Proskauer

Blockchain Service: In an Apparent First, Lawyers Serve Legal Papers Using an NFT

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Fundamental to the due process of law is notice—a requirement that all parties are made aware that a lawsuit could alter their legal rights or duties. Most defendants will be served in person by a process server. But when the defendant is unreachable this way, some creativity may be required, especially when the defendants are only traceable through their actions on the blockchain, an instrument famous in part for its ability to keep its users private. After a hack of almost $8,000,000 of its funds, Liechtenstein-based cryptocurrency exchange LCX AG allegedly traced some of its stolen digital assets to different digital wallets. LCX AG was able to freeze the funds, but with no name stitched into the digital wallet, it still lacked a name and place to pursue legal action. At least, it lacked a physical place. But if LCX AG knew the location of the wallet, then perhaps it could serve the virtual place.

A New York County court agreed, and issued this order:

> ORDERED that . . ., Plaintiff's attorneys, shall serve a copy of this Order to Show Cause, together with a copy of the papers upon which it is based, on or before June 8, 2022, upon the person or persons controlling the Address [i.e., defendant's digital wallet] via a special-purpose Ethereum-based token (the Service Token) delivered—airdropped—into the Address. The Service Token will contain a hyperlink (the Service Hyperlink) to a website created by [Plaintiff's attorneys], wherein Plaintiff's attorneys shall publish this Order to Show Cause and all papers upon which it is based. The Service Hyperlink will include a mechanism to track when a person clicks on the Service Hyperlink. Such service shall constitute good and sufficient service for the purposes of jurisdiction under NY law on the person or persons controlling the Address . . . .

In other words, LCX AG sent a non-fungible token ("NFT") or "Service Token" to the digital wallet where its alleged stolen funds were found containing a hyperlink to the court's order to show cause and other legal documents. (The actual process on the blockchain is recorded here and the NFT hyperlink directs here.) The hyperlink had a mechanism allowing the issuer to see if it had been clicked on. The court approved this as adequate service for purposes of obtaining jurisdiction over the defendants. This is apparently the first time anyone has ever been served through the blockchain. And it was apparently successful as lawyers for defendants filed notices of appearance in the case.

While unique, such service will likely remain rare, at least for now. Currently, New York Law defaults to physical service of defendants, and only allows deviations when such service is "impracticable." But it will perhaps spark a discussion on whether in-person service, which has been the norm for so long, should be supplemented or even replaced by electronic means of service, whether through sophisticated means like the blockchain, or more simple means like email.

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