

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

LCX AG,

Plaintiff,

-against-

JOHN DOE NOS. 1–25,

Defendants,

~1.274M U.S. DOLLAR COIN,

Defendant *in rem*,

-and-

CIRCLE INTERNET FINANCIAL, LLC, and
CENTRE CONSORTIUM, LLC,

Garnishees and Relief Parties.

Index No. 154644-20202

Justice Andrea Masley
IA Part 46

FIRST AMENDED COMPLAINT

Plaintiff LCX AG (“**Plaintiff**”), by and through its undersigned counsel Holland & Knight LLP and Bluestone, P.C., brings this First Amended Complaint against Defendants John Doe Nos. 1–25 (collectively, “**Defendants**”); *In Rem* Defendant Approximately 1.274 Million U.S. Dollar Coin (“**USDC Defendant**”); and Garnishees and Relief Parties Circle Internet Financial, LLC (“**Circle**”) and Centre Consortium, LLC (“**Centre**,” and together with Circle, “**Garnishees and Relief Parties**”) and alleges as follows:

PRELIMINARY STATEMENT

1. This is an action for the unauthorized access to and theft of nearly \$8 million worth of various virtual assets held by Plaintiff, a virtual asset service provider in Liechtenstein. All of the virtual assets were based on the Ethereum blockchain.

2. The theft was perpetrated by Defendants, unknown persons who took numerous measures to obscure the resulting transaction trail left behind on the Ethereum blockchain, including exchanging the stolen assets for other forms of virtual assets and the use of virtual asset services tailor-made to foil virtual asset tracing investigations.

3. Plaintiff's investigation has led it to initiate recovery actions in Liechtenstein, Ireland, and now in the United States—wherever recovery of the stolen assets may be effected.

PARTIES, JURISDICTION AND VENUE

4. Plaintiff LCX AG is a company incorporated in Liechtenstein. Plaintiff maintains a principal place of business at Herrengasse 6, 9490 Vaduz, Principality of Liechtenstein.

5. Defendants John Doe Nos. 1–25 are persons of unknown citizenship who perpetrated the wrongdoing alleged herein. Plaintiff will attempt to identify Defendants through discovery served on third parties with whom Defendants interacted and through additional investigation of the theft and subsequent transfers of the stolen assets by such Defendants.

6. The USDC Defendant is 1,274,249.079848 U.S. Dollar Coin (USDC) allocated to Ethereum blockchain address 0x29875bd49350aC3f2Ca5ceEB1c1701708c795FF3 (the “Address”). USDC is a fiat-backed stablecoin¹ issued by Circle—the custodian of USDC's fiat reserve. USDC holders enjoy certain rights of redemption to the fiat reserve, subject to Circle's USDC Terms of Use—Terms all Persons obtaining and using USDC agree to abide by.² Separately, Centre controls the underlying USDC protocol, including the capability to deny addresses from transacting USDC.

¹ USDC is fully-backed by U.S. Dollar-denominated assets which Circle segregates in accounts separate from its corporate funds. See *USDC Terms*, CIRCLE, Art. 1 (June 10, 2022), <https://www.circle.com/en/legal/usdc-terms>.

² “Circle commits to redeem 1 USDC for 1 USD, subject to these Terms, applicable law, and any fees where applicable.” *USDC Terms*, Art. 3.

7. Garnishee and Relief Party Circle Internet Financial, LLC is a Delaware limited liability company that is registered to do business in New York and maintains a registered agent at C/T Corporation, 28 Liberty Street, New York, New York.

8. Garnishee and Relief Party Centre Consortium, LLC is a Delaware limited liability company.

9. Jurisdiction is proper in New York County for the following reasons:

- a) The Court has *in rem* jurisdiction over the USDC Defendant because the USDC Defendant is an intangible asset subject to the control of Circle, which is present in New York.
- b) The court has *quasi in rem* jurisdiction over the John Doe Defendants because of their interest in the USDC Defendant—which is the subject of Plaintiff’s claims and requests for relief in this action and is subject to the control of Circle, which is present in New York. Exercising such jurisdiction is appropriate, because Defendants’ conduct touched on New York: Defendants stole USDC during the initial theft from Plaintiff, thereby becoming holders of USDC and subject to Circle’s USDC Terms; and the theft implicated rights of redemption to USDC reserve assets in the custody of Circle.
- c) The Court has personal jurisdiction over Circle because it is registered to do business in New York and maintains a registered agent in New York.

