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## English and Singapore High Courts Address the Correct Date for Assessing Damages in Crypto Claims

### INTRODUCTION

- The advent of crypto assets and blockchain technologies has once again, disrupted the operation of traditional legal paradigms.
- Previously, we discussed on how courts addressed the unique procedural roadblocks[1] that crypto asset litigation tends to engender due to its decentralised and pseudonymous nature. In this article, we shall explore some recent cases grappling with the legal issue of assessing contractual damages in crypto claims.
- The general position in Singapore is that in a case of breach of contract, the innocent party is to be put in as good a position as if the contract had been performed. The damages are generally assessed by reference to the date of the breach, although this is a general rule from which the court may depart if following it would give rise to injustice[2].
- However, in the context of volatile crypto assets, such an approach may not be appropriate as illustrated by the cases below.

### **FANTOM FOUNDATION LTD V MULTICHAIN FOUNDATION LTD**

- In *Fantom Foundation Ltd v Multichain Foundation Ltd*[3], the High Court of Singapore commented extensively on the potential issues

that could arise towards the assessment of damages in crypto claims. In that case, the claimant entered into agreements with the defendant to integrate its blockchain with the latter's platform.

- Due to a security breach, the claimant's crypto assets that were deposited into the latter's bridge wallet were siphoned out. The claimant also provided liquidity to the defendant by way of FTM (the claimant's native token on the Fantom Opera Chain), which was left unrepaid.
- Although the issue of date of breach was not critical to the determination of the dispute, the court felt that it was prudent to discuss the potential issues that could arise towards the assessment of damages in future crypto claims before the courts.
- One issue that would arise is the method of ascertaining the market value of a crypto asset at any given point in time. The court noted that unlike shares (the price of which is solely stated at the stock exchange), the price of a crypto asset could vary based on the platform it is being traded on.
- This variance in price is further exacerbated by the fact that unlike other forms of property (which possess some form of inherent economic value), crypto assets are purely held up by their

speculative value which invites dramatic volatility.

- The court notes that it is due to such dramatic volatility, using the date of breach for assessing damages in crypto claims may give rise to injustice. Such a situation may arise in where the value of the crypto asset increases (or decreases) substantially after the date of breach. In such a scenario, valuing the quantum of loss at the date of the breach may arguably fail to reflect the actual loss which the claimant suffered, or the loss which the claimant would be taken to have suffered if it had mitigated its losses.

### **SOUTHGATE V GRAHAM**

- In *Southgate v Graham*[4], the High Court of England and Wales echoed similar sentiments with regards to the issue of date of breach. In that case, the claimant advanced ETH 144 to the defendant as the latter needed £50,000. The claimant argued that they orally agreed that the defendant would return the same amount of ETH plus a 10% premium.
- The County Court judge found that the defendant agreed to repay the ETH plus premium within a reasonable time of demand, which was determined to be midday on 1 October 2019. Therefore, the defendant breached the agreement by failing to repay the ETH since that date.
- The judge ultimately ordered the defendant to pay damages valued at 1 October 2019, the date of breach. The claimant appealed the judge's findings on relief, on the grounds that it was wrong to hold that the valuation date for the assessment of damages should be 1 October 2019.
- The High Court held that the judge was wrong to reach a settled view that the correct valuation date for assessing damages was 1 October 2019.

The court held that although the general rule is that damages are to be assessed by reference to the date of breach, such a rule should not be rigidly applied if it would prevent the aggrieved party from receiving adequate compensation.

- In the present case, assessing damages by reference to the date of breach would have shortchanged the claimant as “[h]e would only be able to go out into the current market (or more accurately the market as at the date of judgment) and acquire with the damages ... no more than a small proportion of the ETH”. Therefore, the fair outcome was to allow the appeal in respect of the valuation date, with the issue of the correct date to be remitted to a remedies hearing at which the judge could be given fuller evidence.

### **KEY TAKEAWAYS:**

- The above cases demonstrate the unique challenges that crypto assets pose in the context of traditional legal paradigms. Although other conventional assets such as shares and stocks inherently face the same issue of price volatility, crypto assets possess an unprecedented extent of volatility such that it is difficult to establish a fair valuation date to assess damages.
- While the cases above do not arrive at a definitive stance as to the proper approach to determining the valuation date for assessing damages, it seems that other jurisdictions have grappled with similar issues. In *Diamond Fortress Technologies Inc v EverID Inc*[5], the Delaware Superior Court calculated the value of cryptocurrency by referring to the “highest market price of the security within a reasonable time of the plaintiff’s discovery of the breach”. This approach originates from securities jurisprudence in the same jurisdiction. According to this approach, a period of two or three months is generally accepted as a reasonable period of time.



- Ultimately, the exercise of awarding damages is a factually sensitive one. As held in *Reeves v Thrings & Long*<sup>[6]</sup>, the assessment of damages is “designed to compensate but not over-compensate the plaintiff for the civil wrong he has suffered. Whilst this is not an area free of legal rules, it is an area in which legal rules may have to bow to the particular facts of the case”. Therefore, it seems that today’s courts are more than cognisant of the volatile nature of crypto assets which would justify a departure from the general rule. However, it currently seems unclear as to what would such a departure exactly entail. As the court in *Fantom Foundation* puts it, the final chapter on the law on the valuation of cryptocurrencies has yet to be written.

*This article was authored by our Managing Partner and Head of Dispute Resolution, [Bazul Ashhab](#), and Partner [Lionel Chan](#). The authors thank Brandon Lim, from the University of Cambridge for his valuable assistance with the article.*

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<sup>[1]</sup> <https://oonbazul.com/crypto-asset-litigation-how-courts-tackle-procedural-roadblocks/>

<sup>[2]</sup> *iVenture Card Ltd v Big Bus Singapore City Sightseeing Pte Ltd and other* [2022] 1 SLR 302

<sup>[3]</sup> [2024] SGHC 173

<sup>[4]</sup> [2024] EWHC 1692

<sup>[5]</sup> 274 A.3d 287

<sup>[6]</sup> [1996] PNLR 265