Neutral Citation Number: **[2023] EWHC 3082 (Ch)**

Case No: **IL-2022-000069**

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INTELLECTUAL PROPERTY LIST (CH D)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: **17 October 2023**

Before :

MR JUSTICE MELLOR

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Between :

(1) DR CRAIG STEVEN WRIGHT **(2) WRIGHT INTERNATIONAL INVESTMENTS LIMITED** **(3) WRIGHT INTERNATIONAL INVESTMENTS UK LIMITED**	**Claimants**

- and -

(1) BTC CORE [redacted] **(16) BLOCK, INC.** **(17) SPIRAL BTC, INC.** **(18) SQUAREUP EUROPE LTD** **(19) BLOCKSTREAM CORPORATION INC.** **(20) CHAINCODE LABS, INC** **(21) COINBASE GLOBA INC.**	**Defendants**

(22) CB PAYMENTS, LTD
(23) COINBASE EUROPE LIMITED
(24) COINBASE INC.
(25) CRYPTO OPEN PATENT ALLIANCE
(26) SQUAREUP INTERNATIONAL LIMITED

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Terence Bergin KC (instructed by **Harcus Parker Limited**) for the **Claimant**
Alexander Gunning KC and **Beth Collett** (instructed by **Macfarlanes LLP**) for **Defendants 2-12, 14 & 15.**

Hearing date: **17th October 2023**
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APPROVED JUDGMENT

Mr Justice Mellor **Tuesday, 17 October 2023**

INTRODUCTION

1. This is another interim hearing in what may loosely be termed the Bitcoin cases which involve Dr Craig Wright or one of his related companies. There are five such cases which I will briefly identify, starting with the four of principal relevance to these applications:

    i) IL-2021-000019, the COPA claim;

    ii) IL-2022-000035, the Coinbase claim;

    iii) IL-2022-000036, the Kraken claim; and

    iv) IL-2022-000069, the BTC Core claim.

2. I held a joint CMC in those four claims on 15 June 2023 and, by my order of that date:

    i) First, I directed a preliminary issue trial of 'the Identity Issue', namely whether Dr Craig Wright is or was the person who adopted the pseudonym Satoshi Nakamoto, ie the person who created Bitcoin in 2009.

    ii) Second, I directed that the Identity Issue would be determined at the trial of the COPA claim set for January next year.

    iii) Third, I stayed the Coinbase and Kraken claims on their undertakings to be bound by the outcome of the COPA trial.

    iv) Fourth, I stayed the BTC Core claim against the 16th, 18th and 21st-26th defendants on undertakings again in effect to be bound by the outcome of the COPA trial.

    v) Fifth, I modified the directions down to the trial of the COPA claim.

    vi) Sixth, in relation to the remaining defendants in the BTC Core claim, ie Ds 2-15, D17, D19 and D20, I gave directions as to their participation in the preliminary issue trial.

3. As far as I am aware, those defendants who appear to be taking an active role in the COPA trial from the BTC Core claim are Defendants 2-12, 14 and 15 who I will refer to as 'the Developers'.

4. The fifth action is BL-2021-000313, which I will call the TTL claim, brought by Tulip Trading Limited (a company with which Dr Wright is involved) against a number of developers, by which TTL seeks to recover certain digital assets. Defendants 2-12 in this BTC Core action are also Defendants 2-12 in the TTL claim. Although the TTL claim is brought against a total of 15 developers, and there are other developers to the BTC Core claim, it is right to note that nearly all of the developers in the BTC Core claim are defendants to the TTL claim.

The applications to be determined today.

5. There are three applications before the court, each brought in the BTC Core claim by the Developers. The respondents to all three applications are the claimants in the BTC Core claim, namely Dr Wright and two of his companies. It is convenient to refer to the respondents simply as Dr Wright.

6. Two of the three applications were originally filed to be determined on paper, but I found it more convenient to direct this hearing for the resolution of all three:

   i) The first and most significant application is by the Developers for security for costs.

   ii) The second concerns the application by the Developers for an extension of time for service of their evidence of fact from the date originally directed in the CMC order, namely 22 September to 13 October 2023. On 13 October, the Developers filed and served a single witness statement of Dr Pieter Wuille, who is the fourth defendant in both the BTC Core claim and the TTL claim. In the course of argument, reference was made to certain content in Dr Wuille's witness statement, as a result of which I read the statement with greater care between the conclusion of argument and the giving of this judgment.

   iii) The third application was the 'collateral use' application, pursuant to which the Developers sought permission to use four documents disclosed in the COPA claim in the TTL claim. Fortunately, Dr Wright has agreed to that application, and so I give permission for those four documents to be used by the Developers in the TTL claim.

