**IN THE GENERAL DIVISION OF**
**THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2023] SGHC 18**

Magistrate's Appeal No 9214 of 2021/01

Between

William Lim Tien Hou

… *Appellant*

And

Ling Kok Hua

… *Respondent*

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# JUDGMENT

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[Criminal Procedure and Sentencing — Disposal of property]
[Criminal Procedure and Sentencing — Revision of proceedings]

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# v
# Ling Kok Hua

**[2023] SGHC 18**

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Aedit Abdullah J
27 May 2022

26 January 2023 Judgment reserved.

**Aedit Abdullah J:**

1 This matter began as a disposal inquiry before the District Judge ("DJ") who ordered the return of a sum of $10,001 (the "Moneys") to Mr Ling Kok Hua, the respondent. Dissatisfied, Mr William Lim Tien Hou, the appellant, has lodged an appeal against the decision of the DJ. Among other issues, this matter raises the question of how the court is to adjudicate in a disposal inquiry where there is more than one claimant who was in lawful possession of the property in question. The present case is determined on the basis of the provisions in the Criminal Procedure Code (Cap 68, 2012 Rev Ed), as amended up to 2018. For ease of reference, this will be referred to here as "CPC 2018". The relevant provisions in CPC 2018 are similar in form to the latest legislation, *ie*, the Criminal Procedure Code 2010 (2020 Rev Ed), following the prescribed naming convention.

2 It is clearly established that there is no right of appeal in the context of a disposal inquiry: *Sofjan and another v Public Prosecutor* [1968-1970] SLR(R) 782 at [14]; *Thai Chong Pawnshop Pte Ltd and others v Vankrisappan s/o Gopanaidu and others* [1994] 2 SLR(R) 113 ("*Thai Chong Pawnshop*") at [12]. The only available recourse is to invoke the revisionary jurisdiction of the court. As such, the present matter has come before this court incorrectly as an appeal. Nonetheless, I consider it in the context of whether the court's revisionary powers should be exercised.

3 Having considered the arguments, I find that the Moneys should be returned to the possessor at the point of the seizure, that being the appellant.

**Background**

4 On 10 November 2018, the respondent was duped into believing that he was communicating with an ex-colleague on Facebook messenger when, in fact, he was speaking with an unknown individual who had gained access to his ex-colleague's compromised Facebook account.[1] The respondent agreed to assist the unknown individual with a bank transfer. As part of the fraud, the unknown individual had the respondent install Teamviewer, an application which allowed the former remote access to the latter's screen.[2]

5 The respondent was asked to make an initial transfer of $1 to an account provided by the unknown individual. As it turned out, this was the appellant's bank account. While the respondent was preparing to make the said transfer, the unknown individual asked him to provide a photograph of himself holding his

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1 Record of Appeal ("ROA") at p 138 (Agreed Statement of Facts ("ASOF") at paras 5 and 6).

2 ROA at pp 138 to 139 (ASOF at paras 8 to 12).

identity card and a note stating, "buying bitcoin from cryptotil on localbitcoins.com 10/11/18", as well as proof of his address. The respondent complied.[3] As he did so, the unknown individual, via Teamviewer, altered the sum to be transferred from $1 to $10,000.[4] This was only realised by the respondent after the transfer went through.[5] The unknown individual then tried to have the respondent make a further transfer of $1. Again, the unknown individual attempted to alter the sum of $1, this time to $30,000. The respondent noticed this and corrected the sum back to $1 before effecting the transfer of $1.[6] Following these transfers, the respondent sought the return of $10,001 to no avail.[7]

6 The appellant was involved in bitcoin peer-to-peer trading on a platform known as "localbitcoins.com". On the platform, his username was "cryptotil".[8] On 10 November 2018, he posted an advertisement on the platform advertising the sale of bitcoin.[9] A user on the platform known as "haylieelan", whose real name was displayed as "Ling Kok Hua", responded to his advertisement. The appellant had the account user "haylieelan" provide a picture of his identity card with a handwritten note stating that he was purchasing bitcoin from "cryptotil", *ie*, the note prepared by the respondent at [5] above.[10] On compliance, the transfer was effected: the bitcoin was transferred to "haylieelan" and the

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3 ROA at pp 139 to 140 (ASOF at paras 13 to 15).

4 ROA at p 140 (ASOF at para 15).

5 ROA at p 140 (ASOF at para 16)

6 ROA at p 140 (ASOF at para 17).

7 ROA at p 141 (ASOF at paras 19 to 20).

8 ROA at p 141 (ASOF at para 23).

9 ROA at p 142 (ASOF at para 24).

10 ROA at p 142 (ASOF at paras 25 and 26).

appellant received $10,000.[11] Later in the day, the appellant received an additional $1.[12]

7 Following the events on 10 November 2018, the respondent lodged a police report. Investigations were commenced, and the Moneys, as held in the appellant's bank account, were frozen and seized. Both the appellant and respondent lay claim to the Moneys. The DJ's full grounds of decision are set out at *William Lim Tien Hou v Ling Kok Hua* [2021] SGDC 237 ("GD").[13]

**Decision below**

8 The DJ ordered the return of the Moneys to the respondent. The DJ found that the Moneys represented criminal proceeds which were traceable directly to the respondent's account: [39].

