1.	On behalf of	Claimant
2.	Witness	Y H Lee
3.	Statement No	4
4.	Exhibit	YHL4
5.	Date	29 August 2023

Claim No. BL-2021-000313

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

B E T W E E N :

TULIP TRADING LIMITED (A SEYCHELLES COMPANY)

Claimant

and

1. BITCOIN ASSOCIATION FOR BSV (A SWISS *VEREIN*)
2.
3.
4.
5.
6.

Defendants

FOURTH WITNESS STATEMENT OF YOON HYUNG LEE
ON BEHALF OF THE CLAIMANT

I, **YOON HYUNG LEE**, known as John Lee, solicitor, of 10 Snow Hill, London EC1A 2AL, STATE AS FOLLOWS:

1. I am a partner in the firm Travers Smith LLP, solicitors for the Claimant, Tulip Trading Limited (a Seychelles company) (the "**Claimant**" or "**TTL**"). I, along with my partner Huw Jenkin, took over conduct of these proceedings (the "**Proceedings**" or the "**Claim**") on behalf of the Claimant on 13 June 2023 and I am duly authorised to make this Witness Statement on its behalf.

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2. This Witness Statement has been prepared by me, with assistance from other members of my team, and on the basis of the instructions provided to me, in respect of which no privilege is waived. Except where I state otherwise, the facts and matters to which I refer in this Witness Statement are within my own knowledge, acquired during the conduct of this matter and are true. Insofar as matters are not within my knowledge, they are based upon information given to me by or on behalf of the Claimant and are true to the best of my information and belief. Where facts are from another source, I identify the source of that information or belief.

3. I make this Witness Statement in response to the following applications:

   (a) the Second to Twelfth Defendants' ("**D2-D12**") application dated 11 July 2023, supported by the First Witness Statement of Mr Timothy Elliss ("**Elliss 1**"), for a trial of a preliminary issue ("**D2-D12's PI Application**") and security for costs ("**D2-D12's SFC Application**"); and

   (b) the Fifteenth and Sixteenth Defendants' (**"D15-D16"**) application dated 26 July 2023, supported by the Second Witness Statement of Mr Samuel Roberts ("**Roberts 2**"), for a trial of a preliminary issue/split trial (together with D2-D12's PI Application, the "**Preliminary Issue Applications**").

4. There is now produced and shown to me marked "YHL4" a paginated bundle of copy documentation to which I will refer in this Witness Statement. Unless otherwise stated, references to page numbers are to those in "YHL4".

Factual background to the Proceedings

5. As set out in my First Witness Statement in the Proceedings dated 8 August 2023 ("**Lee 1**"), the Claimant is a company incorporated in the Seychelles, whose ultimate beneficial owners are Dr Craig Wright, and members of Dr Wright's immediate family. The digital assets that are the subject of the Claim are held at the following two Bitcoin addresses:

   (a) 1FeexV6bAHb8ybZjqQMjJrcCrHGW9sb6uf (known as '1Feex'); and

   (b) 12ib7dApVFvg82TXKycWBNpN8kFyiAN1dr (known as '12ib7')

   (together, the "**Addresses**").

6. The details of the Hack (as defined in the Claimant's Amended Particulars of Claim dated 13 February 2023 "**APOC**") which led to TTL being unable to access or control its digital assets held in the Addresses are set out at paragraphs 35-40 of the APOC, paragraphs 111-117 of the Reply to D2-D12's Defence and paragraphs 95-102 of the Reply to D15-D16's Defence. I do not repeat these matters here.

7. In summary, TTL brings its Claim to seek to restore its access to and control of digital assets held in the Addresses worth, as of today, over £2.3 billion and/or to claim equitable compensation or damages for breaches of fiduciary and/or tortious duties that have caused TTL to be unable to access and to control the digital assets in question, thereby denying it the ability to use or to sell those digital assets.

Procedural background

8. I refer to paragraphs 10 to 11 of Lee 1, which detail the relevant procedural background to these Proceedings. It is not necessary to set out the full details thereof here, save to highlight the significant delay that has been caused already in the progress of the Proceedings as a result of the Defendants' conduct and actions.

