SPECIAL BRIEFING

Freezing Injunctions over Cryptoassets: An Overview of Common Law Developments in England and Cyprus

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Introduction

In recent years, common law courts have come across an increasing number of applications for freezing injunctions concerning cryptoassets. This is largely because of these assets' susceptibility towards being misappropriated by criminals or being used for money laundering, owing to their pseudonymous nature. However, applications for such orders can also be brought by disappointed participants in high-risk-high-reward investments, thus making freezing injunctions a particularly popular choice for those seeking to recover such assets. This article aims to examine the stance courts have adopted in such cases, focusing particularly on concerns that have arisen with regards to the legal status of cryptoassets as 'property', and whether damages could be an adequate remedy for applicants.

The third section of this article will then attempt to analyse and reach conclusions concerning the potential position Cypriot courts could adopt if such an application was to be made before them. Even though up until the time of this writing no such case seems to have reached them, it is still possible to arrive at conclusions regarding the possible outcomes of such an application in Cyprus, due to the fact that the Cypriot position is largely dependent and has developed in parallel with other common law jurisdictions.

The fourth section will attempt to determine the way current developments could affect the manner courts have approached applications for freezing injunctions over cryptoassets. Particular focus will be placed upon two developments: (1) the increasing use of Non-Fungible Tokens (NFTs); and (2) the potential adoption of the Distributed Ledger Technology Law of 2021. The first is a somewhat global development that could have an impact on the question of adequacy of remedies, because of the non-fungible nature of such assets, the second is a development that can only affect Cyprus, by providing clarity on the property status of tokens.

Judicial responses in England and Wales

The English law on freezing injunctions

The civil procedure rules in England enable courts to prevent parties from removing an asset from the jurisdiction, or to restrain a party from dealing with any asset, whether located in their jurisdiction or not. This is allowed through the use of the interim remedy of freezing injunctions. Prior to the adoption of the Civil Procedure Rules in 1998, these orders were known as "*Mareva*" injunctions, a term that is no longer in use by the new Rules.[1] The purpose of these orders is "to preserve a defendant's assets, subject to dealings in the ordinary course of business so that, if and when a judgment is pronounced, the defendant still has assets to meet that judgment."[2]

For an applicant to succeed in obtaining a freezing order, he must satisfy three requirements, best summarised by Peter Gibson LJ in *Thane Investments Ltd v Tomlinson (No.1)*,[3] where he stated that "the applicant for the order has a good, arguable case, that there is a real risk that judgment would go unsatisfied by reason of the disposal by the defendant of his assets, unless he is restrained by the court from disposing of them, and that it would be just and convenient in all the circumstances to grant the freezing order."[4]

Though an extensive analysis of these requirements is not warranted for the purposes of this article, some explanatory remarks on each of them should be provided. With regards to the "good arguable case" requirement, useful guidance can be drawn from the judgment of Mustill J in *The Niedersachsen* where he held that it meant "one which is more than barely capable of serious argument, but not necessarily one which the judge

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[1] Civil Procedure Rules 1998 r.25.1.25.
[2] *JSC BTA Bank v Kythreotis* [2010] EWCA Civ 1436; [2010] 2 C.L.C. 925 at [52], per Longmore LJ.
[3] *Thane Investments Ltd v Tomlinson (No.1)* [2003] EWCA Civ 1272.
[4] *Thane Investments Ltd v Tomlinson (No.1)* [2003] EWCA Civ 1272 at [21].

considers would have a better than 50% chance of success".[5] This is a test that is not viewed as a particularly onerous one.[6]

Regarding the "real risk of dissipation", useful guidance can be drawn from the case of *Lakatamia Shipping Company Ltd*. For the purposes of this article, it suffices to say that it is "judged objectively, that a future judgment would not be met because of an unjustified dissipation of assets…[which] means putting the assets out of reach of a judgment whether by concealment or transfer."[7] This is a question of fact that can be answered by taking into account a variety of factors.

Lastly, as for the question of whether it would be "just and convenient" to grant the applicant with the requested order, Gee states that:

> "The court should be satisfied before granting the relief that the likely effect of the injunction will be to promote the doing of justice overall, and not to work unfairly or oppressively. This means taking into account the interests of both parties and the likely effects of an injunction on the defendant."[8]

For the purposes of this article, one must bear in mind that in determining the balance of convenience for interim injunctions generally, an important factor is whether the applicant could be adequately compensated in damages if they were to succeed in their claim, in those cases no interlocutory injunction should be granted, however strong the applicant's case seems.[9] Nevertheless, this remains a question that will rarely be answered in the negative if the previous two requirements are satisfied.

