NORTON ROSE FULBRIGHT

Blockchain Law

'In rem' and 'quasi' in rem jurisdiction in digital assets disputes

By Robert A. Schwinger, *New York Law Journal* — November 18,2025

The "Blockchain Law" column first began seven years ago this month with a discussion of "Personal Jurisdiction in the Age of Blockchain", R. Schwinger, N.Y.L.J., Nov. 20, 2018, an exploration of how participating in various activities on blockchain systems can create *in personam* jurisdiction over those participants.

But when ordinary *in personam* jurisdiction is not available in a dispute about digital assets, is there room for other kinds of personal jurisdiction, such as *in rem* and *quasi in rem* jurisdiction?

The Delaware Court of Chancery recently had occasion to grapple with the application of these jurisdictional concepts in the blockchain context in *Timoria LLC v. Anis, et al., and 1064.994 ETH, In rem Defendant*, 2025 WL 2827657 (Del. Ch. Oct. 6, 2025), an opinion by Vice Chancellor Laster. *Timoria LLC* concerned a dispute over allegedly misappropriated Ether tokens in a multi-national setting. Jurisdictional issues quickly came to the fore when expedited injunctive relief was sought at the start of this action.

Digital asset machinations at the casino

Timoria LLC concerned events at an online casino based and incorporated in Curaçao, which operated under the name "Duelbits." In May 2022, Duelbits hired two customer support agents, one based in Saudi Arabia and the other in Algeria. They each provided Duelbits with blockchain addresses so that they could receive their compensation in cryptocurrency.

One of the customer support agents' duties was that, if a customer complained about a missing payment, the customer support agent was charged with determining whether the payment had not been executed properly. If it was not, the agent had authority to resend the payment to the proper address.

In 2023-24, the Saudi customer support agent authorized three transfers of Ether tokens to a cryptocurrency address of unknown ownership. In the summer of 2025, the Algerian customer support agent authorized 19 transfers of Ether tokens to that same address. The total value of the Ether tokens in these 22 transfers amounted to approximately $3.7 million.

Duelbits discovered these transfers, and the next day assigned its claims in respect of the transfers to its wholly-owned subsidiary, the plaintiff Timoria LLC, a Delaware company with whom neither of the customer support agents had ever had any dealings. One week later, Timoria brought suit against the two customer support agents and various "John Doe" parties in the Delaware Court of Chancery, asserting claims for embezzlement, conversion, money had and received, and unjust enrichment.

ROBERT A. SCHWINGER is a partner in the commercial litigation group at Norton Rose Fulbright US

More than 50 locations, including London, Houston, New York, Toronto, Mexico City, Hong Kong, Sydney and Johannesburg.

Attorney advertising

Reprinted with permission from the November 17, 2025 edition of the *New York Law Journal* © 2020 ALM Media Properties, LLC. All rights reserved. Further duplication without permission is prohibited. www.almreprints.com – 877-257-3382 – reprints@alm.com.

Relief sought

Timoria sought a variety of injunctive relief, including ordering the defendants to refrain from any further transfer or other disposition of the Ether or its proceeds, ordering them to disgorge the Ether or its proceeds, freezing the assets of the two customer support agents, and preventing any holders or custodians of the Ether or its proceeds from permitting a further transfer or disposition, and to impose a constructive trust over the Ether. Timoria further moved to expedite and for a temporary restraining order.

When one of the customer support agents moved to dismiss the complaint for lack of personal jurisdiction (the other having failed to appear altogether), Timoria voluntarily dismissed the complaint against him without prejudice. However, Timoria's proposed form of temporary restraining order still sought to:

> "(1) assert in rem jurisdiction over the transferred Ether; (2) prohibit any person from selling, transferring, dissipating, or converting the Ether or any proceeds without leave of the court; (3) find that [there was] good cause to believe that the Ether or proceeds were held by [the customer support agents] or several cryptocurrency exchanges; and (4) require each possible custodian to cooperate with Timoria by sharing the identity and contact information of any purported owner of the Ether or proceeds."

At oral argument, "Timoria's counsel asserted that the court could exercise in rem jurisdiction over the Ether and grant the relief sought," notwithstanding the lack of *in personam* jurisdiction.

Interplay of jurisdictional bases and relief sought

The customer support agent who appeared challenged the court's ability to exercise *in rem* jurisdiction over the Ether, and further argued that, even if *in rem* jurisdiction existed, the court could not use that jurisdiction to impose obligations on individual defendants like himself. The court held that this situation in fact involved an interplay of both *in rem* and *quasi in rem* jurisdiction.