10. For the purposes of this action and the limited relief Plaintiffs request of Centre, Centre is not objecting to this Court’s jurisdiction over it.

11. Venue is proper in New York County pursuant to CPLR § 503(a).³

³ In addition, Plaintiff understands that Circle has consented to New York as an appropriate venue for this action at the time. Plaintiff understands that Centre takes no position.

FACTS AND PROCEDURAL BACKGROUND

I. The LCX Exchange Hack

12. Plaintiff created and maintains the internet platform LCX.com, on which Plaintiff operates the virtual currently LCX Exchange (exchange.LCX.com).

13. The LCX Exchange holds its assets in several different digital wallets.

14. Virtual asset wallets are secured by means of an alphanumeric private key. Access to a private key grants control over any assets held at a corresponding virtual asset address, including the ability to send them to other addresses. Generally, such blockchain-based asset transactions are irrevocable.

15. On January 8, 2022, Defendants gained unauthorized access to the primary LCX Exchange wallet address held by Plaintiff, transferring approximately \$7.94 million worth of different virtual assets (the “**Stolen Crypto Assets**”) to an address under Defendants’ control and outside of Plaintiff’s control.

16. The Stolen Crypto Assets consisted of Ethereum (“**ETH**”), USDC, and seven other types of virtual assets.

17. On January 9, 2022, upon learning of the theft, Plaintiff shut down trading on the LCX Exchange, opened an internal investigation, informed its service providers and partners, and notified the National Police of the Principality of Liechtenstein. A true and correct English translation of Plaintiff’s letter to the National Police of Lichtenstein is attached as **Exhibit 1**.

18. Plaintiff also collaborated with an analytics company to further trace the stolen assets and attempt to ascertain the Defendants’ identity.

19. The culmination of this collaboration was a Funds Tracing Report presented by Plaintiff on January 17, 2022 (the “**Tracing Report**”). A true and correct copy of the Tracing Report is attached as **Exhibit 2**.

II. The Aftermath of the LCX Exchange Hack

A. The Defendants’ Attempt to Hide Certain of the Stolen Crypto Assets

20. Subsequent to the theft, Defendants converted into ETH all of the non-ETH Stolen Crypto Assets—using several cryptocurrency exchanges to do so.

21. As detailed in the Tracing Report, Defendants then virtually sent all of the Stolen Crypto Assets to Tornado Cash, a mixing service. *See* Tracing Report 4.

22. Mixing services—mixers—are a way to disguise the blockchain transaction trail left in the wake of blockchain-based cryptocurrency transactions.

23. After depositing ETH into Tornado Cash—which is then mixed with the deposits of numerous other Tornado Cash users—a depositor withdraws the ETH to withdrawal addresses.

24. Plaintiff identified Defendants’ likely withdrawal addresses, including the Address, with the support of its third-party analytics company. *See* Tracing Report 3–4. The Tracing Report and its conclusions were relied upon by law enforcement authorities in Ireland to freeze assets traced through Tornado Cash to an address in the custody of Coinbase Europe.

B. Plaintiff Learns the Defendants Purchased USDC Using the Proceeds of the Stolen Crypto Assets

25. On March 27, 2022 and May 9, 2022, Defendants purchased a total of 4.1 million USDC using the ETH withdrawn from Tornado Cash.

26. In total, via the Address, Defendants purchased 4.1 million USDC in two large transactions on March 27, 2022 and May 9, 2022.

27. Defendants then sold 2.827 million USDC in two large transactions on May 7, 2022 and another on May 31, 2022.

28. As of June 21, 2022, the Address still holds 1.274 million USDC and 600.9837 ETH.

III. Circle and Centre's Roles with Respect to USDC

29. USDC is a fiat-backed stablecoin—a digital token backed by a reserve of U.S. Dollar (USD)-denominated assets. All USDC currently in circulation is issued by Circle.