These are the requirements that have been applied to the cases examined below, and those that anyone seeking to prevent another party from using specific tokens, or a certain amount of cryptoassets must satisfy. When it comes to applications for freezing injunctions over cryptoassets, judicial scrutiny seems to be focused on two aspects: (1) whether these can be considered property for the purposes of a freezing injunction; and (2) whether damages could be an adequate remedy, thus tilting the balance of convenience against the issue of an order. Both of these questions will be discussed below.

Freezing injunctions concerning cryptoassets

The status of cryptoassets as property

One of the first applications for such a freezing order that reached English courts was in the case of *Vorotyntseva v MONEY-4 Ltd*,[10] in September 2018. Mrs Vorotyntseva had given the respondent company approximately £1.5 million worth of Bitcoin and Ethereum. When the respondents failed to address the applicant's concerns regarding the possible dissipation of these assets, Mrs Vorotyntseva applied for a freezing order. In granting the order Birss J concluded that there was a real risk of dissipation, without analysing in much depth the legal requirements for granting the requested order.[11]

The first important judgment on the matter came a year later in the case of *AA v Persons Unknown*.[12] The case concerned a Canadian insurance company whose electronic files were hacked and encrypted by the first respondents, who required ransom in order to provide them with the necessary decryption software. Following some negotiations $950,000 in Bitcoin were paid, allowing the company to access its data.[13] When examining whether the application should be granted, Bryan J was particularly concerned with the status of cryptoassets as property, stating that:

> "they are neither chose in possession nor are they chose in action. They are not choses in possession because they are virtual, they are not tangible, they cannot be possessed. They are not choses in action because they do not embody any right capable of being enforced by action. That produces a difficulty because English law traditionally views property as being of only two kinds, choses in possession and choses in action."[14]

This posed a particularly difficult challenge as freezing injunctions can be granted over assets of the respondent. However, this is a term that "is capable of having a wide meaning".[15] Indeed, this was the position adopted by the court in reaching its conclusions. By applying the test set by Lord Wilberforce in *National Provincial Bank v Ainsworth*[16]—which necessitates property being definable, identifiable by third parties, capable in their nature of assumption by third parties, and having some degree of permanence—Bryan J concluded that cryptoassets were property, and thus could be subject to a freezing

[5] *Ninemia Maritime Corp v Trave Schiffahrts GmbH & Co KG (The Niedersachsen)* [1983] 1 W.L.R. 1412; [1983] 2 Lloyd's Rep. 600 at [605].
[6] *Lakatamia Shipping Company Ltd v Morimoto* [2019] EWCA Civ 2203; [2020] 1 C.L.C. 562 at [35].
[7] *Lakatamia Shipping Company Ltd* [2020] 1 C.L.C. 562 at [34].
[8] Steven Gee, *Gee on Commercial Injunctions*, 6th edn (London: Sweet & Maxwell, 2016), at para.12-042.
[9] *American Cyanamid Co v Ethicon Ltd* [1975] A.C. 396; [1975] F.S.R. 101 at [408].
[10] *Vorotyntseva v MONEY-4 Ltd (t/a nebeus.com)* [2018] EWHC 2596 (Ch).
[11] *Vorotyntseva v MONEY-4 Ltd (t/a nebeus.com)* [2018] EWHC 2596 (Ch) at [9] and [10].
[12] *AA v Persons Unknown* [2019] EWHC 3556 (Comm); [2020] 1 C.L.C. 64.
[13] *AA v Persons Unknown* [2020] 1 C.L.C. 64 at [2]–[15].
[14] *AA v Persons Unknown* [2020] 1 C.L.C. 64 at [55].
[15] *The White Book* (London: Sweet & Maxwell, 2020), at Vol.I, 25.1.25.8.
[16] *National Provincial Bank v Ainsworth* [1965] A.C. 1175.

injunction. Similar conclusions were also reached by the Court of Appeal of Singapore,[17] and the High Court of New Zealand, where the issue was analysed extensively.[18]

