Ontario court grants Anton Piller Order in cryptocurrency heist

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Recently, the Ontario Superior Court of Justice (ONSC) granted an *Anton Piller* Order to the plaintiff in *Cicada 137 LLC v. Medjedovic,* 2021 ONSC 8581 (*Cicada 137*), in connection with the alleged theft of $15 million in digital assets from the plaintiff's digital wallet. This is important as it shows the court's willingness to intervene and provide protection related to the hacking of digital assets, such as cryptocurrency. This case is also interesting as the defendant has raised the defence that "Code is Law," which is an untested online theory which provides that it is acceptable for a user to exploit a weakness "within the parameters of the programming code."

Background

The defendant, Andean Medjedovic (the Defendant or Mr. Medjedovic), is a 19 year-old with a master's degree in mathematics from the University of Waterloo who was, until very recently, living with his parents.

Cicada 137 LLC (the Plaintiff or Cicada), was incorporated to hold cryptocurrency tokens on behalf of a small number of investors of the Indexed Finance facility. The Plaintiff states that the Defendant hacked the source code and induced Indexed Finance to transfer $15 million in tokens to his personal account. The Defendant has admitted to moving the tokens.

In addition to the Plaintiff's claim, there is now also a second action with two representative plaintiffs advancing a class action on behalf of all of the holders of the cryptocurrency tokens taken by the Defendant.

Anton Piller Order

The Plaintiff was able to trace the tokens to the Defendant's account and applied to the ONSC to grant an *Anton Piller* Order to preserve these tokens. An *Anton Piller* Order is a form of preservation order used where there is risk that a defendant may destroy or conceal evidence. If granted, the applicant is permitted to enter the defendant's property in order to seize relevant devices and records. The seized items are then placed in the control of an independent third party, pending determination of the matter.

The Defendant did not defend himself in this action; however, as he was living with his parents at the time of the alleged theft, his parents brought a motion opposing the *Anton Piller* Order. Ultimately, the court granted Cicada an *Anton Piller* Order to search for passwords and other evidence that could lead them to locate and preserve the cryptocurrency tokens. Under this order, Cicada seized electronic devices, belonging to both Mr. Medjedovic and his parents.

The court made the following important comments:

> This is a very serious matter for which an *Anton Piller* Order is justified. A very substantial amount of value has been taken. Moreover, the plaintiff's expert provides evidence about the magnitude of hacking of digital assets to date. As this new form of investing and commerce grows, it is fundamentally important to the stability of the economy and the online market place that that the integrity of these assets be maintained. **The investing and transacting public need assurance that the law applies to protect their rights. Despite what some might think, the law applies to the internet as it does to all relations among people, governments, and others**.

We note that, since the granting of the *Anton Piller* Order in this decision, the Plaintiff did carry out a search of Mr. Medjedovic's parents' home, but it seems the Defendant had already left the house, with his computers and phone, to whereabouts unknown. Mr. Medjedovic has failed to appoint legal counsel, or attend further court appearances, and has been noted in contempt by the Ontario courts.

Code is Law

Although a trial of this matter has not yet been conducted, the court has signalled that it has started considering the Defendant's defence that the "Code is Law." This untested theory states that it is acceptable for a user to exploit a weakness "within the parameters of the programming code" to induce another user to enter into an unfavourable transaction trade, as the source code is public information and users are aware, or should be aware, of the risk of placing their cryptocurrency assets in a virtual repository.

The Defendant's position is that the "Code is Law" would be a complete defence to the Plaintiff's claims against him. If this argument was successful, it would permit the Defendant, and presumably future hackers, to act as he did and exploit the code for financial gain without legal consequence.

Key considerations

As blockchain and cryptocurrency technology improves and becomes increasingly mainstream, the *Cicada 137* decision evidences the willingness of Canadian courts to consider cryptocurrency analogous to paper currency, including an application of the same restrictions as one would expect in a commercial litigation involving physical assets. This decision represents the first of, no doubt, many decisions that will continue to develop the common law and its treatment of ownership of digital assets.

BLG's Disputes Group will continue to provide updates on this case and other cases involving cryptocurrency litigation. Reach out to your trusted advisor at BLG or any of the contacts below to discuss how this decision may impact your business operations.

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