9 The DJ outlined the principles governing a disposal inquiry. A disposal inquiry is not conclusive as to title. It is instead an inexpensive and expeditious manner of distributing items. Thus, a "rough and ready approach" is applied to make an award to the party that has the better right to possession: [24]. Orders made in a disposal inquiry also do not preclude parties from commencing civil suit to assert their rights: [25]. To decide who is entitled to possession of the items, the court must examine the facts of the case. As part of the inquiry, a person is only entitled to possession of seized property if he or she satisfies the precondition of being in lawful possession of the seized property: *Oon Heng Lye v Public Prosecutor* [2017] 5 SLR 1064 ("*Oon Heng Lye*") at [44]. *Oon Heng Lye* concerned an iteration of a provision that has been re-enacted (albeit

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11 ROA at p 142 (ASOF at para 27).

12 ROA at p 142 (ASOF at para 28).

13 ROP at p 119, Grounds of Decision.

with some amendments) as ss 370 to 372 of CPC 2018, which governed the present disposal inquiry: [27].

10 On the facts, the respondent had lawful possession of the Moneys. The Moneys originated from his bank account, and the transfer of the Moneys to the appellant's bank account was procured by fraud: [35]. As for the appellant, it was undisputed that he had a legitimate trading contract with one "haylieelan": [36]. That said, he was involved in the trading of bitcoins, which is largely unregulated and involves risks such as tainted funds being used in transactions. While the appellant conducted due diligence checks, the "cloak of criminality that followed the [Moneys] from [the respondent's] account to the [appellant's account]" was not removed simply because he was involved in a legitimate transaction with the account user "haylieelan": [37]. The Moneys remained tainted by criminality.

11 Separately, the DJ observed that the challenge to the order made should not have been by way of a criminal appeal as commenced by the appellant. It is established that there is no right of appeal against orders made in disposal inquiries: [21]. Instead, the order should be challenged by way of a petition of revision, to have this court exercise its powers under s 401 of the CPC 2018: [22]. The DJ observed that, based on *Magnum Finance Bhd v Public Prosecutor* [1996] 2 SLR(R) 159 ("*Magnum Finance*"), this was a technical irregularity that could be regularised by an exercise of the High Court's powers of revision.

## The parties' cases

### *The appellant's case*

12 The appellant seeks the following remedies in the alternative: for the disposal order to be quashed; for the order to be reversed such that the Moneys

are awarded to the appellant; or for the order to be replaced with a fair distribution of the Moneys where 50% or more is granted to the appellant.[14] Preliminarily, the appellant submits that he is willing to have the matter heard as an appeal or a criminal revision.[15]

13 Apart from the arguments raised before the DJ, the appellant makes four additional points.[16] The first is that the Moneys should be treated as being akin to stolen moneys. If so, the principle of *nemo dat* would be negated. He is an innocent recipient of the Moneys and had lawful possession of and legitimate title to the Moneys. Pertinently, the Moneys were received in exchange for valuable consideration that he provided.[17]

14 The second is based in contract. There was a legitimate transaction between him and "haylieelan", pursuant to which legal ownership of the Moneys was transferred. This distinguishes the present case from the cases cited to the DJ, where the claimants could not demonstrate legal ownership.[18]

15 The third is that the DJ appeared to have regarded him as a constructive trustee. Whether or not he was so is irrelevant as a constructive trust is an equitable remedy. In any event, he was a *bona fide* purchaser who had no knowledge that the Moneys were procured through fraud, and thus equity's darling. Returning the Moneys to the respondent would result in a serious

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14 Appellant's written submissions dated 7 May 2022 ("AWS") at para 40.

15 AWS at paras 5 to 7.

16 AWS at para 15.

17 AWS at paras 17 to 21.

18 AWS at paras 22 to 24.

injustice given that he had done nothing wrong, and additionally, would have implications for online commerce.[19]

16 Finally, the DJ appeared to have relied on a series of cases regarding pawnshop brokers, in particular, *Thai Chong Pawnshop*, on the premise that bitcoin sellers should bear the same risks as pawnshop brokers. The appellant contends that *Thai Chong Pawnshop* should be confined to its unique facts. In the present case, there was a legitimate transaction to which he was party to, and in which he had carried out due diligence when he was not required to.[20]

***The respondent's case***

17 The respondent raises the preliminary objection that the appellant should have sought a criminal revision under s 401 of the CPC 2018 and has thus failed to comply with the relevant procedural requirements. Additionally, the remedies sought by the appellant are not provided for under s 401.[21]

18 In the main, the respondent argues that no material or serious injustice has been occasioned. The respondent disputes the appellant's characterisation of the DJ's decision. In particular, the DJ did not find that the appellant was a constructive trustee;[22] the DJ also did not analogise the facts of *Thai Chong Pawnshop* with the present case but had relied on that decision for a separate proposition.[23] The respondent also disagrees that the appellant's framing of the issue. The fact that the appellant obtained legal ownership by way of a legitimate

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19 AWS at paras 25 to 26.

