

CRYPTO JUDGMENT DAY: ISSUING JUDGMENTS IN CRYPTOCURRENCY IN NEW YORK

By Michael Mix and Jason Gottlieb¹

The recent increase in the popularity of cryptocurrency has brought an inevitable uptick in crypto-related litigation. At the end of any such litigation, a successful plaintiff may win damages, in a judgment entered by the clerk of court. Typically, that judgment of damages is entered in U.S. dollars. But a party transacting in cryptocurrency may have reasons to not want a judgment in fiat currency. Can a New York court enter a judgment in cryptocurrency without converting it to U.S. dollars? The answer is far from clear.

Although there are a dearth of New York cases concerning judgments denominated in cryptocurrency, there is a more robust body of law – including a New York statute – concerning whether or not a judgment may be entered by a New York court in non-U.S. fiat currency. New York Jud. L. § 27(a) provides that “judgments and accounts must be computed in dollars and cents.” And § 27(b) states that “[i]n any case in which the cause of action is based upon an obligation denominated in a currency other than currency of the United States, a court shall render or enter a judgment or decree in the foreign currency of the underlying obligation. Such judgment or decree shall be converted into currency of the United States at the rate of exchange prevailing on the date of entry of the judgment or decree.”

New York courts – federal and state – apply that law and typically convert a foreign currency judgment into U.S. dollars at the exchange rate on the date of entry of judgment. *See, e.g., CRG Fin. AG v. Prime Sun Power, Inc.*, 14-cv-2395-GHW, 2014 U.S. Dist. LEXIS 94700, at *6 (S.D.N.Y. July 8, 2014); *Qing Yang Seafood Imp. (Shanghai) Co. v. JZ Swimming Pigs, Inc.*,

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21-CV-3587 (RPK) (TAM), 2022 U.S. Dist. LEXIS 71123 (E.D.N.Y. Apr. 15, 2022).² When a plaintiff is suing based on a contractual obligation that is not denominated in foreign currency (i.e., a nonmonetary obligation) but the damages are to be determined in a foreign currency, courts have not applied § 27 and instead utilized the “breach day rule,” “whereby the appropriate measure of damages is the equivalent of such foreign currency in terms of dollars, at the rate of exchange prevailing at the date of breach” rather than the date of judgment. *Nature’s Plus Nordic A/S v. Natural Organics, Inc.*, 78 F. Supp. 3d 556, 558 (E.D.N.Y. 2015) (“...to the extent the evidence shows that [plaintiff] suffered any losses in Norwegian Krone, under the ‘breach day rule,’ any damages must be calculated by looking to the exchange rate in effect on the date of the breach”) (citation and quotation marks omitted).

Despite § 27, there are a handful of New York federal cases that enter judgment in foreign currency without conversion to U.S. dollars. In *Mitsui & Co. v. Oceantrawl Corp.*, 906 F. Supp. 202 (S.D.N.Y. 1995), for example, the court concluded that despite § 27, American courts “are not precluded” from entering judgment in the foreign currency of an underlying obligation. The court held that because the parties conducted their transactions in yen, the judgment should be entered in yen without conversion. In *Liberty Media Corp. v. Vivendi Universal, S.A.*, 03 Civ. 2175 (SAS), 2013 U.S. Dist. LEXIS 3521 (S.D.N.Y. Jan. 9, 2013), the court declined to follow § 27(b) because the basis for subject matter jurisdiction was not diversity, and as such entered judgment in euros “without conversion to U.S. dollars,” reasoning that “[t]his option best respects the will of the jury which calculated the amount of damages in euros.” And in *Zim Integrated Shipping Servs. v. PPG Indus.*, 09 Civ. 10099 (DC), 2010 U.S. Dist. LEXIS 88103 at *11-12 n.3 (S.D.N.Y. July 29, 2010),

² “In a case based on diversity of citizenship . . . federal courts apply the state-law rule for conversion of a foreign-currency obligation into currency of the United States.” *Dye v. Kopiec*, 2019 U.S. Dist. LEXIS 80603, at *15 (S.D.N.Y. May 9, 2019)

the court stated in dicta that it was an “ambiguous question” as to whether it could enter judgment in Brazilian reais rather than in U.S. currency, though the court declined to answer that question.

