death. It seems clear that the Court was convinced that this was akin to a "bank error". The Ether Tokens, regardless of how they should be characterized for legal purposes, were the property of Copytrack and were sent to Mr. Wall's account in error. The tokens were not returned when demand was made and Mr. Wall had no legal entitlement to keep

them.

As with all new technologies, courts require support and expert evidence to understand the technical background and to place things in context. This case was no different, but the comments from the Court suggest something was lacking here: "Nowhere in its submission did Copytrack address the question of whether cryptocurrency, including the Ether Tokens, are in fact goods or the question of if or how cryptocurrency could be subject to claims for conversion and wrongful detention."

It is interesting to note that blockchain-based currencies, such as the CPY and Ether tokens at issue in this case, are susceptible to claims of hacking. "The evidence of what has happened to the Ether Tokens since is somewhat murky", the court noted in its judgement. This flies in the face of one of the central claims advanced by blockchain advocates: transactions are stored on an immutable open ledger that tracks every step in a traceable, transparent and irreversible record. If the records are open and immutable, how can there be any confusion about these transfers? How do we reconcile these two seemingly contradictory positions?

The answer is somewhere in the 'last mile' between the ledgerized tokens (which sit on a blockchain), and the cryptocurrency exchanges and virtual wallets (using 'non-blockchain' user-interface software for the trading and management of various cryptocurrency accounts). It may be infeasible to hack blockchain ledgers, but it is relatively feasible to hack the exchange or virtual wallet. This remains a vulnerability in existing systems.

Lastly, this decision is one of the first in Canada directly addressing the enforcement of rights to ownership of cryptocurrency. Clearly, the law in this area requires further development – even in answering the basic questions of whether cryptocurrency qualifies as an asset covered by the doctrines of conversion and detinue. This also illustrates the requirement for traditional dispute resolution mechanisms between international parties, even in disputes involving a smart-contract company such as Copytrack. The fine-print in traditional agreements between industry players will remain important when resolving such disputes in the future.

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