30. As a stablecoin, Circle states that “[e]ach USDC is intended to maintain a value of 1 USD.” *USDC Terms*, Art. 2.

31. As a fiat-backed stablecoin, Circle represents that “USDC is fully backed by an equivalent amount of U.S. Dollar-denominated assets held by Circle with U.S. regulated financial institutions in segregated accounts apart from Circle’s corporate funds, on behalf of, and for the benefit of, [holders of USDC.]” *Id.* Art. 1. Thus, “[i]n order to issue 1 USDC, a corresponding 1 USD (or an equivalent amount of USD-denominated assets) is held in the USDC Reserves.” *Id.* Art. 2.

32. USDC holders enjoy a right to redeem, from Circle, USDC for USD, although the right may only be exercised by those holders with a Circle account. *See id.*

33. Circle provides that it will “always redeem [] USDC at a rate of one USD (\$1) per one (1) USDC[.]” *See id.* Art. 13.

34. The redemption process has three steps: (1) holders seeking to redeem USDC request a redemption from Circle; (2) the holder sends the USDC to be redeemed to Circle, which then removes the USDC from circulation; and (3) Circle “sends USD from its reserves to the user’s bank account (net of any fees)[.]” *What Does It Mean to Tokenize USD and Redeem USDC*, CIRCLE

(Feb. 2022), <https://support.usdc.circle.com/hc/en-us/articles/4418161704212-What-does-it-mean-to-tokenize-USD-and-redeem-USDC->.

35. The right of redemption represented by USDC is transferred automatically upon the transfer of the USDC to a new holder. *See USDC Terms*, Art. 27 (“Sending USDC to an address will automatically transfer and assign to that Holder, and any subsequent Holder, the right to redeem USDC for USD so long as the Holder is eligible to, and does, register a Circle Account.”).

36. Circle reserves the right to freely assign USDC’s rights of redemption to any third party. *Id.* (“We reserve the right to freely assign these Terms and the rights and obligations of these Terms to any third party at any time without notice or consent.”).

37. Circle’s USDC Terms apply to all holders of USDC issued by Circle and the Terms prohibit USDC holders from engaging in Restricted Activities. *See id.* Art. 27 (“Each Holder is subject to all terms of these Terms as if a User including, but not limited to, the requirements to not transact with Blocked Addresses and not engage in Restricted Activities or Prohibited Transactions.”).

38. Restricted Activities, as defined by Circle’s USDC Terms, include: violating or assisting any other in violating any law, statute, ordinance, or regulation; taking any action that interferes with, intercepts, or expropriates any system, data, or information; and partaking in any transaction involving the proceeds of illegal activity. *See id.* Art. 20.

39. Violations of Circle’s USDC Terms “may result in potential consequences, including the possible loss or forfeiture of USD tokenized for USDC.” *See id.* Art. 2.

40. Separately, Centre is the entity governing the USDC protocol, *i.e.*, the software rules which apply to USDC.

41. Pursuant to the Centre Consortium USDC Network Access Denial Policy (the “**Policy**”), Centre is able to prevent the Address (or any other Ethereum blockchain address) from transacting USDC:

[Centre] has the ability to block individual Ethereum Blockchain addresses from sending and receiving [USDC]. . . . [T]his ability is referred to as ‘access denial.’ When an address is denied access, it can no longer receive USDC and all of the USDC controlled by that address is blocked and cannot be transferred on-chain.⁴

42. As required by the Policy, Centre will blacklist the Address “[t]o comply with a . . . legal order from a [U.S.] court of competent jurisdiction.” *See* Ex. 3 at 2.

IV. Prior Proceedings in this Matter and a Defendant’s Unorthodox Appearance

43. On June 1, 2022, Plaintiff filed its complaint against John Doe Nos. 1–25 in this Court based on substantially all of the same facts set forth in this First Amended Complaint and seeking much, but not all, of the same relief. *See* NYSCEF No. 1.

44. Plaintiff also requested the Court issue a temporary restraining order and preliminary injunction, enjoining Defendants from disposing or transferring their property, including the intangible assets and rights of payment stored at the Address; and directing Centre to enact the Policy against the Address, denying the Address the capability to transact USDC. *See* NYSCEF No. 12.

45. On June 2, 2022, the Court heard argument on Plaintiff’s request for relief, which argument was attended by Plaintiff’s counsel and counsel for Centre.

