

BRIEFING NOTE

Web 3.0 in Dispute Resolution Proceedings**- What to Expect from Service of Court Processes by NFT?****Samuel Sharpe & Sinyee Ong****3 August 2022****Introduction**

Many would have thought that litigation would be shielded from all advances of Web 3.0. Yet, that is not to be the case, as two recent court judgments in New York and England and Wales approved of the service of court processes by non-fungible tokens (“NFT” or “NFTs”).

What did the courts decide? Are there any issues on service by NFTs? We discuss below.

What the Courts Decide?

On 2 June 2022, the Supreme Court of the State of New York¹ granted an order permitting service of court proceedings by NFT airdropped into the wallet of an anonymous defendant. In this case:

- Anonymous defendants stole US\$ 8 million worth of virtual assets from the claimant and sold such assets to other cryptocurrency exchanges. The claimant brought an action, *inter alia*, against these anonymous defendants for unlawful conversion.
- Upon the granting of the order, the claimant’s lawyers created NFT that contains a hyperlink. This hyperlink is linked to a website containing the service documents and is equipped with a mechanism that tracks when a person clicks onto the hyperlink.

On 24 June 2022, the High Court of England and Wales made a similar order.² In this case:

- The claimant was the victim of a scam who had been induced to transfer cryptocurrency to unknown persons. The claimant brought an action, *inter alia*, against the unknown defendants for a claim in constructive trust.
- The English court granted an order for service by alternative means by NFT airdropped into the wallets in respect of which the claimant first transferred the cryptocurrencies.

Both judgments are significant because it is the first time an American court and an English court has permitted the service of process by NFT.

¹ *LCX AG v John Doe Nos. 1-25*, Index No. 154644/2022, Order to Show Cause and Temporary Restraining Order dated 6 June 2022.

² *D’Aloia v Person Unknown & Ors* [2022] EWHC 1723 (Ch).

Issues on Service by NFTs?

With these American and English precedents, one can expect more jurisdictions to permit alternative service by NFT. This is especially so in the current climate when we are seeing a rising number of contentious issues in the cryptocurrency space. What are the issues to look out for with respect to this novel form of service?

- Defendants (even if unknown) can be brought to justice. Anonymity may have been a hallmark of cryptocurrency transactions. With alternative service, fraudsters seeking to hide behind the veil of anonymity can and will still be subject to the justice system.
- Defendants (even if unknown) can be un-anonymised. In circumstances where courts order cryptocurrency exchanges with custody of the wallets to freeze the assets in such wallets, wallet owners may be compelled to reveal themselves and show up at proceedings to unfreeze their assets. That said, in circumstances where the wallet is a non-custodial wallet, even if the claimant succeeds in the action against the defendant, there may be no way to freeze or unlock the assets in the wallet.
- Defendants may never know they have been served. It is not uncommon for wallet holders not to check contents in their wallets because spam contents are quite often airdropped into wallets. Hence, a defendant may never read (or find out about) the service document. This, however, may not be a major issue because the service of process by conventional means (i.e., leaving the process document at a business address) often do not require that the recipient has read the document. Besides, due to the immutability feature, proof of service will always remain on the blockchain.

How We May Assist

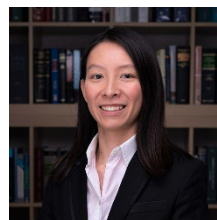
We have been assisting clients in the cryptocurrency and blockchain spaces with contentious issues. We are familiar with Web 3.0 and the concerns of clients in these spaces. To find out how we may be of assistance, then please do not hesitate to contact us.

Samuel Sharpe



samuel.sharpe@sjlaw.com.sg
65 6694 7283 | 65 9786 7409

Sinyee Ong



sinyee.ong@sjlaw.com.sg
65 6694 7281 | 65 9148 5059