SECURITY FOR COSTS.

7. Following my earlier judgment granting security for costs in the Coinbase and Kraken claims (see [2023] EWHC 1893 (Ch)), Dr Wright agreed to give security for the Developers' costs in principle. In those circumstances, the issues which remained for decision were identified by Mr Bergin KC, for Dr Wright, as follows:

   i) first, the quantum of security for incurred costs;

   ii) second, whether security should be given for future and anticipated costs; and

   iii) third, if so in what sum.

Applicable principles.

8. Although the parties referred to different cases, there was no real dispute as to the approach I should take to determine these three issues. Dr Wright referred me to two useful passages in the authorities on the topic of the appropriate quantum of security. First, paragraphs 88(i) to (iii) from the Judgment of Henshaw J. in *Pisante v Logothetis* [2020] EWHC 3322 (Comm) [2020] Costs LR 1815:

> '88. The relevant principles governing the quantification of an order for security for costs are summarised in note 25.12.7 in the White Book as including the following points:

> i) The appropriate quantum is a matter for the court's discretion, the overall question being what is just in all the circumstances of the case. In approaching the exercise, the court will not attempt to conduct an exercise similar to a detailed assessment, but will instead approach the evidence as to the amount of costs which will be incurred on a robust basis and applying a broad brush (see also *Excalibur Ventures v Texas Keystone* [2012] EWHC 975 (QB) §15).
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> ii) In some cases, the court may apply an overall percentage discount to a schedule of costs having regard to (a) the uncertainties of litigation, including the possibility of early settlement and (b) the fact that the costs estimate prepared for the application may well include some detailed items which the claimant could later successfully challenge on a detailed assessment between litigants. There is no hard and fast rule as to the percentage discount to apply. Each case has to be decided upon its own circumstances and it is not always appropriate to make any discount.
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> iii) In deciding the amount of security to award, the court may take into account the "balance of prejudice" as it is sometimes called: a comparison between the harm the applicant would suffer if too little security is given and the harm the claimant would suffer if the amount secured is too high. The balance usually favours the applicant: an under-secured applicant will be unable to recover the balance of the costs which is unsecured whereas, if the applicant is not subsequently awarded costs, or if too much security is given, the claimant may suffer only the cost of having to put up security, or the excess amount of security, as the case may be (see also *Excalibur* § 18).'

9. Second, paragraph 30 from the Judgment of HHJ Pelling QC in *OCM Singapore Njord Holdings Hardrada Pte Ltd v Gulf Petrochem FZC* [2021] EWHC 2447 (Comm):

> '30 It is common ground that in arriving at a figure for security, the court is bound to attempt to arrive at a figure which it is thought likely would be awarded by way of costs following a detailed standard assessment exercise. That, in turn, requires me to have regard to the degree to which costs are reasonable and proportionate in all the circumstances.'

10. Both sides also referred me to my own discussion of the principles in my Security Judgment [2023] EWHC 1893 (Ch) at [52]-[55]. In that judgment, I ordered some security for the costs incurred by the Coinbase and Kraken defendants, down to the point where those claims were stayed pending the outcome of the COPA trial.

11. I have kept all these passages in mind, and I applied them in what follows.

The facts here

12. By way of background to the current application, I was reminded of various amounts given or ordered by way of security in these Bitcoin cases.

    i) First, in the COPA claim, Dr Wright has been awarded security in the total sum of £2.9 million.

ii) Secondly, against incurred costs, I awarded the Coinbase defendants £250,000 by way of security, which roughly equates to about 50% of their actual incurred costs.

iii) Third, for the Kraken defendants, I awarded £150,000, again very roughly, 50% of their actual incurred costs.

iv) Fourth, in the TTL action, interim security has been ordered or agreed down to the CMC in the sum of £211,500.

13. The total security which the Developers seek on this application is just over £1.5 million, the sum calculated as 75% of their actual incurred and anticipated future costs down to the end of the COPA trial. The application was supported by the second witness statement of Mr Charlton, a partner of Macfarlanes, their solicitors, who gives details of how the total figure is made up. No evidence in response was served on behalf of Dr Wright, the points against security being developed in argument by Mr Bergin KC.

14. The Developers' actual and anticipated future costs are just over £2 million, of which the costs incurred already amount to £418,000-odd and future costs of £1.625 million-odd. These figures can be adjusted and dissected in various ways, and were, in the course of argument.