46. That same day, the Court entered an Order to Show Cause, including language agreed upon between Plaintiff and Centre, which, *inter alia*, directed Centre to “deny access to the Address pursuant to the [Policy]” (the “**Order**”). *See* NYSCEF No. 15 at 2.

⁴ A true and correct copy of the Policy is attached as **Exhibit 3**.

47. Pending argument on the motion for a preliminary injunction, the Order also prohibited Defendants:

from disposing of, . . . selling, transferring, encumbering, removing, paying over, conveying or otherwise interfering with Defendants' property . . . rights of payment, or tangible or intangible assets of any kind, whether such property is located in the United States, including , but not limited to, the USDC held at the Address until further order of the court[.]

Order 2.⁵

48. Plaintiff immediately served the Order on Centre. *See* NYSCEF No. 16 (affirmation of service). At 5:36 PM, Centre invoked the Policy and denied access to the Address as required by the Order.⁶

49. On June 5, 2022, a person controlling the Address attempted to exchange 635 ETH allocated to the Address for USDC. This transaction failed owing to Centre's invocation of the Policy.⁷

50. Pursuant to the Order, Plaintiffs served Defendants by airdropping a non-fungible Service Token to the Address on June 6, 2022.⁸

51. On June 15, at 2:30 PM, a person controlling the Address sent 34.35 ETH to a forwarding smart contract which, in turn, sent the 34.35 ETH to Ethereum blockchain address 0x5f65f7b609678448494De4C87521CdF6cEflE932—a smart contract address associated with the cryptocurrency exchange Gemini. Gemini is a operated by Gemini Trust Company, LLC, a New York trust company.

⁵ Subsequent to filing the Complaint, Plaintiff was contacted by a public prosecutor in Liechtenstein, who represented that he considered the Order to Show Cause enforceable in Lichtenstein and that he was exploring whether to prepare and submit a similar court order concerning the Stolen Crypto Assets and request similar relief.

⁶ Centre's invocation of the Policy is viewable on the Ethereum blockchain at transaction hash 0x8cc0c781c03a1b4d943450fb3b44eaf6742fe37b05291968aff7374f0e060c68.

⁷ The attempted transaction is viewable on the Ethereum blockchain at transaction hash 0x6e39f54c538abd3b6a27d8f7c199897fc409a2e1cdc6cb484a106e3e1ba82977.

⁸ The delivery of the Service Token is viewable on the Ethereum blockchain at transaction hash 0x3b74661ad7a12af849ddb92d701adfdac005771bad5f1c7a9e66ffa87768373.

52. A little over an hour later, at 3:46 PM, Ylena Sharova, Esq. and Steven Garfinkle, Esq. of Sharova, filed notices of appearance on behalf of “Defendant JOHN DOE NOS. 1-25[.]” See NYSCEF Nos. 18, 19. These notices are currently listed as “pending” by the Court.

53. Despite numerous requests to do so, Ms. Sharova and Mr. Garfinkle have thus far failed to identify their client.

FIRST CAUSE OF ACTION: DECLARATORY JUDGMENT
PLAINTIFF IS ENTITLED TO ENFORCE THE RIGHTS OF REDEMPTION
REPRESENTED BY THE USDC DEFENDANT

54. Plaintiff incorporates by reference paragraphs 1 to 53 as if fully set forth herein.

55. Plaintiff asserts it is entitled to the rights of redemption represented by the USDC Defendant because Defendants purchased that USDC using proceeds of the Stolen Crypto Assets.

56. There is an actual and justiciable controversy between Plaintiff, Defendants and Garnishees and Relief Parties concerning the party entitled to enforce the rights of redemption represented by the USDC Defendant.

57. A declaratory judgment will serve the useful purpose of clarifying and settling the legal rights of the parties with respect to the rights of redemption and other rights represented by the USDC. In particular, a declaratory judgment will provide essential clarity to Plaintiff in ascertaining its enforcement options in the event that it obtains a judgment against Defendants.

58. The substantial controversy between the parties having adverse interests is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment, as it is an important and effective remedy available to the parties.

59. By reason of the foregoing, Plaintiff is entitled to a judgment declaring that Plaintiff is entitled to enforce the right of payment represented by the USDC Defendant.