It stated that "an order freezing the Ether that would affect the rights of 'all persons[]'... is classic in rem relief." But to the extent Timoria also sought to impose obligations on individual defendants and cryptocurrency trading platforms by requiring them to cooperate with Timoria based on such *in rem* jurisdiction, "Timoria crosses the boundary of in rem jurisdiction and enters the world of quasi in rem jurisdiction."

Both of these jurisdictional categories "involve jurisdiction based on the court's power over property within its territory." (Quotation omitted.) While "[a] judgment in rem affects the interests of all persons in designated property" (quotation omitted), *quasi in rem* jurisdiction "comes in two types":

> "So-called type one cases involve a plaintiff 'seeking to secure a pre-existing claim in the subject property and to extinguish or establish the nonexistence of similar interests of particular persons.' So-called type two cases involve the plaintiff seeking to apply 'the property of the defendant to the satisfaction of a claim against him.'" (Citing *Hanson v. Denckla*, 357 U.S. 235, 246 n.12 (1958).)

While both types of *quasi in rem* jurisdiction involve "using property as the jurisdictional hook" for a claim, the first type pertains to "a claim related to the property," whereas the second pertains to "a claim unrelated to the property." The court thus dubbed these two types "property-related" and "property-unrelated" *quasi in rem* jurisdiction.

The court explained the importance of these categories by referring back to the U.S. Supreme Court's foundational modern decision on *quasi in rem* jurisdiction, *Shaffer v. Heitner*, 433 U.S. 186 (1977). Even since that decision, said the court, "the assertion of quasi in rem jurisdiction has been constitutionally fraught," particularly in so-called type two, "property-unrelated" situations. "Since *Shaffer*, all assertions of jurisdiction must comply with constitutional standards of due process."

Ensuring this requires a "two-step inquiry" of (1) determining whether the property at issue is within the court's jurisdiction, and then (2) determining whether sufficient contacts are present to satisfy due process standards.

Where are digital assets located?

For the first step of the analysis, determining where a digital asset like Ether is located is not always easy, because as an electronic asset it is "intangible property." As such, said the court, "[i]t has no physical location, and it may have connections to multiple locations. Therefore, modern situs rules acknowledge that intangibles may be located in multiple situses" (cleaned up).

The court held that under "standard jurisdictional principles... intangible personal property is found at the domicile of its owner." (Quotations omitted.) Accordingly, multiple courts have applied the so-called "Owner Domicile Theory" to reach the conclusion that "[c]ryptocurrency has its non-exclusive situs for jurisdictional purposes in its owner's domicile," even if it may also be deemed to have other situses as well.

The court acknowledged that there are certain competing theories on the issue of determining the situs of a digital asset but it declined to follow them. For example:

> "A competing view effectively treats cryptocurrency as tangible property based on "the location of the key that unlocks the digital asset" (the 'Key Theory'). If the key exists offline in a physical location, then the Key Theory treats the cryptocurrency as located there."

The problem with the Key Theory, though, said the court, is that if the key is housed in an online wallet, which itself is an intangible digital location, "[f]ocusing on the key therefore does not advance the analysis, and any proposed solution to the problem of localising a crypto asset based on the private key merely defers consideration of the issue." (Quotation omitted.)

Another possible theory that the court declined to follow is the "Node Theory," which posits that "a blockchain cryptocurrency like Ether is located for jurisdictional purposes wherever a node of the blockchain network exists that holds a copy of the distributed ledger."

The court suggested that this theory rested upon a questionable analogy between digital assets and internet domain names, and opined that this theory was not especially helpful because it would result in many such assets being deemed to have thousands of locations.

The court also noted the "Network Access Theory," under which "[s]ome legal scholars argue that the situs of an electronic asset exists wherever it can be accessed electronically." The theory is based on certain language from *Rush v. Savchuk*, 444 U.S. 320, 330 (1980) (dealing with automobile insurance contract obligations), but the court noted that "American courts have generally not applied *Rush* to electronic assets."

Ultimately, though, since here the Owner Domicile Theory provided an answer for this case, the court held that "[w]hether the Network Access Theory is viable under Delaware law must await an appropriate case."

How and when is situs determined?

Even under the Owner Domicile Theory, questions still may arise about determining what the relevant location is. In *Timoria LLC*, one of the customer support agent defendants disputed that the Ether at issue in the case should be deemed located in Delaware.