Based on the aforementioned cases, it would be reasonable to conclude that a judicial consensus is forming on the status of cryptoassets as property in common law jurisdictions. This is a position that is also supported by academic sources. Sarah Green rightfully mentions that:

> "It is only a matter of time before cryptocurrencies are used in transactions external to the block chain. Property is a gateway to many standard forms of transactions. A crypto-coin can never become the subject matter of a trust or a proprietary right of security, nor will it be an asset in a deceased's person's estate, unless it is first recognised as an object of property. The same is true of a secured creditor or trust beneficiary enforcing their claim in property to the unsecured creditors of an insolvent coin-holder. The development of a viable cryptocurrencies derivative market may sometimes require that the primary assets from which secondary claims are constructed are capable of legal recognition as property."[19]

One could argue that it would be unreasonable for the law to fall behind by not attributing cryptoassets with the legal status of property, given the ever-increasing role this category of assets plays in most people's everyday life. Nor would it be warranted for courts to limit themselves to strict categorisations, such as the traditional view adopted by Fry LJ in 1885, that "[a]ll personal things are either in possession or action. The law knows no tertium quid between the two."[20] Such rigidness would prevent those examining the law from viewing property for what it really is, a manner to describe a legal relationship between a person and a thing, hence guarantying a set of rights over it. As the United Kingdom (UK) Jurisdiction Taskforce has described it:

> "Strictly, the term property does not describe a thing itself but a legal relationship with a thing: it is a way of describing a power recognised in law as permissibly exercised over the thing. The fundamental proprietary relationship is ownership: the owner of the thing is, broadly, entitled to control and enjoy it to the exclusion of anyone else. However, ownership is just one kind of property right: property is a comprehensive term and can be used to describe many different kinds of relationship between a person and a thing."[21]

If it were for the law to prevent users of cryptoassets to rely on the legal protections offered by their characterisation as property, and the subsequent use of civil remedies, the law would truly fall behind current market and technological tendencies. This is especially true if one considers that by 2025, 10% of the world's gross domestic product is expected to be stored on blockchain,[22] whilst at the moment of this writing, overall cryptocurrency market capitalisation surpasses $2 trillion.[23] Currently, based on the decisions analysed above, it seems that common law courts have steered clear from the perils of not considering cryptoassets as property, thus making the award of freezing injunctions over them, more straightforward.

The adequacy of remedies

As discussed above, the adequacy of remedies by the defendant, if the claimant were to succeed in his claim is an important factor when determining where the balance of convenience lies. With regards to cryptoassets, this question was first raised in the case of *Toma & True v Murray*.[24] While the court was not particularly concerned with the status of the tokens concerned as property, and in fact adopted the rationale of *AA v Persons Unknown*,[25] it did pay particular attention to the efficacy of damages as an adequate remedy.

The facts of the case concerned the failing of a Bitcoin sale, which left the applicant sellers without the money they were supposed to receive for it. They then applied for an interim order against the individual who controlled the account involved in the transaction.[26] The High Court however refused the application, determining that since the respondent had unencumbered property worth £4.8 million, damages could have been an adequate remedy if the claim succeeded in the future.

However, in subsequent cases, courts have indicated their increasing willingness to grant these orders, especially in cases where fraud is alleged.[27] One could argue that this is largely because of this type of assets' highly volatile prices, which could cast doubts over the adequacy of damages at any point while adjudication is