15. In terms of incurred costs, some £66,000-odd were incurred by the Developers' previous solicitors, Bird & Bird, before the Developers' current solicitors, Macfarlanes LLP, took over. In the face of an accusation of duplication of costs due to the handover, Mr Charlton gives an assurance that the costs incurred in Macfarlanes getting up to speed have not been included.

16. The total sum of incurred costs is compared with those incurred by Ds 19&20, being £128,000 and £82,000 respectively. Mr Gunning KC for the Developers makes the point that those figures are not proper comparables because his clients are taking a much greater role in these proceedings. I am inclined to accept that submission.

17. I should also mention the offer made by Dr Wright as to incurred costs. He has offered £62,000 to cover incurred costs down to 18 August 2023. This, as the Developers point out, is a very low percentage of their actual incurred costs, around 17%.

18. It remains the case, however, that the sums sought by way of security by the Developers are large, and I must carefully examine the extent to which the sums sought are justified in all the circumstances.

19. The most important points taken by Dr Wright on the costs incurred by the Developers are three in number:

i) First, hourly rates;

ii) Second, alleged duplication; and

iii) Third, certain more detailed points on the various workstreams identified in the schedule of costs annexed to Mr Charlton's witness statement.

iv) These three points apply equally to the future anticipated costs.

20. In terms of the hourly rates, I am reminded that the guideline rate for a grade A solicitor is £512, and that is to be compared with the rates charged by the two Macfarlanes partners involved who are charging at £895 and £1025 respectively, £1025 being almost exactly double the guideline rate.

21. As far as the grade C associate is concerned, he is being charged at £475 an hour, against the guideline rate of £270 an hour. Grade D trainees are being charged at £330, as against a guideline rate of £186, even though I am reminded no uplift is permitted for grade D.

22. Sensitive perhaps to the guideline rates, counsel for the Developers argued a percentage reduction could be applied i.e. take account of the normal percentage reduction of 70% or 75%, plus a further reduction to reflect the difference between the actual hourly rates and the guideline rates. The application of that sort of reduction would bring the actual incurred costs of £418,000 down to about £270,000.

23. As far as alleged duplication is concerned, this is a big point taken in Dr Wright's skeleton, and on his behalf, counsel argues there is obvious duplication in relation to disclosure, witness statements and expert evidence. It is convenient to take these points in tandem with Dr Wright's more general points on proportionality. Whilst there is an element of duplication, I do not see how else the Developers are supposed to defend their interests. I made it clear when ordering the preliminary issue that the Developers may have something to add or contribute on the identity issue, and they must, in my judgment, have the opportunity to work out what they may be able to add or contribute.

24. Necessarily, that entails them understanding what COPA has done, the evidence served by both COPA and Dr Wright, and then working out whether, and if so, what the Developers are able to contribute.

25. Having said that, once the evidence has been served for trial, I anticipate that the role of the Developers ought to diminish. Certainly, their representatives will need to monitor what happens in the immediate lead-up and during the trial, and they may need to take the opportunity to participate at certain points during the trial. But as presently advised, I am not persuaded that the Developers need to incur the substantial costs of leading counsel, amounting to a substantial brief fee and six refreshers, and it is those fees that make up the bulk of the costs sought to cover the PTR and trial.

26. As far as the future anticipated costs are concerned, Mr Bergin makes a number of points, for example, the sum of £94,000 attributed to a possible application for specific disclosure. Mr Bergin makes the obvious point that if an application is made prior to or at the PTR, the Developers can seek their costs in the application in the normal way.

27. Perhaps his biggest point is the fact that awarding a very substantial sum by way of security for the trial now is premature, and I am inclined to agree. We will have a much better idea at or shortly before the PTR of the extent to which it is really necessary for the Developers to participate in the trial.

28. As I said, I anticipate that the Developers should be able to have a certain presence at the trial, whether that is simply by reviewing the daily transcript or to maintain what is sometimes called a watching brief, although their role in this litigation is somewhat more involved than is normally attributed to a watching brief.

29. In these circumstances, I am at the present moment not inclined to make an order for security, which includes the substantial costs attributed to the presence of leading counsel by way of a substantial brief fee and six refreshers at the trial. Having said that, in all the circumstances, I propose to award the following sums by way of security for the following phases of this litigation:

    i) In terms of the costs incurred by the Developers to date, I award security in the sum of £250,000, which must be paid or lodged within 21 days.

    ii) In terms of future costs, in other words, the remaining steps down to and including the PTR, I will award the sum of £300,000, to be lodged by 14 November 2023.

    iii) For the trial itself, although as I have said I am not persuaded at the moment of the necessity for leading counsel to be briefed and to attend even parts of the trial, I do think it is appropriate for junior counsel to maintain a watching brief throughout the trial, and for those costs, I propose to order the sum of £100,000 by way of security, to be lodged by 13 December, which is the first possible date for the PTR.