9. First, certain of the Defendants' obstructive and evasive conduct in relation to the service of the Proceedings has led to significant delay. The Claim Form was issued on 24 February 2021, the Amended Claim Form was issued on 28 April 2021 and the Particulars of Claim are dated 29 April 2021. On 8 May 2021, TTL was granted permission to serve the Claim documents outside the jurisdiction.[1] I understand that TTL's solicitors at that time (Ontier LLP) asked the Fourteenth Defendant, Mr Ver, via his attorneys, whether he would accept service by email or delivery of hard copies to his attorneys, and Mr Ver refused this reasonable request. TTL sought to effect service of the Claim documents on Mr Ver through the Foreign Process Section of the Royal Courts of Justice with no success. On 16 December 2021, TTL was granted permission to serve the Claim on Mr Ver in Saints Kitts and Nevis, and to serve the Claim via email to various email addresses.[2] Eventually, Mr Ver received the Claim documents via email on 24 December 2021, and he acknowledged service on 21 January 2022. Had Mr Ver accepted service via email or delivery of hard copies to his attorneys in May 2021, when he was asked, a significant delay of almost eight months would have been avoided.

10. Second, the Defendants' unsuccessful jurisdictional challenges (the "**Jurisdiction Challenges**") caused further significant delay. As previously set out at paragraph 11 of Lee 1, this led to the Defences being filed and served between 14 and 22 months after they would have been had the Defendants submitted to jurisdiction, as it was found they ought to have done. I understand that the delay was caused not just by the fact that the Jurisdiction Challenges were made, but also because the Defendants took every conceivable point on those challenges – including as to whether there was a serious issue to be tried as to TTL's factual case, which required substantial evidence. In the event, that allegation was not pursued seriously at the oral hearing. In addition to contending

[1] By the Order of Deputy Master Nurse dated 8 May 2021 [**YHL4/3-8**].
[2] By the Order of Deputy Master Arkush dated 16 December 2021 [**YHL4/9-11**].

that there was no serious issue in relation to the factual case, the Defendants asserted that there was no serious issue in relation to the duties contended for, that the gateways were not satisfied, that England was not the convenient forum, and that TTL had failed to give full and frank disclosure. All of these contentions failed (and, except for the issue concerning the existence of the duties alleged, all failed at first instance and were not appealed). This is relevant to the issue of yet further significant delay that would be caused by the preliminary issue trial ("**PIT**") which D2-D12 and D15-D16 currently seek.

Recent procedural background

11. Further to the Order of Mr Justice Mellor dated 15 August 2023, (the "**Order**"), the Preliminary Issue Applications are to be heard together at the first case management conference listed for three days in the window of 13-17 November 2023 (the "**CMC**") [**YHL4/12-14**]. In accordance with paragraph 3.a. of the Order, TTL is to provide its responsive evidence to the Preliminary Issue Applications without reference to the Contested Material[3] by 29 August 2023. As a result, in this Witness Statement, I do not respond to the Contested Material of Elliss 1 whilst we await the Court's determination of the Claimant's Strike Out Application (as defined in Lee 1), which is due to be heard on 3 October 2023, pursuant to paragraph 1 of the Order. Any inadvertent reference in this Witness Statement to the Contested Material is not intended to constitute a response to the same, and a further witness statement will be produced to address this material, should it be necessary, in accordance with paragraph 3.c. of the Order.

The Preliminary Issues

12. D2-D12 and D15-D16 wish three issues to be determine at a PIT:

    (a) TTL's ownership of the Bitcoin in the Addresses (the "**Ownership Issue**") – D2-D12 and D15-D16;

    (b) whether or not the Court can and/or should determine the Ownership Issue (the "**Determination Issue**", adopting D15-D16's terminology) – D15-D16 only; and

    (c) whether or not TTL commenced the Proceedings knowing that it does not own the Bitcoin in the Addresses and whether or not the claim brought by TTL is fraudulent and an abuse of process (the "**Abuse Issue**") – D2-D12 only.

13. TTL opposes the determination of the Ownership Issue and the Determination Issue at a PIT for the reasons set out below.

[3] The "Hollington Material" and "Irrelevant Material" as defined in Lee 1.

14. TTL opposes the determination of the Abuse Issue on the basis that it is an unnecessary and inappropriate issue for determination at a PIT, or at all in these Proceedings, which would cause additional expense and delay beyond even that which would otherwise be caused by a PIT.