[17] *B2C2 Ltd v Quoine PTC Ltd* [2020] SGCA(I) 02 at [143] and [144].
[18] *Ruscoe v Cryptopia Limited (in liquidation)* [2020] NZHC 728 at [50]–[134].
[19] Sarah Green "Cryptocurrencies in the Common Law of Property", in David Fox and Sarah Green (eds) *Cryptocurrencies in Public and Private Law* (Oxford: Oxford University Press, 2019), p.141.
[20] *Colonial Bank v Whinney* (1885) 30 Ch. D. 261 at 285.
[21] UK Jurisdiction Taskforce, "Legal Statement on Cryptoassets and Smart Contracts", The LawTech Delivery Panel (November 2019) at [35], available at: *https://35z8e83m1ih83drye280o9d1-wpengine.netdna-ssl.com/wp-content/uploads/2019/11/6.6056_JO_Cryptocurrencies_Statement_FINAL_WEB_111119-1.pdf*; *Yanner v Eaton* [1999] HCA 53 at [17].
[22] Global Agenda Council on the Future of Software & Society, "Deep Shift Technology Tipping Points and Societal Impact", World Economic Forum (September 2015) at 7, available at: *https://www3.weforum.org/docs/WEF_GAC15_Technological_Tipping_Points_report_2015.pdf*.
[23] Statista, "Overall cryptocurrency market capitalization per week from July 2010 to April 2022", available at: *https://www.statista.com/statistics/730876/cryptocurrency-maket-value/*.
[24] *Toma & True v Murray* [2020] EWHC 2295 (Ch).
[25] *AA v Persons Unknown* [2020] 1 C.L.C. 64 at [62].
[26] Andrew Maguire, "Cryptoassets—Obtaining English Freezing and Proprietary Injunctions in Relation to Cyberfraud", Littleton (13 October 2020) available at: *https://littletonchambers.com/articles-webinars/cryptoassets-obtaining-english-freezing-and-proprietary-injunctions-in-relation-to-cyberfaud/*.
[27] *Danisz v Persons Unknown* [2022] EWHC 280 (QB) at [15] and [16].

pending. Another reason for which courts may become more willing to grant such orders, is the ease with which cryptoassets could be concealed or otherwise rendered practically untraceable. As Lane J remarked "[t]his is a form of transaction whereby, at the click of a mouse, an asset can be dissipated."[28]

Even if one turns back to the case of *AA v Persons Unknown*, damages were indeed considered inadequate in a case where 96 Bitcoin tokens could be dissipated.[29] This seems indeed to be the reasonable approach, both in cases where the respondents are known to the applicant and in those where they are not. Due to the drastic changes that the values of cryptoassets could have, in relatively short periods of time, it is hard for any court to conclude with certainty that by the time the claim reaches its conclusion, the defendants will be able to compensate the claimants if the value of the tokens significantly alters, and they are no longer in possession of them.

Though current decisions seem to indicate that cryptoassets can be subject to a freezing injunction, as they are considered property, and damages cannot be easily considered to be an adequate alternative, it is still too early to say that this is an established course of action. Presently, such cases are still noticeably scarce in most common law jurisdictions. Moreover, up until the time of this writing it seems that the decisions given have not yet reached the highest echelons of the judiciary. It is therefore possible that the current status of the law could drastically change if a Court of Appeal or Supreme Court decision were to be made. Nonetheless, those precedents that are currently available can serve as useful guidance both for practising lawyers as well as for courts in other jurisdictions that are yet to face such applications. One such jurisdiction, Cyprus, will be discussed in the following section.

The situation in Cyprus

The law on freezing injunctions

The Cypriot legal system is a mixed one, drawing its origins in both common law and continental law, with private law being mostly based on the former, and public law relying on the latter. Procedural law has one of the closest associations, of all areas of law, with the English common law system.[30] The British colonial rulers had managed to a large extent to codify a plethora of common law provisions prior to the island's independence, which remained in force in the new Republic of Cyprus by virtue of art.188 of its Constitution.[31] Where no explicit statutory provision is made, Law 14/1960 provides that the common law and equitable principles would continue to apply,[32] thus supplementing any *lacunae* that may arise.

This is also the Law that allows Cypriot courts to grant injunctions "in all cases in which it appears to the court just or convenient so to do",[33] and which has acted as a gateway for *Mareva* freezing injunctions to enter the country's legal system. Indeed, the Supreme Court of Cyprus adopted the English decisions in *Mareva Compania Naviera SA v International Bulkcarriers SA*,[34] and *Nippon Yusen Kaisha v Karageorgis*[35] after only a year, in its decision in *Nemitsas Industries Ltd v S & S Maritime Lines Ltd*.[36] Ever since that decision, the development of Cypriot and English law on this area has been inextricably linked.[37]

Article 32 of the Law sets out three requirements that any applicant seeking an interim injunction should satisfy: (1) there must be a serious matter at trial; (2) there is a probability that the applicant is entitled to relief; and (3) it will be difficult or impossible to award complete justice at a later stage without granting the requested order.[38] Aside from these three explicitly-stated requirements, case law has identified a number of specific requirements that are included under the term "just and convenient" in cases concerning *Mareva* injunctions. These are that: (1) there is some movable property; (2) there is a risk of dissipation; and (3) if the assets are removed or dissipated, a later court decision will most likely not be satisfied.[39] One further point that must be noted with regards to the risk of dissipation are the following factors adopted by Kallis J in the case of *Poltava Petroleum Ltd v Mexana Oil Ltd*. These are:

> "(1) The nature of the assets which are the proposed subject of the injunction, and the ease or difficulty with which they could be disposed of or dissipated. The plaintiff may find it easier to establish the risk of dissipation of a bank account, or of moveable chattels, than the risk of the defendant disposing of real estate…
>
> (2) The nature and financial standing of the defendant's business…
>
> (3) The length of the defendant's establishment in business. Stronger evidence of potential dissipation will be needed where the defendant is a long-established company with a reasonable market reputation than where little or nothing is known or can be ascertained about it.

[28] *SD v (1) Persons Unknown (2) Huobi Global Limited (trading as Huobi)* [2022] EWHC 280 (QB) at [11].
[29] *AA v Persons Unknown* [2020] 1 C.L.C. 64 at [62]–[65].
[30] Nikitas E. Hatzimihail, "Cyprus as a Mixed Legal System" (2013) 6 *Journal of Civil Law Studies* 38, 54.
[31] Constitution of the Republic of Cyprus 1960 art.188.
[32] Courts of Justice Law (L.14/60) art.29(1)(c).
[33] Courts of Justice Law (L.14/60) art.32.
[34] *Mareva Compania Naviera SA v International Bulkcarriers SA (The Mareva)* [1980] 1 All E.R. 213.
[35] *Nippon Yusen Kaisha v Karageorgis* [1975] 1 W.L.R. 1093; [1975] 3 All E.R. 282 CA.
[36] *Nemitsas Industries Ltd v S & S Maritime Lines Ltd* (1976) 1 CLR 302.
[37] George Erotocritou and Petros Artemis, *Injunctions* (Livadiotis, 2016), p.204.
[38] Courts of Justice Law art.32.
[39] *Linmare Shipping v Boustani* (1981) 1 CLR 386; *Poltava Petroleum Ltd v Mexana Oil Ltd* (2001) 1 CLR 1301; Erotocritou and Artemis, *Injunctions* (2016), p.215.

(4) The domicile or residence of the defendant…
(6) The defendant's past or existing credit record…
(9) The defendant's behaviour in response to the plaintiff's claims: a pattern of evasiveness, or unwillingness to participate in the litigation or arbitration, or raising thin defences after admitting liability, or total silence, may be factors which assist the plaintiff."[40]

All these factors are rather indicative of a higher risk that the assets over which an injunction is sought might be dissipated, hence leaving a potential later court decision unfulfilled. To the contrary, in cases where the defendant demonstrates that he has property that is hard to dissipate, such as real estate, and that the fulfilment of a later judgment against them is unlikely to be hindered, then the courts will be more reluctant to grant a *Mareva* injunction.[41] This analysis demonstrates that there is nothing in the Cypriot law that is prima facie preventative for its application in cases concerning *Mareva* injunctions over cryptoassets. The following section will attempt to reach specific conclusions concerning the outcome of such an application.

Possible approach to applications for freezing injunctions over cryptoassets

Having seen the general framework under which Cypriot courts grant *Mareva* injunctions and having reached the conclusion that this framework could allow for cryptoassets to become subject to such an injunction, it is now necessary to address more specific concerns that may arise.

With regards to the proprietary status of cryptoassets under Cypriot law, as of the moment of this writing, it seems that there is no decision, neither of the Supreme Court, nor in any of the District Courts, that explicitly recognises cryptoassets as capable of constituting someone's property for the purposes of a *Mareva* injunction. Furthermore, the only available definition as to what can constitute movable property can be found in the Administration of Estates Law,[42] which simply states that all property, of any description, that it is not immovable property falls within the definition of movable property. Clearly, this definition cannot establish with any certainty that cryptoassets can constitute property, let alone that they can be subjected to a *Mareva* injunction.