20 AWS at paras 27 to 36.

21 Respondent's written submissions dated 11 May 2022 ("RWS") at paras 4 to 13.

22 RWS at para 26.

23 RWS at paras 27 to 30.

contract is irrelevant as that goes towards ownership, which is not the focus of a disposal inquiry.[24]

19 The respondent further argues that the DJ was correct to find that the cloak of criminality followed the Moneys, notwithstanding the checks carried out by the appellant. The DJ was right in finding that the appellant appreciated the risks associated with the trade of cryptocurrency. Moreover, the DJ's decision is supported by *Chen Xiuzhu v Public Prosecutor* [2020] SGDC 34 ("*Chen Xiuzhu*"), which is analogous to the present case. The appellant thus has no propriety interest in or claim to the Moneys.[25]

### ***The young*** **amicus curiae's** ***opinion***

20 A young *amicus curiae*, Mr Samuel Koh ("Mr Koh"), was appointed to give his opinion on two questions framed by the court.

21 The first question concerns the application of the principles in *Oon Heng Lye* that: (a) a person claiming seized property must show that the property was "legally acquired by him" to be a "person entitled" to possession of the seized property; and (b) whether or not a person in actual possession of seized property should be regarded as being in lawful possession depends on the circumstances. The second question, broadly, concerns how the court should adjudicate between claims in a disposal inquiry where there is more than one claimant who is or was in lawful possession of the seized property. Various considerations such as whether the general principles of property law should be applied and whether the nature of cryptocurrency should modify the approach were highlighted for Mr Koh's consideration.

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[24] RWS at paras 31 to 35.

[25] RWS at paras 43 to 47.

22 On the first question, Mr Koh begins by proving a summary of the genesis of the requirement in *Oon Heng Lye* that the person claiming the seized property satisfies the precondition of being in lawful possession of the seized property ("Lawful Possession Precondition"). The precondition was first laid down in *Oon Heng Lye* by Sundaresh Menon CJ in his interpretation of the phrase "entitled to the possession of the property" found in s 392(1) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC 1985"). This has since been extended and applied in other decisions of the High Court. Carefully tracing the various iterations of the provisions which have replaced s 392(1) of the CPC 1985, Mr Koh argues that there is direct precedent to apply the Lawful Possession Precondition to the present facts in so far as the court relies generally on s 370(2) of the CPC 2018.[26]

23 In his view, however, an important preliminary issue pertains to whether the Moneys are to be released pursuant to ss 370(2)(*b*) or 370(2)(*e*) of the CPC 2018. The DJ did not expressly refer to the provision relied on. In Mr Koh's opinion, s 370(2)(*b*), which governs disposal where the property is the subject of or connected to criminal offences, is the relevant provision. Section 370(2)(*e*), in comparison, is a residuary provision that only applies in the event that none of the provisions in ss 370(2)(*a*) to 370(2)(*d*) apply, and requires the court to order delivery of the property to the person entitled to possession of the property, or in the event that such a person cannot be ascertained, an order relating to the custody and production of the property. Given that s 370(2)(*b*) applies, it follows that s 370(2)(*e*) is inapplicable. In respect of s 370(2)(*b*), Mr Koh suggests that there is no need for a charge to have been brought in respect of the "offence", or for the "offence" to have been

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[26] Young *Amicus Curiae's* opinion ("YAC") at paras 18 to 28.

committed by any person who is on trial, or for a conviction to have been obtained. On the facts, as summarised in the Agreed Statement of Facts, there is sufficient evidence to suggest that the Moneys were proceeds of crime. Moreover, both claimants in the present case were victims of fraud.[27]

24 The next issue is whether the Lawful Possession Precondition applies to ss 370(2)(*b*) and 370(2)(*e*) of the CPC 2018. With respect to s 370(2)(*e*), the precondition clearly applies given that the provision is *in pari materia* with s 392(1) of the CPC 1985.[28] As for s 370(2)(*b*) of the CPC 2018, Mr Koh argues that the precondition should apply. This is for two reasons. First, s 370(2)(*b*) confers on the court the power to "dispose" of property as it thinks fit. This is broader than the power in s 370(2)(*e*), which provides the court with the power to order the "delivery" of property. Further, in s 370 of the CPC 2018, the references to "delivery" of property are accompanied by the requirement that the recipient be "entitled to possession" of the property in question. Second, the rationale underlying the Lawful Possession Precondition as applied to s 392(1) of the CPC 1985 was the presence of provisions establishing a procedure for circumstances where the person entitled to possession of the seized property is unknown or cannot be found. Those provisions required that the person from whom the property was seized show that the seized property was "legally acquired by him" as a precondition to delivery. These requirements are similarly present in the CPC 2018 and applicable to s 370(2)(*b*) of the CPC 2018.[29]

25 In the application of the Lawful Possession Precondition, the court should bear in mind the objectives of a disposal inquiry. This informs the

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27 YAC at paras 33 to 56.