15. D2-D12 belatedly sought to add the Abuse Issue to their PI Application. D2-D12's original Application Notice and draft Order sought only the Ownership Issue to be determined at a PIT. However, on 11 August 2023, Enyo Law LLP provided my firm with an amended application with an updated draft Order seeking to add two further issues encapsulated in the Abuse Issue for determination at a PIT. No consent from TTL or permission of the Court was sought by D2-D12 to amend their Application Notice before or since. Their explanation was that this amendment was said "*to accurately reflect the application and the evidence provided in Elliss 1*".[4]

16. The Abuse Issue is a wholly misconceived attempt by D2-D12 to recast their PI Application. As my firm has previously explained,[5] TTL will either succeed or fail on the Ownership Issue. If it fails, then, subject to any appeals, the Claim would simply be dismissed. The Court would not need additionally to strike out the Claim or to determine whether it was an abuse of process, as such determinations would not change the outcome of the Claim.

17. D15-D16 appear to take the same view. Footnote 3 of Roberts 2 explains that whilst D15-D16 seek determination of the Ownership Issue as a preliminary issue on the same bases as D2-D12, they do not also seek the specific remedy of strike-out for abuse of process; instead, they (simply) seek a dismissal of the Claim.

18. I do not deal further with the specificities of the Defendants' draft orders, such as listing the hearing and specific dates for responsive evidence, given that the majority of these issues have fallen away as a result of the Order, and that further directions to trial, either preliminary or full, are a matter for the CMC. For the avoidance of doubt, where I do not respond to a specific point raised in Elliss 1 or Roberts 2, TTL should not be taken to accept any such point merely because I have not specifically taken issue with it in this Witness Statement.

Court's discretion to order a PIT

19. The case management powers in CPR 3.1(2) give the Court power to order a preliminary issue or split trial in an appropriate case. The points I make below in relation to a PIT

[4] Second letter from Enyo Law LLP to Travers Smith LLP dated 11 August 2023 [**YHL4/15**].
[5] Letter from Travers Smith LLP to Enyo Law LLP dated 20 July 2023 [**YHL4/16-20**].

apply equally in respect of D15-D16's request in the alternative for a split trial. Paragraph 6.10 of the Chancery Guide further explains that:

> *"Costs and time can sometimes be saved by identifying decisive issues, or potentially decisive issues, and ordering that they are tried first. A trial of a preliminary issue may also be appropriate where its determination, although not itself decisive of the whole case, may enable the parties to settle the remainder of the dispute or otherwise shorten the proceedings. An example would be a relatively short question of law which can be tried without significant delay (or much in the way of disclosure or witness evidence) but which would be determinative of one or more of the key issues in dispute*" (emphasis added).

20. As the Court will be aware, Neuberger J (as he then was) in *Steele v Steele* [2001] CP Rep 106, set out a 10-point checklist of some of the factors a Court should take into consideration before ordering a PIT. They are:

(a) whether the determination of the preliminary issue would dispose of the case, or at least one aspect of the case;

(b) whether the determination of the preliminary issue could significantly cut down the costs and time involved in pre-trial preparation or connection with the trial;

(c) how much effort, if any, will be involved in identifying the relevant facts for the purpose of the preliminary issue;

(d) to what extent is it to be determined on agreed facts;

(e) where the facts are not agreed upon, the court should ask to what extent that impinges on the value of a preliminary issue hearing;

(f) whether the determination of a preliminary issue may unreasonably fetter either or both parties, or the court achieving a just result;

(g) to what extent there is a risk of the determination of the preliminary issue increasing costs and/or delaying the trial;

(h) to what extent the determination of the preliminary issue may be irrelevant;

(i) to what extent the determination of the issue could lead to an application of the pleadings being amended so as to avoid the consequences of the determination; and

(j) taking into consideration all of the other points, is it just to order a preliminary issue.[6]

21. Further relevant factors were identified in *McLoughlin v Grovers (A Firm)* [2001] EWCA Civ 1743 at paragraph 66, as follows:

> "*In my judgment, the right approach to preliminary issues should be as follows. (a) Only issues which are decisive or potentially decisive should be identified. (b) The questions should usually be questions of law. (c) They should be decided on the basis of a schedule of agreed or assumed facts. (d) They should be triable without significant delay, making full allowance for the implications of a possible appeal. (e) Any order should be made by the court following a case management conference*."