It is worth pointing out that for the purposes of the Prevention and Suppression of Money Laundering and Terrorist Financing Law, cryptoassets can constitute property,[43] yet, this cannot guarantee that this will be also the case in *Mareva* applications.[44] Furthermore, the test applied by Lord Wilberforce in *National Provincial Bank v Ainsworth*,[45] does not seem to have been applied in any Cypriot case. This could mean that in the question of whether cryptoassets can constitute property for the purpose of *Mareva* injunctions, Cypriot courts will likely follow the precedent set by English courts.

Nevertheless, it is worth noting that Cypriot courts have exercised their discretion to issue *Mareva* injunctions over a wide array of different assets. These include among other money held within the jurisdiction,[46] vehicles,[47] shares,[48] and land.[49] All these are indicative of the courts' willingness to exercise their powers efficiently and for the purposes of securing that full justice will be awarded at a later stage.

However, this willingness is only exercised in cases where there is a real danger of dissipation. In their book on injunctions, former Supreme Court President, Petros Artemis, and former Supreme Court Judge, George Erotocritou, warn against the abuse of the courts' jurisdiction in cases where there is no such danger, or where the risk exaggerated.[50] This cautiousness was made clear early on in the Supreme Court's decisions, stating that:

> "The discretion of the Court to make a Mareva Injunction must be exercised with great circumspection and always with due regard with the specific aims of the law, notably an aid to the process of execution designed to forestall action likely to undermine the efficacy of the judicial process."[51]

In the author's opinion, when it comes to cryptoassets, the risk of dissipation and hinderance of the judicial process will always remain high. This is due to the fact that this specific type of asset is by its very nature easy to hide, and with the use of the proper mechanisms, cryptoassets can be rendered completely untraceable.[52] One could thus argue that the court's warnings should not be viewed that strictly when it comes to cryptoassets.

[40] *Poltava Petroleum Ltd v Mexana Oil Ltd* (2001) 1 CLR 1301 at 1319–1321.
[41] *Tsiolakkis v Stylianides* (1992) 1 CLR 782.
[42] The Administration of Estates Law (Cap.189) art.2.
[43] Prevention and Suppression of Money Laundering and Terrorist Financing Law (Law 188(I)/2007) art.2.
[44] Andreas Erotocritou and Elina Nikolaidou, "Cyprus: Fraud, Asset Tracing & Recovery 2022", Mondaq (06 April 2022) available at: *https://www.mondaq.com/cyprus/white-collar-crime-anti-corruption-fraud/1180100/fraud-asset-tracing-recovery-2022*.
[45] *National Provincial Bank v Ainsworth* [1965] A.C. 1175.
[46] *Ship "Tina" v Ventmare Maritime* (1981) 1 CLR 248.
[47] *Pantelides v Pieris* (1998) 1 CLR 2111.
[48] *Seamark Consultancy Services Ltd v Joseph P Lasala* (2007) 1 CLR 162.
[49] *Seamark Consultancy Services Ltd v Joseph P Lasala* (2007) 1 CLR 162.
[50] Erotocritou and Artemis, *Injunctions* (2016), p.224.
[51] *National Iranian Tanker Company Ltd v Pastella Marine Company Ltd* (1987) 1 CLR 583.
[52] Lars Haffke, Mathias Fromberger, and Patrick Zimmermann, "Cryptocurrencies and anti-money laundering: the shortcomings of the fifth AML Directive (EU) and how to address them" (2020) 21 *Journal of Banking Regulation* 125, 130–131.

It should be noted that there are also policy reasons mandating a uniform judicial treatment of cryptoassets in England and Cyprus. In her analysis of judicial stances against cryptoassets in several jurisdictions, Zilioli notes the fragmentation which has resulted from several court cases.[53] She rightly points out that in the absence of international rules, or at least international standards, this diverse approach is bound to create several hazards.[54] These include the possibility of forum-shopping and regulatory arbitrage, hence "exacerbating the risks resulting from the a-jurisdictional nature of crypto-assets."[55] Given the close economic and legal ties between England and Cyprus, adopting different stances on the matter would be particularly damaging. Not only would it prevent crypto-related businesses from operating in both jurisdictions with ease, but more importantly, it would deprive the Cypriot judiciary from an especially rich source of inspiration on *Mareva* injunctions.

Therefore, since the law of the Republic does not seem to preclude the use of *Mareva* injunctions for cryptoassets, and that the courts in Cyprus have held a positive stance towards expanding the injunction's ambit to a plethora of different asset types, one could conclude that the law in Cyprus will sooner or later include cryptoassets. Yet, this remains an educated guess at best, and one cannot be certain unless such a decision ever arrives, or the lawmaker makes an explicit provision about it.