30. I wish to make it clear that I am not excluding the Developers from participating in the trial through the presence of leading counsel, but either shortly before or at the PTR, I will certainly be prepared to hear further submissions from the Developers as to the need, if they are so advised, as to the level and likely cost of their representation at the trial.

31. Even if I am persuaded that some representation by way of leading counsel is required at the trial, I will need significant evidence to persuade me that leading counsel will need to block out the entire trial period and be paid accordingly. I anticipate that insofar as the Developers need to make any representations at trial, the trial can be organised so as to accommodate any representations on behalf of the Developers at suitable points, and that is a matter of timing to be discussed further at the PTR.

EXTENSION OF TIME FOR THE DEVELOPERS' FACT EVIDENCE

32. The background to this is that in my CMC order, I ordered the Developers to serve their fact evidence by 22 September 2023. I recognised when giving judgment that the Developers would have a lot of work to do to catch up with the COPA claim and, in fact, their primary reason for wanting the extension of time is because they have been hard-pressed to catch up.

33. A number of detailed points are made in the evidence in the application notice, which I need not set out. In the event, as I indicated, they have now served the witness statement of Dr Pieter Wuille. I have reviewed that witness statement, particularly in light of the principal objection taken to an extension of time on behalf of Dr Wright, and that principal objection is on the grounds of relevance.

34. It is apparent from Dr Wuille's witness statement that he has been involved as a so-called maintainer of the Bitcoin software since around I think March or April 2011, which is around the time it is generally accepted that Satoshi Nakamoto stepped back from direct involvement. In his witness statement, Dr Wuille describes various developments, both additions to and removals from the Bitcoin software, that he was personally involved in over the years when he was a maintainer.

35. It is not immediately obvious from his witness statement the relevance of each of those developments, although counsel for the Developers told me that they relate to certain claims made by Dr Wright, whether in these proceedings or in documents, that he developed these various matters.

36. In terms of the objection that all of Dr Wuille's evidence is irrelevant, this is not the occasion on which it is possible to rule that all of his evidence is irrelevant and, indeed, I would be inclined to accept that responsible solicitors and counsel for the Developers have produced a witness statement containing evidence that they consider to be relevant to the issue to be determined at the COPA trial.

37. The other point taken on behalf of Dr Wright is principally delay. It is said that the Developers have had the disclosure in the COPA claim for three months or so. I confess I find the objection to the relatively short extension of time sought to be rather bizarre. I am quite satisfied that the Developers have had a very substantial task to catch up with the progress in the COPA claim. It comes as no surprise to me that the Developers did require further time in which to serve their witness statement.

38. In all the circumstances, I propose to grant the extension of time. I see no prejudice to Dr Wright, but there would be considerable prejudice to the Developers if their chosen evidence is not allowed to be adduced for the trial.

39. For those reasons, I propose to allow the extension of time down to 13 October 2023.

COSTS

40. I now have to deal with the costs of these applications.

41. So far as the incidence of the costs of the security for costs application are concerned, Mr Bergin submits the result amounted to a score draw. He points to the very significant reduction in the trial costs between what was sought and what I awarded. He realistically acknowledges that I have in effect deferred that issue but he nonetheless maintains the result was a score draw. I disagree.

42. The developers have achieved significant security, far more than was ever on offer from Dr Wright. Furthermore, I take some account of the without prejudice save as to costs offer to accept security in the sum of £518,000, and in the result, I awarded some £650,000, albeit £100,000 of that was for trial.

43. So, on the incidence of costs, I have no doubt that the Developers are the successful party and I will award them their costs of the applications in any event.

44. I am asked to summarily assess the various costs. Counsel for Dr Wright takes issue as to the hourly rates charged in comparison with the guideline hourly rates issue. Mr Gunning for the Developers meets that point by reducing all of his figures down to the guideline rates. Those yield figures for the three applications as follows:

    i) security for costs, £44,282;

    ii) collateral use, £21,609;

iii) extension of time £16,585;

making, by my arithmetic, a total sum of £82,476.

45. I summarily assess those costs in the sum of £75,000, to be paid within the normal period of 14 days.