22. More recently, Briggs J (as he then was) noted in paragraph 4 of his judgment in *Lexi Holdings Plc v Pannone & Partners* [2009] EWHC 3507 (Ch) that "*questions of case management, questions of cost, delay and the use of the parties' and the court's resources must come first and foremost in the consideration whether any particular issue should be dealt with as a preliminary issue*".

23. Contrary to the stance taken by D2-D12, the substantive merits of the parties' respective cases on the Preliminary Issues in question are <u>not</u> relevant to the determination of whether there should be a PIT. TTL has sought to strike out certain parts of Elliss 1 which seek to adduce evidence going to the merits in relation to the Ownership Issue for that very reason. D15-D16 appear to agree with TTL's position that the merits are irrelevant, given that they have found it unnecessary to adduce any evidence going to the merits in support of their application for a PIT. Suffice it to say that the Court has already determined that there is a serious issue to be tried in relation to TTL's case on the Ownership Issue, a finding which the Defendants chose not to appeal.[7]

<u>TTL's position on a PIT</u>

24. In summary, TTL's position is that a PIT would not be in furtherance of the Overriding Objective to deal with cases justly and at proportionate cost. The prejudice that would be caused to TTL by a PIT would far outweigh any potential advantages thereof. The key factors relied upon by TTL are as follows:

[6] This is a non-exhaustive list and each case will turn on its own facts as per *Aldersgate Estates Ltd v Ham Construction Ltd* [2013] EWHC 104 (TCC).
[7] *Tulip Trading Limited v van der Laan & Others* [2022] EWHC 667 (Ch), at paragraph 52 [**YHL4/34**].

(a) The determination of the Ownership Issue and duty issues need to coincide in order to ensure that all Defendants found to owe duties are bound by the judgment on the Ownership Issue.

(b) The Preliminary Issues will require the determination of highly contentious facts, which will cause significant further delay to the resolution of the Proceedings.

(c) Significant further delay would be highly prejudicial to TTL.

(d) A PIT will lead to significantly increased costs.

(e) In the event that TTL were to succeed at any PIT, it is highly unlikely to lead to an early conclusion of the Proceedings.

(f) The Claim raises important and novel points of law which it is in the public interest for the Court to address at the earliest opportunity.

A. Additional Defendants

25. It is the Defendants' case that the identity of those developers involved in the operation of the Networks changes over time. The Defendants also say that, on any view, TTL would not be entitled to Injunctive Relief (as defined at paragraph 27 below) unless it had obtained a declaration as to ownership and it was for this reason that TTL made amendments to its pleaded case in the APOC to run a case that TTL is entitled to Injunctive Relief "*once it obtains its requested declaration as to ownership*".[8] TTL must be at liberty to apply to add additional developers as defendants up to the point of judgment in order to protect itself against the Defendants giving up their alleged control of the Networks ahead of judgment in a bid to avoid being subject to Injunctive Relief (or, indeed, so as to seek deliberately to preclude TTL from obtaining effective Injunctive Relief).

26. This gives rise to an obvious need for the determination of the Ownership Issue and the duty issues to coincide. A PIT on the Ownership Issue would undermine TTL seeking to add additional defendants after it won on a PIT of the Ownership Issue, because none of those defendants would be bound by the judgment in the PIT, and could therefore not, on TTL's amended case, be subject to any Injunctive Relief.

27. This could lead to TTL being unable to obtain justice. As I explained in summary at paragraph 7 above, TTL seeks, among other things, injunctive relief such that the Developers are required to provide TTL with access to and control of the Bitcoin in the Addresses, to take all reasonable steps to ensure that TTL has access to and control of

[8] APOC, paragraph 48.

the Bitcoin in the Addresses, and to take all reasonable steps to ensure that the Bitcoin in the Addresses cannot be dealt with by anyone other than TTL (the "**Injunctive Relief**").[9] The importance of the Injunctive Relief is clear in circumstances where the value of the Bitcoin tokens in the Addresses are in the billions of pounds and personal relief for damages against the Defendants may not be satisfied for all the usual reasons, such as solvency and location of and enforcement against assets.