28 YAC at para 59.

29 YAC at paras 60 to 75.

approach of the court in the disposal inquiry.[30] The applicable standard for the claimant to meet is that of a *prima facie* standard. This was adopted by the Court of Appeal in *Mustafa Ahunbay v Public Prosecutor* [2015] 2 SLR 903 ("*Mustafa Ahunbay*"). In *Mustafa Ahunbay*, the Court of Appeal held that persons claiming an interest in seized property (including persons who were entitled to possession of the seized property) who seek to be heard at the reporting or subsequent reporting of seizure under s 370 of the Criminal Procedure Code (as in force in 2012) must prove their *prima facie* interest (at [67]–[68]). Apart from *Mustafa Ahunbay*, there are good reasons for the extension of the *prima facie* standard to s 370(2) of the CPC 2018, such as the objective of a disposal inquiry being an inexpensive and expeditious way of distributing items seized in the course of investigations.[31] In applying the *prima facie* standard, as a matter of practice, the claimant should adduce sufficient positive evidence to meet this standard. In particular, the claimant should demonstrate its proprietary interest in the seized property. This entails showing that the claimant had ownership and/or possessory rights in the property. Ownership or title, while not necessary, is relevant given that title and possession are related concepts, and often, the right to possession arises from the fact of having title. The claimant should also show that the interest was acquired by lawful means or from a legitimate source.[32]

26 As for the second question concerning how the court is to adjudicate between two or more claimants in lawful possession of the seized property, Mr Koh reiterates that the court's task is to identify the party entitled to possession of a seized property, and not the rightful owner. To this end, there

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30 YAC at paras 79 to 99.

31 YAC at paras 100 to 120.

32 YAC at paras 124 to 131.

should not be a presumption that the seized property should be returned to the person last in possession prior to seizure. To determine who is entitled to possession, regard may be had to issues of title or ownership to the extent permissible by the evidence adduced. This is as the right to possession often follows title in a property. Property law principles can and should also be applied given the proximity of title and possession of property. While doing so, the objectives of the disposal inquiry should be kept in mind. This means that complex issues of fact and law on title and property should not be decided in the disposal inquiry. Instead, the court should exercise its judgment in a "rough and ready" fashion. Mr Koh also opines that in so far as the party last in possession of the seized property immediately prior to seizure was in lawful possession of the seized property, and in the absence of anything to establish any better title, the property should be delivered to the party last in possession prior to seizure.[33]

27 In relation to the specific considerations highlighted for Mr Koh's consideration, he opines firstly, that the nature of cryptocurrency should not lead to any modification of the general principles applicable to the adjudication of competing claims over seized property in a disposal inquiry.[34] Notably, he also highlights that it is possible for the court to order the seized property to be divided between competing claimants given the broad language used in s 370(2)(*b*). However, Mr Koh is doubtful as to whether this would be the appropriate order to make in relation to property that is the subject of a scam, given that one of the contesting claimants would likely remain dissatisfied and

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33 YAC at paras 133 to 134.

34 YAC at paras 142 to 145.

may commence a civil action, which would be a waste of time and costs for the parties to the civil action.[35]

**The issues**

28 The central issue is whether the Moneys should be returned to the appellant or the respondent. There are, however, two prior issues that require clarification: the first pertains to the preliminary issue of the mode of challenge to the DJ's order; and the second pertains to the applicable governing provision.

**Mode of challenge to an order made pursuant to a disposal inquiry**

29 As observed at [2] earlier, there is no right of appeal against an order made in a disposal inquiry. The appropriate course of action for the appellant is to petition for revision. The appellant, in turn, has indicated his willingness for the matter to be heard either as a criminal appeal or as a criminal revision. This is wholly erroneous. A petition for appeal and a petition for revision are not interchangeable. As observed in *Amarjeet Singh v Public Prosecutor* [2021] 4 SLR 841, "revisions fundamentally differ from appeals": [21]. It follows that there is no right of election. That said, although the DJ's order has been incorrectly challenged by the appellant, this court is not foreclosed from considering whether to exercise its revisionary jurisdiction. This was similarly the case in *Magnum Finance* where an appeal was filed against an order made pursuant to a disposal inquiry, and the High Court held that it was not precluded from exercising its powers of revision. It is on this basis that the challenge to the DJ's order is considered.

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[35] YAC at paras 146 to 153.

30 The respondent separately contends that the remedies sought by the appellant are not available under s 401. This was not supported. The revisionary powers of the High Court, as outlined in s 401(2), are contained in ss 383, 389, 390 and 392 of the CPC 2018. In particular, 390(1)(*d*) provides that the court may alter or reverse an order. These powers are cast in sufficiently wide terms to encapsulate what the appellant seeks.