Potential developments

The proliferation of NFTs

In recent years a particular type of *Non-Fungible Tokens* (NFTs), has been gaining increasing prominence among professional investors and the public in general. These tokens are used to represent real-life assets, such as artworks or even real estate, and rely mostly on the Etherium blockchain to guarantee their authenticity and uniqueness.[56] These assets are also linked to the digital wallet of their owner in the same manner as other types of tokens and are thus equally vulnerable to fraud and misappropriation. Huertas and Hikl note the ease with which anyone may issue an NFT makes this market particularly vulnerable to a series of different types of fraud.[57]

Though their essence lies in their uniqueness, NFTs susceptibility to dissipation vis-a-vis freezing injunctions remains equally high as other types of cryptoassets. As noted by Sookman with regards to those misappropriating such assets: "[t]hey act at the speed of the internet, anonymously, almost always reside and act from foreign jurisdictions, and are notorious for covering their tracks including by peeling their stolen crypto assets to obfuscate recoveries."[58] This makes the need to act quickly and decisively by utilising all judicial means available, including freezing orders, imperative for anyone seeking to recover their NFTs.

With regards to the adequacy of remedies, these are arguably even less satisfactory as an alternative remedy when compared to other cryptoassets. NFTs are used to guarantee the ownership of valuable collectables such as artwork whose value is hard to ascertain. More importantly their uniqueness may make the exercise of determining that remedies can substitute them a perilous task for courts.

Though this section was initially intended to be purely hypothetical, in the midst of writing this article, the first ever freezing order over NFTs was issued by the High Court of England and Wales in the case of *Lavinia Deborah Osbourne v Persons Unknown*.[59] The case concerned the stealing of two NFT artworks from the claimant's digital wallet in January 2022, which were then traced to two separate wallets.[60] The freezing orders were then issued by the High Court in March 2022 in what seems to be the world's first judgment on the matter. The importance of this decision lies on the fact that it has demonstrated the English judiciary's willingness not only to adapt to novel technologies, but to also do it swiftly and effectively. It is a judgment that builds upon the increasing volume of freezing orders for cryptocurrencies, and which can help bring certainty to any NFT owner whose ownership might have been compromised. Yet again, such ground-breaking decisions need to be approached cautiously as they serve only as an indication of the stance courts might adopt in the future. Academics and practitioners alike can only remain hopeful that with the increasing use of NFTs, further judicial guidance with regards to freezing orders, is soon to come.

The Distributed Ledger Technologies Law of 2021

One last possible development to note, albeit one that has a much more local character, is the publication by the Cypriot Ministry of Finance, of a bill on a Distributed Ledger Technologies Law in September 2021.[61] This is part of a wider governmental strategy which aims at

[53] Chiara Zilioli, "Crypto-assets: legal characterisation and challenges under private law" (2020) 45(2) *European Law Review* 251, 256–261.
[54] Zilioli, "Crypto-assets: legal characterisation and challenges under private law" (2020) 45(2) *European Law Review* 251, 264–265.
[55] Zilioli, "Crypto-assets: legal characterisation and challenges under private law" (2020) 45(2) *European Law Review* 251, 266.
[56] Robyn Conti and John Schmidt, "What You Need To Know About Non- Fungible Tokens (NFTs)", Forbes Advisor (14 May 2021) available at: *https://www.forbes.com /advisor/investing/nft-non-fungible-token/*.
[57] Michael Huertas and Aylin Hikl, "Non-fungible tokens (NFTs)—new opportunities but do they need new EU regulations?" (2022) 37(4) *Journal of International Banking Law and Regulation* 132, 136–137.
[58] Barry Sookman "Blockchain Vulnerabilities and Civil Remedies to Recover Stolen Assets" (2022) 2 *International Journal of Blockchain Law* 25, 29.
[59] Racheal Muldoon, "Landmark NFT Judgment", Lexology (07 April 2022) available at: *https://www.lexology.com/library/detail.aspx?g=8ec1413f-f491-4372-a996 -4a5cf025724e*; Kate Gee and Alasdair Marshall, "NFTs Recognised as Property", *Signature*, 20 April 2022 available at: *https://www.signaturelitigation.com/nfts-recognised -as-property-lavinia-deborah-osbourne-v-1-persons-unknown-2-ozone-networks-inc-trading-as-opensea/*.
[60] Muldoon, "Landmark NFT Judgment", Lexology (07 April 2022); Gee and Marshall, "NFTs Recognised as Property", *Signature*, 20 April 2022.
[61] Bill on the Distributed Ledger Technology Law of 2021, available at: *http://mof.gov.cy/en/press-office/announcements/949/?ctype=ar* (DLT Law).

