

IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES  
BUSINESS LIST (ChD)

B E T W E E N:

(1) TULIP TRADING LIMITED (a Seychelles company)

Claimant

- and -

(1) BITCOIN ASSOCIATION FOR BSV (a Swiss verein)

[REDACTED]

Defendants

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FIFTH WITNESS STATEMENT OF TIMOTHY WILLIAM ELLISS DATED 31 OCTOBER 2023

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I, **TIMOTHY WILLIAM ELLISS**, a solicitor of the Senior Courts of England and Wales, of Enyo Law LLP, Fifth Floor, 1 Tudor Street, London, EC4Y 0AH, **WILL SAY** as follows:

1. I am a partner of Enyo Law LLP and I am instructed in these proceedings by the Second to Twelfth

Defendants (the “**Enyo Defendants**”).

2. I have conduct of the proceedings and am duly authorised to make this witness statement on behalf of the Enyo Defendants.
3. By way of preliminary formalities:
  - 3.1. Except where I indicate to the contrary, the facts and matters contained in this witness statement are within my own knowledge. Where the facts and matters are not within my own knowledge, I have indicated my sources of information and belief.
  - 3.2. Nothing in this witness statement is intended to, or does, waive any privilege belonging to the Enyo Defendants.
  - 3.3. There is now produced and shown to me a bundle of copy documents marked TWE-5, that contains paginated copies of documents to which I shall refer to in this witness statement. Where I refer to documents in this witness statement, I refer to these as Exhibit TWE-5/page number(s).

**A. INTRODUCTION**

4. Pursuant to paragraph 1 of the Order of Mellor J dated 13 October 2023, TTL was required to pay into the Senior Courts Costs Office the sums of (i) £296,154.95 in respect of the Enyo Defendants’ costs incurred and estimated costs of proceedings; and (ii) £192,471.75 in response of D15 and D16’s costs incurred and estimated costs of proceedings by 16:30 on 18 October 2023 (“**SFC Order**”).
5. TTL has failed to make the payments required by the SFC Order, leaving the Enyo Defendants and D15 to D16 unsecured. D15 and D16 made an application on 30 October 2023 for an order which states unless TTL makes the payment in the SFC Order within three business days the claim shall be struck out and TTL shall pay their costs of the claim on the indemnity basis. I make this witness statement in support of the Enyo Defendants’ application for an identical order in regards to the Enyo Defendants’ costs which are due under paragraph 1(1) of the SFC Order.
6. In the interests of efficiency, I adopt the evidence as set out in the Third Witness Statement of Samuel Roberts dated 31 October 2023 (“**Roberts 3**”). I do not propose to repeat this here, save by way of brief summary and for where it differs for D2 to D12. Similarly, I also will not repeat what I said about the importance of security for costs and TTL’s impecuniosity in my first statement dated 11 July 2023 (in particular at paragraphs 99 to 109). The Enyo Defendants continue to rely on that evidence in support of this application for a further order as to security for costs.

## Background

7. The Enyo Defendants issued an application for security for costs on 11 July 2023, on the basis that TTL was impecunious. After significant back and forth in correspondence between the parties, it was eventually agreed by TTL that it would provide security for the Enyo Defendants' costs by way of payment into court, however quantum was still disputed. Eventually, on 5 October 2023, TTL offered to make a payment into court for 70% of the Enyo Defendants' estimated costs up to and including the CMC, and the SFC Order was made on 13 October.
8. On 17 October 2023 Shoosmiths (who recently replaced Travers Smith as solicitors for TTL) sent a letter which stated that their "*client has confirmed to us that they have made the required payment*".<sup>1</sup> On 23 October 2023, Shoosmiths confirmed that TTL had completed and sent to the Court Funds Office the CFO 100 form along with a cheque in the sum of £296,154.95 and provided photographs of the CFO 100 form and the cheque provided to the Court Funds Office.<sup>2</sup> However, the photographs indicated that the CFO 100 form contains various errors and omissions and did not include details of the relevant parties.
9. Given the concern that TTL's conduct had breached the SFC Order and the Enyo Defendants remained unsecured, my firm made enquiries to the Courts Funds Office on 27 October 2023 as to which we were advised:
  - 9.1. On 19 October 2023, the Court Funds Office received the following (i) a CFO 100 form; and (ii) a cheque in the sum of £296,154.95.
  - 9.2. The documentation sent was rejected because (a) the CFO 100 form was incomplete; and (b) the Courts Funds Office was not provided a sealed copy of the relevant Court Order, pursuant to Part 37 paragraph 1.1(b).
  - 9.3. On 25 or 26 October 2023, the Courts Funds Office sent the documentation back. Given no cover letter was provided with the CFO 100 form or the cheque, the Courts Funds Office sent the documentation to this firm via second class post.
10. My firm wrote to Shoosmiths via email on 27 October relaying this information and requesting that they "*urgently make enquiries with the Courts Funds Office and rectify the position*" and stating that absent confirmation that payment has been made by 31 October 2023 the Enyo Defendants reserved