**Governing provision of the application**

31 The next issue concerns the governing provision of the application. The DJ does not clarify the basis of her order. Reference is made generally to ss 370 and 372 of the CPC 2018. The appellant similarly only refers to s 372 of the CPC 2018 in this application Before the DJ, the appellant relied on s 370(2)(*e*) in his written submissions.[36] The respondent, in turn, argued that s 370(2)(*b*) is the relevant provision.[37]

32 The relevant portion of s 370(2) of the CPC 2018, which is headed "Procedure governing seizure of property", provides as follows:

> (2) Subject to subsection (3), and to any provisions on forfeiture, confiscation, destruction or delivery in any other written law under which property may be seized, the relevant court must, upon receiving a report mentioned in subsection (1), make such of the following orders as may be applicable:
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> …
>
> (*b*) in any case where the relevant court is satisfied that an offence was committed in respect of the property, or that the property was used or intended to be used to commit an offence — such order as the relevant court thinks fit for the disposal of the property;

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36 ROA at p 167 (Written submissions of Mr William Lim Tien Hou at para 6).

37 ROA at p 297 (Written submissions of Mr Ling Kok Hua at para 7)

> …
>
> (*e*) in any other case, an order relating to —
>
> (i) the delivery of the property to the person entitled to possession of the property; or
>
> (ii) if that person cannot be ascertained, the custody and production of the property.

33 On the face of the provision, s 370(2)(*b*) is the relevant governing provision. Section 370(2)(*b*) is cast in wide terms. It applies in so far as an offence was committed in respect of the property or in so far as the property was used or intended to be used to commit an offence. Here, an offence was committed in respect of the Moneys. The transfer from the respondent's account to the appellant's account was procured by fraud; it entailed the deception of the respondent and similarly, the appellant was deceived as to the identity of the person with whom he transacted. This is clear based on the Agreed Statement of Facts. Given so, s 370(2)(*e*), which is a residuary provision to accommodate situations that do not fall within the preceding subsections, would not apply.

34 The query then turns to the principles that underlie an order made pursuant to s 370(2)(*b*). The DJ relied on *Oon Heng Lye* for the proposition that an individual is to satisfy the Lawful Possession Precondition. In *Oon Heng Lye*, the Lawful Possession Precondition was founded on s 392(1) of the CPC 1985. The DJ further observed that s 392 of the CPC 1985 has been re-enacted as ss 370 to 372 of the CPC 2018.

35 It is important to be precise however, and take note that in 2018, through the Criminal Justice Reform Act 2018 (No. 19 of 2018) ("Act 19 of 2018"), a new version of s 370(2) was enacted, introducing a number of variations in the orders that can be made. What was in s 392 of the CPC 1985 and s 370(2) of the version of the code pre-Act 19 of 2018 was contained in s 370(2)(e) of the

CPC 2018. On this basis, it is clear that the Lawful Possession Precondition applies to s 370(2)(*e*) of the CPC 2018. But it is unclear whether the Lawful Possession Precondition applies to s 370(2)(*b*) of the CPC 2018.

36 Notwithstanding the difference in the legislative history of the provisions, there is good reason for the Lawful Possession Precondition to apply to s 370(2)(*b*) of the CPC 2018. In *Oon Heng Lye*, the court determined that the Lawful Possession Precondition applied to s 392(1) of the CPC 1985 (*ie*, the equivalent of s 370(2)(*e*) of the CPC 2018) based on ss 392(4) and 393(1) of the CPC 1985: at [45]–[46]. Section 392(4) of the CPC 1985 sets out the procedure for when the person entitled to property is unknown or cannot be found; s 393(1) sets out the procedure where no person establishes a claim in such circumstances and where the person in whose possession the property was found is unable to show that he had legally acquired it. Based on the two provisions, the court in *Oon Heng Lye* determined that in making an order for the delivery of the item to the person entitled to possession under s 392(1), the person in question must show that he had legally acquired it.

37 The reasoning in *Oon Heng Lye* may be extended. The equivalents of ss 392(4) and 393(1) in the CPC 1985 are found in ss 372(1) and 372(3) of the CPC 2018. These provisions in the CPC 2018 are materially similar to those in the CPC 1985, and correspondingly set out the procedure for when the person entitled to property is unknown or cannot be found as well as the procedure for when no person establishes a claim in such circumstances and when the person in whose possession the property was found is unable to show that he had legally acquired it.

38 The only point of distinction is that s 370(2)(*b*) of the CPC 2018 refers to the disposal of a property while s 392(1) of the CPC 1985 refers to the

delivery of the property. The query is thus whether disposal encompasses delivery. On an ordinary understanding of "disposal", it is clear that it refers to the getting rid of something. In the context of legal proceedings, it would encompass, to my mind, removing the property from being subject to those proceedings. It is of sufficiently wide ambit to include delivery. This is further apparent from the use of the term "disposal" in s 364 of the CPC 2018. It is stated that the court is able to make an order as it thinks fit for the disposal of the property in question in as much as it is not subject any provisions on forfeiture, confiscation, destruction or delivery. This suggests that disposal encompasses delivery, and if so, that the Lawful Possession Precondition applies to s 370(2)(*b*).