facilitating the introduction of distributed ledger technologies into the Cypriot legal system whilst also protecting, among others, consumer rights.[62]

The importance of this legislation lies on two innovative additions to the law, which can be found in arts 4 and 8. Article 4 regulates the property status of tokens by providing that "irrespective of whether they are digitally or non-digitally native, [they] are personal, movable property of the person they belong to."[63] With the adoption of this bill, the question that the English High Court answered in *AA v Persons Unknown*,[64] will be addressed legislatively in Cyprus. This will offer Cypriot courts and practitioners alike more certainty than their English brethren enjoy, as the status of cryptoassets as property will be even more well founded. Consequently, those claimants who seek to obtain a *Mareva* injunction in Cyprus over such assets will be facing one fewer challenge when compared to claimants in other common law jurisdiction, which has the potential to turn the island into a friendlier jurisdiction for crypto investors.

Moving on to art.8, its second paragraph provides that:

> "In case of record or transaction in permissioned or permissionless blockchain or DLT, that is the result of error or deceit or fraud, or in case a Court considers just and equitable, a Court may order any person that may be considered necessary to restitute the record or provide any other remedies for the restitution of the record or the damage caused."[65]

This provision will add an additional weapon to counter online crime. Though it is likely that in most instances a *Mareva* injunction will come before the issuance of an order under art.8, whilst full adjudication of the claim is still pending. In other words, the civil remedy provided here will most likely complement *Mareva* injunctions rather than replace them with regards to cryptoassets. Yet, this is a proposal that has a long way to cover until it is fully adopted, thus leaving Cypriot courts dependent on case law development in the meantime.

Conclusion

In recent years, the judiciary has made considerable efforts through a series of decisions to offer certainty to anyone affected by the misappropriation of their cryptoassets. This is indeed a welcome initiative as it has made available one of the law's "nuclear weapons"[66] to an expanding class of everyday people who choose to invest in cryptoassets. In what seems to be some of the present time's cutting edge case law, the English High Court has determined the status of cryptoassets as property, for the purposes of freezing orders. More importantly though, it has signified its increasing willingness to grant applicants with such injunctions in order to safeguard their rights. Though in Cyprus, the courts are yet to issue such an order, the analysis conducted in this article concludes that it is entirely possible for them to do so.

The last substantial section of this article examined two important developments which are likely to affect the current trends concerning freezing orders over cryptoassets. The first of these developments is the rise of NFTs, which constitute an entirely different species of cryptoassets. However, as was mentioned above, the English High Court promptly reduced any room for speculation by issuing the first ever freezing injunction over two NFT tokens in March 2022. Though this is far from setting an established precedent at the moment, it still remains a step in the right direction. The second development discussed above is the publication of the Distributed Ledger Technologies bill in Cyprus. If this law passes through the House of Representatives in its current form, it will constitute a leap forward in the race to harmoniously include cryptoassets in the local lawscape. This is achieved through the two provisions discussed above, which will put an end to any speculation over cryptoassets' proprietary status, and more importantly it will allow for courts to issue restitution orders for misappropriated tokens.

The field of cryptoassets is a novel one both technologically and legally speaking, and there is a lot of work to be done for these assets to become part of our everyday normality. One can only hope that this will happen soon, either through legislative or judicial initiatives.

[62] Ministry of Finance, "Distributed Ledger Technologies (Blockchain)—A National Strategy for Cyprus", Republic of Cyprus (June 2019), at 12–17.
[63] DLT Law art.4(1).
[64] *AA v Persons Unknown* [2020] 1 C.L.C. 64.
[65] DLT Law art.8(2).
[66] *Bank Mellat v Nikpour* [1985] FSR 87 at [92] per Donaldson LJ.