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<sup>1</sup> Letter from Shoosmiths LLP to Enyo Law LLP dated 17 October 2023 [Exhibit TWE5/1 – 2]

<sup>2</sup> Letter from Shoosmiths LLP to Enyo Law LLP dated 23 October 2023 [Exhibit TWE5/3 – 6]

the right to make an application to the Court.<sup>3</sup>

11. On 30 October 2023 my firm received via post (i) the CFO 100 form, sealed order and cheque in respect of the Enyo Defendants payment, with a cover letter from the Courts Funds Office stating the documents had been returned because *“The Claimant/Defendant details are not noted on the lodgement form”*; and (ii) the CFO 100 form and cheque in respect of D15 and D16’s payment, with a cover letter from the Courts Funds Office stating the documents had been returned because *“A sealed order had not been received”*.
12. My firm promptly notified Shoosmiths and Cooke, Young and Keidan of this fact via email, and sent the hard copies to Shoosmiths via courier.<sup>4</sup>
13. At 10:17am today my firm received a further letter from the Courts Funds Office which stated the documents were returned *“as the Form 100 was not completed correctly, the claimant/defendant details were not recorded on it. A sealed copy of the court order appears to have been received but separated from the other documents (cheque, form 100) this was also returned to Enyo”*.<sup>5</sup>
14. No response was received to these requests from Shoosmiths until 14:53 today when a letter was sent to all the Defendants which stated *“the necessary CFO100 forms and accompanying documents for payment of security have been resent to the Court”*<sup>6</sup> (i) on 29 October 2023 in respect of the Enyo Defendants; (ii) on 31 October 2023 in respect of D15 and D16; and (iii) on 31 October 2023 in respect of D14 in anticipation that similar issues may occur. The letter attached copies of CFO 100 forms but notably did not confirm how these documents were sent (e.g. whether by way of tracked mail service) or whether TTL has made enquiries at the Court Funds Office as to whether the documents sent in respect of the Enyo Defendants have yet to be received. This is clearly unsatisfactory.
15. The lack of response from TTL, and the apparent disregard for the SFC Order is concerning. Almost two weeks have now passed since TTL was required to pay the monies into court as security for costs, and it has not done so. Its conduct has, at best, shown serious disregard for the importance of proper compliance with the Court’s order. Even if TTL’s initial mistake arose from carelessness and/or inadvertence, it has had ample time since 18 October 2023 to rectify the situation, and has neither done so nor given any proper explanation of whether any steps are being taken to do so.

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<sup>3</sup> Exhibit SCR3/34

<sup>4</sup> Exhibit SCR3/40-53

<sup>5</sup> Email from Court Funds Office to Enyo Law LLP dated 31 October 2023 with attached letter dated 30 October 2023 **TWE5/7 – 9]**

<sup>6</sup> Letter from Shoosmiths LLP to all Defendants dated 31 October 2023 [**Exhibit TWE5/10 – 11]**


16. The Enyo Defendants are 11 individual developers who currently remain unsecured, in circumstances where significant costs have already, and will in the coming weeks, be incurred, in particular in light of the upcoming CMC which has been scheduled for 3 days in the period of 13 to 17 November 2023. As such, I respectfully request the court orders as set out in the attached order.

**B. Costs**

17. In light of TTL's behaviour, as set out in further detail in Roberts 3, the Enyo Defendants seek their costs of this application on the indemnity basis.

**STATEMENT OF TRUTH**

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of Court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.



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Timothy William Elliss

31 October 2023