39 This is also consistent with the finding in *Lee Chen Seong Jeremy and others v Public Prosecutor* [2019] 4 SLR 867 at [115] that the Lawful Possession Precondition applies to s 370 of the CPC 2018. A similar observation was also made in *AB Partners Pte Ltd v Public Prosecutor* [2020] 4 SLR 1082 ("*AB Partners*") at [56]–[57] that the reasoning in *Oon Heng Lye* should extend to s 370(2) of the CPC 2018.

**Whether the Moneys should be returned to the appellant or respondent**

40 The controlling principle in this inquiry is whether the appellant or respondent fulfils the Lawful Possession Precondition. In evaluating whether the Lawful Possession Precondition is satisfied, it is necessary to keep in mind the objective of a disposal inquiry. The propositions in this regard are well-established. A disposal inquiry is not meant to be conclusive as to title: *Thai Chong Pawnshop* at [5]. It follows that parties are able to commence separate civil proceedings to assert their rights: *Thai Chong Pawnshop* at [5]. The object of a disposal inquiry is to identify the party entitled to possession: *Sim Cheng*

*Ho and another v Lee Eng Soon* [1997] 3 SLR(R) 190 ("*Sim Cheng Ho*") at [9]. It is thus intended to be an inexpensive and expeditious manner of distributing items: *Thai Chong Pawnshop* at [5].

41 Having considered the arguments of parties, the Moneys should be returned to the individual that it was seized from, that being the appellant.

42 It is not disputed that the respondent fulfils the Lawful Possession Precondition. The Moneys originated from the respondent's bank account. The transfers were procured by fraud. There is nothing to suggest that the Moneys were initially illegitimately or illicitly obtained by the respondent. The appellant, too, does not contest that the respondent satisfies the Lawful Possession Precondition.

43 In preferring the respondent's claim over that of the appellant, the DJ observed that the appellant appreciated the risks associated with transacting bitcoins, and that the "cloak of criminality" that followed the Moneys was not negated by his legitimate transaction with the user "haylieelan". With respect, this is unpersuasive.

44 To begin with, it is immaterial whether the possession of the asset came through a risky transaction in ascertaining if the Lawful Possession Precondition was satisfied. The CPC 2018 does not distinguish between different levels of risk. And what may seem risky to one person may not be to another: risk appetites will vary. While as a matter of financial and consumer regulation, cryptocurrency activity may be regarded as risky and perhaps forbidden, a dealer or trader in cryptocurrency is not to be treated any differently from any other owner of a valuable asset. Whether or not a cryptocurrency, as opposed to its monetary proceeds, is property is a question left for another day.

45 Lawful possession may be indicated by various factors including transactions that appear valid and untainted by criminality: what matters is that at least on the face of these transactions there is such absence of criminality. As emphasised and explained at [55] below, the court in the disposal inquiry process is not concerned with examining whether full rights have been established at civil law. It therefore does not necessarily delve into whether contracts are valid or property rights properly created or transferred. What suffices is that on the face of things there is no taint of criminality.

46 On the facts here, there was a legitimate contractual transaction between the appellant and "haylieelan", without any indication of any criminal behaviour on the part of the appellant. This establishes lawful possession on the part of the appellant.

47 The contractual transaction also demonstrates that the Moneys were lawfully obtained and/or originated from a legitimate source. This stands in stark contrast to the situation in *AB Partners*, where the petitioner's lawful entitlement to the funds in question was in doubt. No evidence had been produced by the petitioner to show its lawful entitlement. There were also several other factors, such as the petitioner's shares being sold at a significant undervalue, that cast doubt on whether the funds were lawfully obtained. The situation also differs from *Oon Heng Lye* where the funds were the proceeds of the petitioner's unlicensed moneylending activities. Contrastingly, there is no evidence to suggest that the appellant was aware of the source or nature of the Moneys. There is also no evidence to show that the appellant had any role to play in the fraud perpetuated on the respondent. As noted by the DJ, the appellant was also a victim of the fraud. The respondent, too, does not dispute that the appellant was party to a legitimate contractual transaction. Instead, the respondent contends that this fact is irrelevant as it goes towards demonstrating

ownership instead of possession. This is erroneous. As observed in *Sim Cheng Ho* at [8], "[t]itle and possession are related concepts". In so far as the appellant is able to demonstrate ownership interest in the Moneys, this goes towards establishing his possessory interest.