28. Plainly it is in TTL's interests, and therefore TTL will endeavour, to take all reasonable steps to identify the relevant individuals and entities who control the Networks at present and to add them as defendants to the Proceedings as soon as practicable and, in any event, in advance of a PIT (should one be ordered). However, there is a significant asymmetry of information between TTL and those in control of the Networks as to the identity of the latter at any given time. Further, and more fundamentally, it is the Defendants' case that the identity of the developers involved in the Networks is subject to change. There is also a substantial risk that the Defendants may deliberately seek to frustrate TTL's claim for Injunctive Relief. In these circumstances, it is entirely possible and plausible that:

    (a) other individuals and/or entities will gain control of or will be revealed as having control of the Networks after judgment is handed down in the PIT, and those individuals and entities would not be bound by any ownership declaration, and therefore will not be subject to the Injunctive Relief TTL seeks; and/or

    (b) some or all of the current Defendants could resign from their roles and hand over control of the Networks to other persons following the PIT in order to frustrate TTL's Injunctive Relief (albeit I acknowledge that those developers would still be subject to any monetary relief ordered in TTL's favour).

29. Therefore, a PIT would create a real risk of a lacuna for TTL whereby it has been declared as the owner of the Bitcoin in the Addresses, yet it cannot regain its access to and control of those Bitcoin because the Injunctive Relief could not be obtained against those in position to give effect to it because there was no declaration as against those individuals or entities. The most obvious and straightforward way to avoid this lacuna, or at least minimise the risk of such a lacuna being created, is for a consolidated judgment to be handed down following a single trial which deals with both the Ownership Issue and the duty issues, so that there is one judgment providing TTL with the Injunctive Relief which can be enforced against the developers who are defendants to the Proceedings at the time that judgment is handed down.

[9] APOC, paragraph 45.

B. Contentious facts and significant further delay to the Proceedings

30. It is agreed on all sides that the Ownership Issue does not relate to a discrete point of law, which can be determined on agreed facts. To the contrary, it raises highly contentious facts. This, by its very nature, makes it an issue that is highly unsuitable for determination as a preliminary issue.

31. Relatedly, it is acknowledged by D2-D12 and D15-D16 that a PIT will inevitably lead to a delay in the prosecution of TTL's claim[10]. TTL's position is that such a delay will be very significant indeed and would cause severe prejudice to TTL, in circumstances where it issued its claim two and a half years ago.

32. As I explained above, these Proceedings have already been delayed by some eight months due to D14's uncooperative approach to acceptance of service and, notably, delayed by some 20 months as a result of the Defendants' unsuccessful jurisdictional challenge, which I understand took every conceivable point, however baseless. As I explain below, a PIT would effectively require TTL to go through two substantive trials, leaving aside the question of appeals, each of which would require substantial documentary, factual and expert evidence.

33. D2-D12 estimate that a PIT would last 7 to 10 days[11] and D15-D16 estimate 10 days.[12] Had such a hearing been listed by 31 July 2023, the earliest possible listing window would have been between 1 October 2024 and 31 January 2025. The trial date windows for the Chancery Division were updated on 24 August 2023 and a PIT of 7 to 10 days could now be fixed between 21 October 2024 and 28 February 2025.[13] However, a PIT will only be listed if ordered by the Court at the CMC in mid-November 2023. If determined in the Defendants favour, I consider that it is likely that a PIT of 7 to 10 days could be listed at the earliest in spring 2025, given that the available dates will have shifted substantially by November 2023.

34. Thereafter, were TTL to succeed at the PIT, and absent any appeals, a trial of the remaining issues will need to be listed. It is realistic to assume that the earliest date by which a judgment of the PIT will be handed down would be in the second quarter of 2025 (although it may well take longer, given the nature of the issues in dispute). There would then be a further delay pending a further CMC which would have to be held in October 2025 at the earliest. If the Court's availability for a trial of the remaining issues

[10] Paragraph 97.5 of Elliss 1, adopted by D15-D16 in paragraph 16 of Roberts 2.
[11] Paragraph 78 of Elliss 1.
[12] Paragraph 14.3 of Roberts 2.
[13] Source: "Trial date windows for Chancery division" https://www.gov.uk/guidance/trial-date-windows-for-chancery-division - Last updated 24 August 2023 [**YHL4/82**].

at that point in time reflects the Court's current availability, that would take a further 15 months to list, taking the parties to the end of 2026 or early 2027.

35. This would mean that the hearing of all the issues would conclude, at the earliest, some **6 years** after the issuance of the Claim Form on 24 February 2021 in these Proceedings. In TTL's respectful view, such a delay would not be consistent with the English legal system providing proportionate, efficient and effective justice for parties.