The defendant's first argument was that there was circularity in focusing on the plaintiff's domicile. He argued that doing so in itself assumes the plaintiff has a valid claim to the assets in question, so as to qualify as their owner, whereas "if the challenged transfers were valid, then ownership changed, and the cryptocurrency moved to the domicile of the new owner," such that "the domicile of the original owner could not support jurisdiction."

The court, however, held that this argument was foreclosed by the court's having to "accept the well-pled allegations of the complaint as true" at the pleading stage.

The defendant further argued that the owner's domicile should be assessed as of the time when the relevant events took place, not when the suit was filed. In this case, that would be before Curaçao-based Duelbits had transferred its claims to its Delaware subsidiary Timoria. This defendant "dispute[d] that Duelbits could change the jurisdictional domicile from Curaçao to Delaware for purposes of this lawsuit," and "effectively argue[d] for limiting the Owner Domicile Theory to the owner's domicile at the time of the wrong."

While the court acknowledged that this argument "has considerable force," it ultimately concluded that it raised

issues of "foreseeability" for the due process analysis, in which the court looks at whether a party "should reasonably anticipate being haled into court" in that location for the particular dispute. Thus:

> "A party who sues in the domicile of the owner at the time of the wrong will have a strong argument for constitutionally sufficient minimum contacts. If a subsequent owner invokes the Owner Domicile Theory to sue elsewhere, minimum contacts may not exist."

But nonetheless, the court agreed that because Timoria was the current owner of the Ether, under the Owner Domicile Theory "the Ether is located in Delaware for jurisdictional purposes." The foreseeability issues instead must await consideration under the second step of jurisdictional analysis, the due process review of the parties' contacts with the forum.

Due process implications of property-based claims

The court next considered what jurisdictional implications flow under *Shaffer v. Heitner* from a lawsuit over digital assets being filed in the putative owner's domicile, in terms of the relief sought *in rem* against the asset, or *quasi in rem* against those who own, hold or transferred that asset.

While *Shaffer* "presented a type two quasi in rem action involving property-unrelated jurisdiction," that decision nevertheless stated that the due process principles of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), "applied to 'all assertions of state-court jurisdiction.'" Thus, that framework "also governs the exercise of in rem jurisdiction and quasi in rem jurisdiction in its property-related manifestation," as in *Timoria LLC*.

Shaffer, the court acknowledged, "left open the possibility that the presence of property in a state could provide the minimum contacts sufficient to satisfy due process for some types of claims." The catch, though, is that "when the minimum contact that is a substitute for physical presence consists of property ownership it must, like other minimum contacts, be related to the litigation." (Quotations omitted.)

The court then explored various degrees of connection between an asset and a forum state, and their jurisdictional implications. It began by noting that "[r]eal property is the clearest example of an asset whose presence in Delaware can provide sufficient contacts to support in rem and quasi in rem jurisdiction (at least of the property-related variety)," pointing to the "widely accepted" principle that "a state has jurisdiction to determine title to real property within its borders."

The court likewise noted "[i]ntangible property that Delaware uses its sovereign authority to create can also support in rem jurisdiction." The paramount example of this is a corporation created under state law.

> "A Delaware corporation is an artificial legal entity that comes into existence and gains the power to act in the world through Delaware's exercise of sovereign authority. The corporation is inextricably tied to Delaware, providing all of the minimum contacts necessary to adjudicate some types of claims."

But which types of claims? A dispute over the holding of corporate office, for example, "is in the nature of an *in rem* proceeding, where the 'defendants' are before the court, not individually, but rather, as respondents being invited to litigate their claims to the *res* (here, the disputed corporate office)." Thus, "the existence of the corporate office is a function of and so inextricably intertwined with Delaware's sovereign authority that it provides the necessary minimum contacts for disputes over title to the office."

But the *in rem* posture of the proceeding limits what the court permissibly can do in that context. For example:

> "[T]he court cannot go further and actually rescind a transaction procured through [the parties'] unlawful behavior or award money damages to those harmed by that behavior. That type of ultimate relief can only be obtained in a plenary action in a court that has *in personam* jurisdiction over any necessary or indispensable parties."

The court next considered the due process limits on an action based on the ownership of shares located in Delaware. Reviewing cases decided in *Shaffer*'s aftermath, the court concluded that jurisdiction permissibly could be exercised in "disputes closely tied to the stock and inextricably intertwined with Delaware law." Thus:

> "a court asking whether the situs of shares alone would be sufficient must evaluate the claim at issue to assess whether the case involves property-related jurisdiction or property-unrelated jurisdiction. If the case involves property-related jurisdiction, it becomes more likely that the situs of the shares would be sufficient."