48 While the respondent seeks to analogise the present facts to *Chen Xiuzhu*, which similarly involved two claimants who were victims of fraud, the reasoning in *Chen Xiuzhu* should be confined to its facts. In *Chen Xiuzhu*, the second claimant was duped into transferring moneys to a third party, who then exchanged the said moneys with the first claimant for its equivalent value in a foreign currency. Notably, the transfer of the equivalent of the moneys in a foreign currency was executed by the first claimant's nephew overseas, and not the first claimant herself. The court found that the second claimant was entitled to the funds because the first claimant could not demonstrate a proprietary interest in or claim to the funds. *Chen Xiuzhu* observed at [9] that it was not "even a situation involving a commingling of funds where [the first claimant] might still be able to eke out some interest in the same". Simply, there was no evidence that the funds transferred to the third party originated from the first claimant. Given this, there was no proprietary claim of any kind possible on the part of the first claimant. In contrast, the property that was exchanged for the Moneys, *ie*, the bitcoins, belonged to the appellant.

49 There is thus no reason to find that the appellant did not satisfy the Lawful Possession Precondition. This means both the appellant and respondent satisfy the Lawful Possession Precondition. In this respect, Mr Koh's opinion in respect of the second question posed to him as outlined above at [26] is of assistance. He outlines the principles that the court should rely on in adjudicating between competing claims in a disposal inquiry where there is more than one claimant who is or was in lawful possession of the property.

Succinctly, the principles guiding the court in adjudicating claims in a disposal inquiry remain relevant; the court is to determine the party entitled to possession, and principles of title and ownership may be of assistance in the inquiry.

50 An appropriate starting point is the respondent's contention that there is no presumption that the seized property is to be transferred to the person last in possession immediately prior to seizure. This is on the authority of *Sim Cheng Ho*. While this is broadly correct, the manner in which the proposition emerges in *Sim Cheng Ho* should be examined. In *Sim Cheng Ho*, the petitioner argued for a three-point test to be applied: firstly, the magistrate should ascertain the possessor at the time of the seizure; secondly, he should ascertain if the possession was unlawful; and thirdly, in the absence of unlawful possession, the property should be returned to the possessor at the time of the seizure. The court rejected the petitioner's framework and set out a hypothetical at [8] where "X, who holds title, loans his property to Y for a day, who would then be in possession as a lawful licensee". If the property is then seized from "Y", through no fault or "X" or "Y", "Y" could not dispute that "X" is entitled to possession on the basis of "X's" title. From this, the court concludes that "[t]he mere inability to *decide* questions as to title does not and cannot lead to an inability to *have regard* to the party who holds title. Title and possession are related concepts" [emphasis in original]: [8]. The gist of the court's finding was that title is of relevance in determining who is entitled to possession of property. It was in this particular context that it was observed that it cannot be presumed that the lawful possessor of the property at the point of seizure should receive the property. The reason for this, as highlighted in *Sim Cheng Ho*, is that there may be another individual who clearly has title of property and thus is entitled to possession.

51 The hypothetical raised in *Sim Cheng Ho* is a useful counterfoil to the present situation. Here, both parties were in lawful possession of the Moneys and it is not clear, at this juncture, who has the stronger title or interest in the Moneys, as compared to the hypothetical in *Sim Cheng Ho* where one of the parties holds title and clearly has a stronger claim.

52 In such a circumstance, the Moneys should be returned to the person from whom it was seized. In *Ung Yoke Hooi v Attorney-General* [2009] 3 SLR(R) 307 ("*Ung Yoke Hooi*"), the Court of Appeal set out the functions and duties of the magistrate's court under s 392 of the CPC 1985. To recap, s 392 of the CPC 1985 has been largely re-enacted as ss 370 to 372 of the CPC 2018. The Court of Appeal noted that the magistrate's court's main function is to "determine who is entitled to the possession of the seized property and to return it to him, or, if such person cannot be found, to keep it in safe custody": [29]. In *Ung Yoke Hooi*, the funds in seized accounts were reported by the Investigation Officer ("IO") to be tainted moneys belonging to another entity; the appellant, in turn, maintained that they were proceeds of sale of his shares: [32]. The moneys in the seized accounts thus either belonged to the appellant or the entity specified by the IO. Albeit in *obiter*, the Court of Appeal observed that the appellant had "a better right to possession (and also ownership) simply because the *money was in his possession* before the accounts were seized" [emphasis in original]: [32]. The basis for this was s 112 of the Evidence Act (Cap 97, 1997 Rev Ed) which provides that where the question is whether any person is the owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner: [32].

53 Various academic commentaries, as helpfully noted by Mr Koh, have made similar observations.[38] In Justice C K Prasad & Namit Saxena, *Ratanlal & Dhirajlal: The Code of Criminal Procedure* (LexisNexis, 21st Ed, 2018), in relation to s 457 of the Code of Criminal Procedure 1973 (Act No 2 of 1974) (India) ("Indian CPC"), which is *in pari materia* with s 370 of the CPC 2018, it was observed that "[i]n the absence of anything to show the title to the property, it should be ordered to be delivered to the person in whose possession it had been at the time of the attachment" (at p 2168). A similar comment is made in S R Roy, *B B Mitra on the Code of Criminal Procedure*, 1973 vol 2 (Arup Kumar de Kamal Law House, 18th Ed, 1995) in relation to s 457 of the Indian CPC, that "if there is no evidence as to the ownership of the property, it should be delivered to the person from whose possession it was taken" (at p 1555).