36. In contrast, Mr Elliss notes in paragraph 94 of Elliss 1 that a single, 8 to 10-week trial of all the issues in the Claim could be listed from 18 November 2024. The trial date windows for the Chancery Division, as updated on 24 August 2023, indicate that 18 November 2024 is still the earliest date from which a trial over 10 days could be listed.[14] Even on D2-D12's own timings, the PIT could only be listed four weeks before the current window for listing a single 8 to 10-week trial, such that a PIT would only serve to bring forward the hearing of the Preliminary Issues by a mere month. On the other hand, a PIT would at the very minimum likely delay the conclusion of the Proceedings by 18 months and potentially considerably more.

37. Additionally, two separate and substantial trials would need to fit around the availability of the docketed Judge in the Proceedings, Mellor J, which may give rise to yet further delays to the timetable set out above. The parties are agreed that a docketed Judge is desirable to ensure continuity and efficiency in a case of this nature, which raises highly complex, technical and novel issues.

38. Furthermore, there is every reason to believe that the Defendants will seek permission to appeal any decision against them at the PIT, despite the statements in paragraph 97.3 of Elliss 1 that "*the Ownership Issue is unlikely to be the subject of an appeal once determined*" and that "*even if the Ownership Issue were to be decided against the Enyo Defendants, it is unlikely to impede or disrupt the continuation of the proceedings*". TTL understands that the so-called 'Bitcoin Legal Defense Fund' funds at least D2-D12 in these Proceedings, which is headed by, among others, the billionaire founder of Twitter, Jack Dorsey.[15] It can be inferred from this, and the manner in which D2-D12 especially have conducted this litigation for the short period in which our firm has been on the record, that they will leave no stone unturned in this litigation (for example, their persistent and aggressive approach in seeking, ultimately unsuccessfully, to list non-urgent matters as urgent vacation business, which in our view led to an unnecessary directions hearing on 15 August 2023).

[14] *Ibid.*
[15] https://bitcoindefense.org/.

39. Importantly, the longer the Proceedings are delayed for, the more likely it is that the Hackers (or the onward recipients of the stolen TTL Private Keys) will manage to decrypt the algorithmic mask protecting the TTL Private Keys before TTL is able to regain control of the Bitcoin tokens in the Addresses. If that were to happen, TTL may lose its right to the Injunctive Relief.

C. Substantial additional costs

40. Furthermore, were TTL to succeed at a PIT, it is very likely to lead to substantial increased costs in bringing the Proceedings to a conclusion, given the inherent inefficiencies in conducting two separate trials, each with its full procedural steps leading up to trial, instead of one consolidated trial.

41. The Defendants' bare assertion that "*there will be no material increase in costs*" as a result is simply not credible.[16] There are costly processes which would need to be undertaken (and in some cases duplicated) for two trials, and which could be streamlined and benefit from efficiency gains if they were instead focussed on one consolidated trial, for example; (i) two sets of disclosure, witness evidence and expert reports, rather than one; (ii) two sets of brief fees at every hearing, rather than one; (iii) additional correspondence between the parties over a prolonged period of time; and (iv) additional case management hearings.

D. Prospect of settlement

42. The outcome of the PIT would only be decisive of the whole claim if the Defendants were to succeed (subject to any appeals). On the other hand, if TTL were to succeed, the PIT would not be decisive, and the Claim would proceed to a full trial. Given the highly contentious nature of the Claim, the serious allegations of impropriety being made by the Defendants, the value of the assets in dispute, and the highly combative position which the Defendants have adopted to date, it is extremely unlikely that the Defendants would become amenable to a settlement of the Claim as a result of their failure at a PIT. Indeed, D2-D12 and D15-D16, respectively, have stated in their Directions Questionnaires that they "*do not believe there is a realistic prospect of settlement*" and that "*settlement will be unachievable in this claim*". This is far from being a classic liability/quantum split trial, whereby a compromise on the latter following a decision on the former is a realistic possibility.

[16] Paragraph 8 of Elliss 1 and paragraph 12 of Roberts 2.

