

Insurer seeks return of ransomware payment

Tom Webb



An English insurer has approached the English courts to recover hundreds of thousands of dollars' worth of Bitcoin it paid out to deal with ransomware.

Details of the hack emerged in a December High Court of England and Wales judgment, which was made public last week.

According to the ruling, an insurer paid \$950,000 in Bitcoin to hackers in October 2019 so that a client could recover the use of its IT systems in the wake of a ransomware attack. Mr Justice Bryan anonymised the identities of the English insurer and its client, a Canadian insurer which held a cyberattack insurance policy with the English firm.

The English insurer instructed blockchain investigations consultancy Chainalysis to track the Bitcoin it had paid. The consultancy found that 96 of the 109.25 Bitcoin had been sent to cryptocurrency exchange Bitfinex. The injunction was issued to two Bitfinex companies based in the British Virgin Islands.

The insurer approached the High Court asking for orders forcing the exchange to disclose the identity of the persons who controlled the relevant account, a freezing injunction, and a proprietary injunction that would stop the exchange or the alleged hackers from moving the Bitcoin; the company's counsel ultimately only pursued the interim proprietary injunction in the December hearing.

Mr Justice Bryan agreed to grant the proprietary injunction, after ruling that Bitcoin was a form of property. Proprietary injunctions are only available over property.

Alongside recent English case law that dealt with whether cryptocurrencies can be considered property, Mr Justice Bryan cited from "Crypto Assets and Smart Contracts", a legal statement by the UK Jurisdiction Taskforce that said they can be dealt with as property.

Lawrence Akka QC and Sam Goodman of Twenty Essex, David Quest QC of 3VB and Matthew Lavy of 4 Pump Court drafted the taskforce's statement. Akka told GDR: "We noted in the legal statement that proprietary rights can be particularly important when someone is trying to recover something which has been stolen or unlawfully taken, and this case is a really good example of that."

"We deliberately did not talk about legal remedies, but the judgment shows that the English courts are prepared to deploy fundamental principles to new technologies to help parties recover cryptocurrency payments," Akka said. "And I am particularly pleased that a Commercial Court judge has now endorsed our legal analysis as an accurate statement of English law."

As part of the proprietary injunction, Mr Justice Bryan also ordered Bitfinex to disclose the identity of the controllers of the account containing the Bitcoin. He said Bitfinex should provide the information by 18 December 2019.

A Bitfinex spokesperson told GDR: "Bitfinex has robust systems in place to allow it to assist law enforcement authorities and litigants in cases such as this. In this case we have assisted the claimant to trace the stolen Bitcoin and we understand the focus of the claimant's attention is no longer on the Bitfinex platform. It now appears Bitfinex is an entirely innocent party mixed up in this wrongdoing."

Counsel to the insurer

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Partner Adam Morallee in London is assisted by Matt Green and Hayley Griffin