54 A similar sentiment has been expressed in *Criminal Procedure in Singapore and Malaysia* (S Chandra Mohan & Tan Yock Lin gen eds) (LexisNexis, Looseleaf Ed, 2022, 2019 at Ch VI, paras 2204 and 2205, as follows:

> … Not all questions of rightful possession are inevitably complex and in any case in which the question admits of a straightforward answer, the court ought not to return the property to the person from whom it was seized by the police, eg the pawnbroker, but to the person with the right of possession thus clearly established … So where the person claiming to have the right to possession can produce clear evidence that the person from whom the property was seized forged her signature to the documents of transfer, the magistrate should exercise his discretion in her favour. *But where the issue of forgery is complex and the evidence uncertain and little else is forthcoming from the police investigations, the discretion must favour the person from whom the property was seized.*
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> [emphasis added]

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[38] YAC at pp 68 to 69.

55 The foregoing analysis dovetails with the objectives of a disposal inquiry and the role of the court in the process. At its centre, the disposal inquiry is a mechanism to remove and distribute seized properties from the criminal system. This is borne out by a review of s 370 of the CPC 2018. Section 370(1) requires the law enforcement officer to provide a report to the magistrate court when he considers the property to not be relevant to any criminal process or after a year of the date of seizure of property, at whichever point is earlier. On receipt of the report, the court may exercise its power under s 370(2) of the CPC 2018 (as set out at [32] above). This, however, is circumscribed by s 370(3): if there are any pending court proceedings in relation to the property or if the property is relevant to any investigation or process, the property may not be disposed of. Accordingly, the properties that are then dealt with by the court under s 370(2) are properties that are no longer relevant or needed in criminal proceedings or police investigations. As explained by Yong Pung How CJ in *Thai Chong Pawnshop* at [5], "these [disposal] inquiries tend to serve merely as a speedy and convenient means to rid the court of items it no longer has use or need for". It is thus unsurprising that disposal inquiry hearings are conducted in a rather informal manner. It is marked by the absence of pre-inquiry processes such as the disclosure or discovery of documents. This was further explained by the court in *Sim Cheng Ho* at [26] that, "[i]n such inquiries, there are no proper procedures for all pertinent issues to be set out and for evidence to be discovered and contested in an orderly fashion". This hamstrings the court's ability to make determinations on complex issues of fact and law, especially those in relation to civil law such as title. This is also consonant with the "rough and ready" approach to be taken by the court in the process given the lack of procedures available in the civil process to decide between claims: *Sim Cheng Ho* at [9]. It is therefore clear that the CPC 2018 does not envisage the court in the disposal

inquiry process making determinations on contentious civil issues. Questions of ownership and title are best left for the civil court.

56 Returning to the present issue, the Moneys should be returned to the appellant. In reaching this conclusion, it is important to note that both the appellant and the respondent satisfy the Lawful Possession Precondition. This is unlike a situation where only one of many claimants satisfy the Lawful Possession Precondition. Where all claimants have satisfied the Lawful Possession Precondition, and there is no further evidence available as to who has a better claim, s 370(2)(*b*) of the CPC 2018 does not accommodate much further than for the return of the property to the lawful possessor of the property at the point of seizure. As noted, the present ruling has no effect on a civil court; the ruling is not an adjudication on the issues involving civil law. This leaves parties free to commence civil proceedings.

57 Accordingly, this is an appropriate case for the revisionary jurisdiction of the court to be exercised. This would require a demonstration not only that there has been some error but that material and serious injustice had been occasioned: *Oon Heng Lye* at [14]. In *Oon Heng Lye*, it was observed at [43] that grave and serious injustice would be occasioned if the petitioner was the person entitled to possession of the seized funds. Presently, the appellant, *ie*, the petitioner, was entitled to possession of the Moneys. The DJ, with respect, had erred in finding that he did not satisfy the Lawful Possession Precondition. The return of the Moneys to the respondent would thus give rise to serious injustice. It bears reiterating that even though the Moneys were associated with a cryptocurrency transaction, the present application was dealt with in the same way as any other. To my mind, no special risks presented themselves that warranted a different approach. As foreshadowed at [44], whether

cryptocurrency and/or its proceeds are property is not an issue to be dealt with in this judgment.

**Conclusion**

58 For the reasons above, while I understand the respondent's assertion of his rights on the basis of the law as it stands, I set aside the order of the DJ. The Moneys are to be returned to the appellant.

59 I understand that both parties have been put to expense and time in dealing with the aftermath of a fraud that neither was implicated in, and which both were victims of. Today's decision is also unlikely to be the end of the matter. I must, however, apply the law as it stands. However, I would urge the parties to see if they can come to some sort of resolution between themselves that would avoid further time and expense for both.

60 It remains for me to thank Mr Koh for his comprehensive submissions that were of assistance to this court. I am also grateful for the work of the counsel for the parties.

Aedit Abdullah
Judge of the High Court

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