E. Development of the law and public interest

43. The Claim raises novel and very important legal issues, as Mr Elliss notes in paragraph 24 of Elliss 1. The Court of Appeal held that there is a serious issue to be tried on TTL's case, and Lord Justice Birss noted that "*for Tulip's case to succeed would involve a significant development of the common law on fiduciary duties*", and that "[i]*f the decentralised governance of bitcoin really is a myth, then in my judgment there is much to be said for the submission that bitcoin developers, while acting as developers, owe fiduciary duties to the true owners of that property*".[17] The Law Commission repeatedly acknowledges the importance of the fundamental characteristics of Bitcoin outlined in the Court of Appeal's decision in its Final Report on Digital Assets dated 27 June 2023, and is clear that the common law is sufficiently flexible and able to accommodate digital assets.[18]

44. These novel legal issues, and the potential development of the common law on this subject, are likely to be of broader application to participants in the digital assets and blockchain space, including users, developers, commercial enterprises, other participants, regulators and law enforcement agencies. As such, it is in the wider public interest for the full trial of the Claim to be heard and determined at the earliest possible opportunity.

Conclusion on the Preliminary Issue Applications

45. For the reasons detailed above, it would not be right or just in all the circumstances for the Court to order a PIT on the Ownership Issue. The severe prejudice that will be caused to TTL far outweighs any potential benefits of a PIT. It follows that it is equally inappropriate and unjust for the Court to order a PIT on the Determination Issue, given its close relationship to the Ownership Issue.

46. TTL respectfully requests that the Court dismisses the Preliminary Issue Applications.

D2-D12's SFC Application

47. In the D2-D12 SFC Application, D2-D12 are seeking an order that TTL pay security for D2-D12's costs of the Proceedings up to and including a preliminary issue trial on an indemnity basis. D2-D12's estimated costs of the claim up to a preliminary issue trial are

[17] *Tulip Trading Limited v van der Laan & Others* [2023] EWCA Civ 83, at paragraphs 86 and 91. **[YHL4/79-80]**

[18] Law Commission Report No 412: Digital Assets: Final Report (https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2023/06/Final-digital-assets-report-FOR-WEBSITE-2.pdf).

approximately £1.39 million. D2-D12 are seeking security for 90% of their costs, being £1.25 million.[19]

48. In paragraphs 7 to 9 of my Second Witness Statement in the Proceedings dated 14 August 2023 ("**Lee 2**"), I set out the background to the Previous SFC Applications filed by D2-D12 (and D15-D16) in respect of their Jurisdiction Challenges. I do not repeat that material here, save to note that in the context of the Previous SFC Applications, Master Clark refused to order security on an indemnity basis.[20]

D2-D12's Current Application

49. D2-D12 seek security for costs on the basis that the condition under CPR 25.13(2)(c), namely, that "*the Claimant is a company or other body (whether incorporated inside or outside Great Britain) and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so*" (the "**Impecuniosity Condition**"), has been satisfied. They rely on the position that:

    (a) in the context of the Jurisdiction Challenges, the Court ruled that the Impecuniosity Condition was satisfied by TTL;[21]

    (b) there has been no change in circumstances to TTL's financial position since the determination of the Previous SFC Applications; [22] and

    (c) the Impecuniosity Condition as found by Master Clark remains unchallenged by TTL.[23]

50. It is further contended by D2-D12 that, given the Impecuniosity Condition applies, it is just to require TTL to provide the security sought unless TTL can show that to do so would stifle the claim.[24]

TTL's position: Impecuniosity Condition

51. In a letter from our firm to Enyo Law LLP dated 18 August 2023 **[YHL4/97]** we explained that TTL intended to adopt the same position as regards the Impecuniosity Condition in response to D2-D12's SFC Application as it did in respect of D15-D16's SFC Application, which was addressed in Lee 2 and in my Third Witness Statement in the Proceedings

[19] Elliss 1 at paragraph 108.
[20] *Tulip Trading Limited (a Seychelles company) v Bitcoin Association for BSV* [2022] EWHC 141 (Ch) at paragraphs 19 and 20 **[YHL4/89-90]**
[21] Elliss 1 at paragraph 101.
[22] Elliss 1 at paragraph 103.
[23] Elliss 1 at paragraph 104.
[24] Elliss 1 at paragraph 106.

dated 18 August 2023 ("**Lee 3**"), and I adopt the definitions used therein. I summarise TTL's position in broad terms below:

(a) TTL does not accept that it is impecunious or that the Impecuniosity Condition is satisfied in the present circumstances and therefore it rejects the arguments and analysis set out in Roberts 1 and Elliss 1.