Due process principles applied to digital assets disputes

Noting that "[t]his case involves both in rem and quasi in rem jurisdiction," the court considered each form of jurisdictional power in turn, but found each to be wanting.

First, describing "[t]he in rem component" as "the seizure of the Ether solely to determine title," the court pointed out that:

> "Ether . . . is not a type of property so inextricably tied to Delaware that claimants would reasonably foresee that they would have to appear here to assert their claims. Ether is intangible property, but unlike a corporation, title to a corporate office, or corporate stock, Delaware did not use its sovereign authority to create Ether. No statute puts the world on notice that Ether has its situs in Delaware, and the LLC has not pointed to any other document or agreement that might serve that function."

As a result, even under *in rem* principles, "[t]he fact that the Ether currently is located in Delaware does not create contacts sufficient to satisfy due process on its own."

Turning next to the potential exercise of *quasi in rem* jurisdiction in this dispute, the court explained:

> "The quasi in rem component of this case seeks to leverage the seizure of the Ether to impose obligations on individuals like the Algeria and Saudia Arabia residents. Since the Ether's current location in Delaware does not create contacts sufficient to satisfy due process for adjudicating title, it cannot provide sufficient contacts to impose personal obligations."

The court rejected comparisons of this situation to cases involving corporate offices or corporate stock for Delaware-created corporations.

> "The Ether happens to be in Delaware because Timoria's domicile is here. In that setting, the intangible asset's constructive presence in Delaware is not enough on its own to provide the necessary minimum contacts."

The court cited *Rush v. Savchuk*, 444 U.S. at 329-30, to conclude that "such a 'contact' can have no jurisdictional significance," and that "[d]ue process demands more."

Thus, without further Delaware contacts by the defendants or the cryptocurrency exchanges that Timoria sought to restrict by the TRO it sought (which Timoria could not show), the court held that "Timoria has failed to satisfy the constitutional prong of the personal jurisdiction inquiry."

> "In this case, the presence of the Ether in Delaware is not enough, standing alone, to support the relief Timoria seeks, and Timoria has identified no other contacts with the state."

Accordingly, the court held that "[p]ersonal jurisdiction does not exist" and dismissed the case without prejudice.

Is there any room left to exercise in rem and quasi in rem jurisdiction as to digital assets?

Given the decision in *Timoria LLC*, is the prospect of successfully invoking *in rem* and *quasi in rem* jurisdiction in cases involving digital assets now dead? Not necessarily.

The court in *Timoria LLC* cautioned that it was possible there might be different results under variant facts where "there were ties to Delaware that would make suit here foreseeable and consistent with traditional standards of fair play and substantial justice." For example:

> "The answer would be different if Timoria had owned the Ether at the time of the taking. A person who wrongfully takes intangible property present in a jurisdiction has created a jurisdictionally significant contact."

This is because in such a situation, "the wrongdoers would have metaphysically reached into Delaware to take the Ether. In that setting, the wrongdoers would have created a contact with Delaware sufficiently strong to support suit

here." But when the asset moved to Delaware only after the events in question, the defendants "could not have reasonably anticipated being sued in Delaware."

The court in *Timoria LLC* also noted that the outcome might have been different if it had been "shown that no other jurisdiction could provide relief." It explained that "[c]ourts have deployed more aggressive bases for jurisdiction when the claim is particularly serious and no other jurisdiction could entertain the suit."

Conclusion

The mobility of people and assets within a federal system like the United States, and across a complex international economy and financial system, has for more than a century posed due process complexities for parties seeking relief in cross-border disputes.

These complexities are amplified when such disputes concern fleeting intangible digital assets whose locations are at most "metaphysical," and which can travel the globe in seconds while the persons involved never change their physical locations.

Timoria LLC shows that notwithstanding the complexities of such novel settings, courts that are asked to be aggressive in exercising jurisdictional power will attempt to ground their decisions in the due process fundamentals of looking at what reasonable expectations defendants and others might have had of being subjected to the forum court's power, based on their contacts with the forum and dealings with the plaintiff party.

At least for the present, it appears, decades-old cases from the pre-digital era still hold sway in defining the limits of jurisdictional power in digital assets disputes.

© Norton Rose Fulbright US LLP. Extracts may be copied provided their source is acknowledged.
US 68352 – 11/25