There is no definitive New York case determining whether or not a judgment may be denominated in cryptocurrency without conversion, or whether § 27 even applies to cryptocurrency. To date, we have only been able to locate one case even tangentially addressing it. In *Jing v. Sun*, 21-2350 (GRB)(AYS), 2022 U.S. Dist. LEXIS 1902 (E.D.N.Y. Jan. 4, 2022), the court granted a default judgment under the Commodities Exchange Act against a defendant that allegedly took plaintiff’s money, but failed to invest in Bitcoin as promised. The court found that while New York courts “typically” utilize the “judgment day rule” to “claims based upon an obligation denominated in a foreign currency,” specifically referencing § 27(b), the court ultimately decided that “doing so here would not make sense.” The court explained that the plaintiffs’ “request for the judgment day U.S. Dollar value of the promised Bitcoin is inconsistent with their claim that each was making a risk-free investment. . . . It makes more sense to award each Plaintiff the amount that each transferred to [defendant]. This protects both Plaintiffs and the defaulting Defendant against the ‘highly volatile’ fluctuating value of Bitcoin.” *Id.* at *63. The court thus awarded the plaintiffs damages in the form of the U.S. dollar amount of their investment. For two plaintiffs that had transferred Bitcoin to the defendant as part of their investment, the court awarded “U.S. dollar damages [that] reflect either the cost quoted by [defendant] for one Bitcoin, or the cost quoted to the Plaintiff who made the transfer.” However, the court did not award a judgment denominated in Bitcoin.

It is difficult to predict the precedential value of *Jing*. The court’s reference to § 27 suggests that New York state and federal courts could apply the statute to cryptocurrency and convert a cryptocurrency judgment to U.S. dollars at the prevailing rates at the time of judgment (even

though that is not what actually happened in *Jing*). But some plaintiffs may prefer a judgment denominated in cryptocurrency without conversion into U.S. dollars, due to the volatile nature of cryptocurrency. For example, if the underlying contractual obligation is in Bitcoin, and the plaintiff believes that the price of Bitcoin is going to rise after judgment, the plaintiff might prefer a judgment in Bitcoin without conversion, rather than receiving a judgment in U.S. dollars, which would not account for the Bitcoin increase by the time the plaintiff is able to collect on the judgment. The *Mitsui* and *Liberty Media* decisions illustrate that it is logistically feasible for the clerk to enter a judgment in non-U.S. fiat currency.

In order to circumvent the uncertainty as to whether § 27 applies to cryptocurrency, a plaintiff seeking a judgment of cryptocurrency could seek specific performance of the cryptocurrency sought. However, under New York law, a plaintiff seeking specific performance must meet other requirements, most notably including that the plaintiff must have no remedy at law. Specific performance is appropriate where the “subject matter of the particular contract is unique and has no established market value.” *Sokoloff v. Harriman Estates Dev. Corp.*, 96 N.Y.2d 409, 415 (2001) (citation and quotation marks omitted). Accordingly, if a court believes that the plaintiff seeking an award of cryptocurrency can be made whole through money damages, it may deny the request for specific performance.

Moreover, issuing a judgment in cryptocurrency is complicated by the fact that the nature of cryptocurrency itself is a complex question. Cryptocurrency sometimes acts as – or is classified as – currency utilized to facilitate the purchase or sale of goods or services. But government regulators sometimes classify certain cryptocurrency as a commodity or a security (complicated questions that are outside the scope of this article). Courts thus will have to wrestle with the question of whether or not they have the power to issue a judgment in a cryptocurrency that could

be classified as a commodity or a security, or whether a given cryptocurrency must only be utilized as currency to satisfy § 27(b).

Accordingly, further clarity is thus needed regarding whether a New York judgment may be denominated in cryptocurrency without conversion to U.S. dollars, and whether § 27 applies to judgments in cryptocurrency as it does to judgments in foreign fiat currency. Until then, litigants who transact in cryptocurrency will have no certainty as to how their eventual judgment will be denominated.