

Corporate Litigation

Fintech Alert: Will Delaware or California Adjudicate a \$1 Billion Commercial Contract Dispute Related to a Cryptocurrency?

Action Item: As Jamie Dimon, the CEO at J.P. Morgan Chase, continues to criticize Bitcoin as a fraud, and the Securities and Exchange Commission warns of the potential dangers of investing in initial coin offerings, the number of initial coin offerings has skyrocketed and companies are increasingly investing in blockchain, the technology that enables the existence of cryptocurrency (among other things). Now, a court in either Delaware or California will adjudicate a dispute between blockchain startups R3 Holdco LLC and Ripple Labs Inc. over an options contract to purchase XRP, Ripple's digital currency.

On September 8, 2017, R3 Holdco LLC ("R3"), a consortium of financial institutions that uses blockchain to make banking transactions more efficient, brought an action against Ripple Labs, Inc. ("Ripple"), which uses cryptocurrency and blockchain technology to make international wire transfers and other forms of cross-border exchanges faster and cheaper, in Delaware Chancery Court for the alleged improper repudiation of an option contract to purchase units of the XRP. R3 alleges that in September of 2016, R3 and Ripple entered into an option contract (the "Option Contract") giving R3 the right to purchase or transfer five billion XRP for an exercise price of

\$0.0085 per unit. The exercise period of the Option Contract did not end until September of 2019. However, R3 alleges that, despite two years remaining in the exercise period, Ripple in June of this year e-mailed R3 and "purported to unilaterally terminate the Option Contract prior to any attempt by R3 to exercise its right to purchase XRP or transfer that right to another party." R3 requests that the court, among other things, declare R3 is entitled to its rights under the Option Contract, order Ripple to sell five billion units of XRP at the exercise price to R3, and/or award R3 compensatory damages. After soaring more than 3,000 percent this year, XRP now trades at \$0.20 per share, making the options worth more than \$1 billion.

That same day, Ripple shot back by commencing an action in the Superior Court of California, County of San Francisco, against R3 for breach of contract. Ripple alleges that R3 misled Ripple into entering an agreement where R3 promised to promote Ripple's financial technology and XRP. Ripple allegedly entered into this agreement based on R3's representations that it could leverage its consortium of banks to promote XRP. However, after the agreement was signed in 2016, Ripple alleges R3 failed to take any steps to perform its obligations

under the agreement. Furthermore, Ripple alleges that many key banks left R3's consortium within months of R3 and Ripple signing the agreement, greatly reducing R3's ability to promote XRP. Ripple asks the California court to invalidate the agreement between Ripple and R3, and for R3 to pay damages from the breach of agreement.

Conclusion: Who won the race to the courthouse is yet to be seen. But, relevant to that race may be that Delaware, on August 1, 2017, became the first state in the nation to allow corporations to record issuances, transfers, and ownership of stock using blockchain technology. And, in addition to that, Delaware is a highly contractarian state, acknowledging and even promoting parties' rights to self-structure, through agreement, their obligations, and benefits. What is known, for sure, is that the cryptocurrency market is lucrative and the fight over rights relating to those cryptocurrencies is real and now mainstream.

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