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Path-Breaking Crypto Victories for Ripple and for BProtocol Foundation and Founders

Quinn Emanuel handles some of the largest and most significant civil disputes and government investigations in blockchain and cryptocurrency. Two recent nine-figure victories for Ripple and for BProtocol Foundation and its founders highlight our capabilities, as well as emerging law governing crypto tokens and companies that handle them.

Tetragon v. Ripple

On Friday, March 5, 2021, Quinn Emanuel secured victory in a $175 million dispute for client Ripple Labs Inc. ("Ripple") in Delaware Chancery Court against Ripple shareholder Tetragon Financial Group Limited ("Tetragon").[1]

Tetragon filed the case on January 4, 2021, less than two weeks after the SEC filed a lawsuit against Ripple in the Southern District of New York claiming that Ripple's sales of the digital asset XRP constituted unregistered sales of securities. Tetragon claimed that the SEC's lawsuit and an earlier Wells notice that SEC Staff sent to Ripple constituted "Securities Defaults" under Tetragon's Agreement with Ripple. The Securities Default provision is triggered if the SEC or another governmental authority or agency of similar stature and standing "determine[s] on an official basis" that the cryptocurrency XRP is a security on a current and going forward basis. If triggered, the provision gives Tetragon the right to demand redemption of its Ripple shares for a payment that today would have equaled approximately $175 million.

Ripple has consistently taken the position that there has been no Securities Default. As Ripple explained to Tetragon before the lawsuit was filed, the enforcement action is not a Securities Default because it merely shows that the SEC has put the question of whether XRP is a security to a Court to decide. And the Wells notice is not a default for many reasons, including that it is simply SEC Staff action without Commissioner involvement.

After Tetragon filed the lawsuit, the Court quickly granted Tetragon a narrow TRO and, at Tetragon's request, set an expedited discovery schedule. The parties exchanged documents and took several fact and expert depositions in a compressed timeframe, culminating in a preliminary injunction motion hearing in mid-February. On March 5, the Court issued its opinion denying Tetragon's injunction motion relief and dissolving the TRO.

The Court concluded that the plain language of the Securities Default provision reads as Ripple has asserted, and that the SEC has not determined XRP's status on an official basis. The Court favorably cited expert testimony Ripple presented from two former SEC Commissioners, and observed that:

> XRP is no more a security after the SEC filed the enforcement action than it was before it. A determination under [the Securities Default provision] resolves the question of whether XRP is a security. The enforcement action, by contrast, asks that question. The question is not yet resolved, so a

[1] Ripple is a global, privately-held payments technology company that uses blockchain innovation (including the digital asset XRP) to allow money to be sent around the world instantly, reliably, and more cheaply than traditional avenues of money transmission

determination has not yet been made. And when it is made, it will be made by the District Court.

In delivering its opinion, the Court noted that Tetragon's own expert—who made various admissions when examined under oath by Quinn Emanuel—ultimately offered support for Ripple's positions. And as to Tetragon's theory that the Wells notice was a Securities Default (a theory Tetragon's expert admitted he did not endorse), the Court noted "in its zeal to reach a desired litigation outcome, [Tetragon] finds itself in the awkward position of advancing a position at odds with its own expert . . . ."

Holsworth v. BProtocol

On April 3, 2020, the law firms Selendy & Gay and Roche Cyrulnik Freedman filed eleven class action securities lawsuits in the United States District Court for the Southern District of New York against seven crypto token developers and four crypto exchanges, as well as associated individuals.[2] All suits allege the same theory: that defendants owe damages or rescission to purchasers who bought crypto tokens, often long after initial offerings and on foreign exchanges, because those tokens were unregistered securities. Quinn Emanuel quickly took up the defense of three of these cases: for BProtocol, Civic, and Quantstamp. In the first of the eleven cases to be decided, on February 22, 2021, Judge Alvin Hellerstein gave BProtocol and its founders a total victory.[3] The 193-page complaint asserted 102 federal and state causes of action, seeking at least one hundred million, and potentially far more, in damages. The Court granted BProtocol's motion to dismiss, without leave to replead, and did so on virtually all of the grounds Quinn Emanuel argued.

Specifically, the Court ruled that BProtocol won on the grounds of failure to state a claim, personal jurisdiction, standing, *Morrison*, statute of limitations, and even *forum non conveniens*. On failure to state a claim, it has been an open question whether crypto traders who buy tokens from secondary sellers, rather than from issuers themselves, can access Securities Act Section 12(a)(1)'s registration protections merely by pointing out that token issuers made statements, for instance on social media, promoting or explaining a token. The Court ruled that such allegations are not enough. Rather, to plead solicitation under 12(a)(1), plaintiffs must allege that they actually decided to purchase as a result of a statement made by the issuer.[4] Similarly, on personal jurisdiction, the Court found that alleged promotional activities in New York were insufficient because the plaintiff nowhere alleged that he purchased tokens because of these activities, and any jurisdictional discovery would be a mere "fishing expedition."

As to Article III standing, the Court found the complaint insufficient "without real-world, up to date allegations" of damages or that rescission would provide an "appropriate remedy." This

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[2] *See, e.g.,* Reenat Sinay, "Investors Accuse Crypto Firms of Illicit Token Sales," *Law360*, April 6, 2020, https://www.law360.com/articles/1260569/investors-accuse-crypto-firms-of-illicit-token-sales. The cases are against Binance, Tron, BitMEX, KuCoin, Bibox, Block.One, Bprotocol Foundation, Civic, KayDex, Quantstamp, and Status. They have not been coordinated and are pending in front of Judges Carter, Broderick, Daniels, Cote, Kaplan, Hellerstein, Torres, Abrams, Preska, and Buchwald.

[3] *Holsworth v. BProtocol Found.*, No. 20 CIV. 2810 (AKH), 2021 WL 706549 (S.D.N.Y. Feb. 22, 2021).

[4] The *BProtocol* decision contrasts with *Zakinov v. Ripple Labs, Inc.*, 2020 WL 922815, at *12 (N.D. Cal. Feb. 26, 2020), which Plaintiffs cited heavily in their opposition. Although there differences in facts alleged in the two cases, overall this leaves SDNY with a narrower interpretation of 12(a)(1) solicitation than ND Cal has espoused.

important decision will make it more difficult for secondary traders to argue that token issuers should somehow be held responsible for unwinding, through rescission, innumerable later transactions. The Court also reached the logical, but nonetheless novel, conclusion that *Morrison*[5] bars the adjudication of disputes relating to crypto transactions that took place on foreign exchanges, even if the purchaser was located in the U.S. when he accessed the foreign exchange online. The Court further reiterated that the statute of limitations for non-registration claims is only one year and cannot be tolled by conclusory concealment allegations. Finally, the Court even dismissed on *forum non conveniens* grounds, ruling that "Wherever the current business location of Bancor, New York is not a reasonable and convenient place to conduct this litigation."

Freed of the weight of this meritless suit, BProtocol and its founders can turn their attention back to what they do best: providing backstop liquidity for decentralized lending platforms, and helping to stabilize the rapidly growing DeFi ecosystem.[6]

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If you would like more information regarding our blockchain and cryptocurrency practice or if you have any questions about the issues addressed in this Client Alert, please do not hesitate to contact us:

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[5] *Morrison v. Nat'l Australia Bank Ltd.*, 561 U.S. 247, 266-67 (2010).

[6] *See* https://www.bprotocol.org/.