SECOND CAUSE OF ACTION
CONVERSION

60. Plaintiff incorporates by reference paragraphs 1 to 53 as if fully set forth herein.

61. The Stolen Crypto Assets are identifiable intangible articles of property, traceable using the Ethereum blockchain and associated with specific virtual asset addresses.

62. Plaintiff had an immediate possessory right to the Stolen Crypto Assets, which Plaintiff was either the owner of or was the custodian of on behalf of Plaintiff's customers.

63. Defendants intended to and did exercise absolute dominion over the Stolen Crypto Assets when, through their unauthorized access, they transferred the Stolen Crypto Assets to an address over which Plaintiff has no control, exchanged many of those Assets for other virtual assets, and then attempted to hide the illicit transactions by using a mixer.

64. Defendants' dominion over the Stolen Crypto Assets was in derogation of Plaintiff's rights to those Assets, completely depriving Plaintiff of the use of the Stolen Crypto Assets.

65. Defendants' dominion over the Stolen Crypto Assets damaged Plaintiff.

THIRD CAUSE OF ACTION
MONEY HAD AND RECEIVED

66. Plaintiff incorporates by reference paragraphs 1 to 53 as if fully set forth herein.

67. Defendants received the Stolen Crypto Assets from Plaintiff by way of unauthorized access to Plaintiff's virtual asset address at the LCX Exchange.

68. Defendants benefited from receiving the Stolen Crypto Assets by selling many of those Assets and retaining the proceeds from those sales.

69. In principles of equity and good conscience, Defendants should not be allowed to retain the Stolen Crypto Assets or the profits derived from the sale of same because Defendants had no authority to receive and transact the Stolen Crypto Assets.

FOURTH CAUSE OF ACTION
CONSTRUCTIVE TRUST

70. Plaintiff incorporates by reference paragraphs 1 to 53 as if fully set forth herein.

71. Plaintiff has a claim on the USDC Defendant because it is, in part, the proceeds of the Stolen Crypto Assets which were wrongfully and unlawfully taken from Plaintiff when Defendants gained unauthorized access to Plaintiff's virtual asset address at the LCX Exchange.

72. Defendants forfeited their rights to the USDC Defendant by their violation of the USDC Terms—specifically, engaging in Restricted Activities by their unlawful taking of the Stolen Crypto Assets and transacting the proceeds of said illegal activity.

73. In principles of equity and good conscience, the rights of redemption represented by the USDC Defendant should be held in trust by Circle for the benefit of Plaintiff.

WHEREFORE, Plaintiff LCX AG respectfully requests that this Court enter a judgment in its favor, as follows

- a. As to the First Cause of Action, a judgment, pursuant to CPLR § 3001, declaring that Plaintiff is entitled to enforce the rights of redemption represented by the USDC Defendant, directing Circle to assign those rights to Plaintiff, and directing Centre to permanently deny access to the Address, effectively removing the USDC Defendant from circulation;
- b. As to the Second Cause of Action, awarding compensatory damages against Defendants in an amount to be determined at trial plus interest at the statutory rate;
- c. As to the Third Cause of Action, directing Defendants and any entity with custody or control over Defendants' assets to transfer to Plaintiff assets substantially equivalent to the value of the Stolen Crypto Assets, including directing Circle to assign to Plaintiff the rights of redemption represented by the USDC Defendant and

directing Centre to permanently deny access to the Address, effectively removing the USDC Defendant from circulation;

- d. As to the Fourth Cause of Action, directing Circle to hold in trust for the benefit of Plaintiff the rights of redemption represented by the USDC Defendant and to assign to Plaintiff those rights as soon as practicable; and directing Centre to permanently deny access to the Address, effectively removing the USDC Defendant from circulation;
- e. Awarding Plaintiff's attorneys' fees and costs incurred in prosecuting this action; and
- f. Awarding any other relief that the Court finds just and proper.

Dated: New York, New York
June 22, 2022

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CERTIFICATION PURSUANT TO 22 NYCRR § 202.8-b

I, Elliot A. Magruder, an attorney duly admitted to practice law before the courts of the State of New York, hereby certifies that this First Amended Complaint complies with the word count limit set forth in 22 NYCRR § 202.8-b(c) and contains 3,233 words, excluding the parts exempted by § 202.8-b(b).

Dated: New York, New York
June 22, 2022

/s/ Elliot A. Magruder, Esq.