(b) Without prejudice to the position in paragraph 51.a above, TTL does not, at present, intend to pursue this argument in the context of D2-D12's SFC Application or D15-D16's SFC Application based on the facts prevailing as at the present time. However, to the extent there is a material change in the relevant factual circumstances, TTL reserves the right to reconsider its position. This is particularly so given that, following the directions hearing on 15 August 2023, both SFC Applications will be heard at the CMC listed in the window between 13 and 17 November 2023, which is still some 11 weeks away.

(c) Any change in the relevant factual circumstances would be notified to D2-D12 and D15-D16 as soon as possible after those circumstances materialise, and TTL accepts that it would require the Defendants' consent (or, if that consent is not forthcoming, the permission of the Court) to adduce any new evidence.

(d) TTL also reserves the right to argue in future that it is not impecunious, even in factual circumstances that are materially identical to those prevailing as at the present time.

Form of security

52. In the context of D15-D16's SFC Application, I indicated in paragraphs 18 to 19 of Lee 2 and paragraphs 9 to 26 of Lee 3 that TTL would be willing, and should it be permitted, to provide security for D15-D16's costs in the form of digital assets (i.e. Tokens) to be held with a third-party custodian, with the mechanisms and protections described therein. TTL believes that such security will constitute good security for D2-D12's costs for the same reasons. I also said in Lee 3 that, after one of the third-party custodians having informed us on the morning of that statement being filed that they would not proceed, we were continuing to seek alternative providers and that we would inform the parties and the Court as soon as we were able to. As at the date of this Witness Statement, we have been unable to identify a suitable third-party custodian for this purpose.

Quantum

53. D2-D12's estimated costs of the claim up to a PIT are approximately £1.39 million. D2-D12 are seeking security for 90% of their costs, being £1.25 million.[25] Before turning to the detailed figures in D2-D12's draft costs budget, I address three preliminary points:

    (a) Security for costs is not generally ordered on an indemnity basis. As noted in paragraph 48 above, in the context of the Previous SFC Applications, having considered the relevant authorities, Master Clark refused to order security for costs on an indemnity basis.

    (b) D2-D12's application for security for costs up to and including any PIT is also not consistent with a staged approach to security for costs. If D2-D12 were to limit its application in the same way as D15-D16 (i.e. to only seek costs up to and including the first CMC), the amount being sought would reduce significantly: from £1.25m to approximately £423,078.50.[26]

    (c) Related to (b) above, even if a PIT were to be ordered at the CMC, the relevant scope of each phase of work that would form part of the PIT preparations would need to be considered carefully by the parties and the Court. The estimated costs of any future stage of the Proceedings should be revisited when there is more certainty regarding the nature and scope of the issues to be determined at that trial, which will in turn inform how detailed, lengthy and costly the relevant phases will be.

54. As regards the specific calculations set out in D2-D12's draft costs budget,[27] I make the following observations:

    (a) Approximately 70% of the incurred time and 83% of the incurred costs relates to work undertaken by Grade A or Grade B fee earners[28] which is unreasonably top-heavy. This can be contrasted with the estimated time for future costs being split

[25] Elliss 1 at paragraph 108.
[26] This figure represents 100% of D2-D12's incurred and estimated costs for the following three phases of work included in the draft costs budget: (i) "Issue/Statements of Case"; (ii) "CMC"; and (iii) "Contingent Cost A: Preparation of Preliminary Issue Trial Application". Therefore, any security ordered in relation to these costs would likely be considerably lower. For example, 60% of this amount is approximately £252,484. NB: In respect of the Grade D fee earner's incurred costs for the "Issue/Statements of Case" phase we have used the "incurred costs" figure of £2,272 (and not the £0 figure in the "total" column, which we assume is an error).
[27] See pages 733 to 739 of Exhibit TWE-1.
[28] See incurred costs in respect of the phases "Issue / Statements of Case" and "Contingent Cost A: Preparation of Preliminary Issue Trial Application" on pages 734 and 739 of Exhibit TWE-1.

45%/55% as between Grade A or Grade B earners (45%) and Grade C or Grade D earners (55%).

(b) The estimated costs and counsel fees for (i) the hearing of the Preliminary Issue Application and (ii) the CMC will need to be revised down now that the Court has ordered that the former will be heard and determined at the CMC **[YHL4/12-14]**. The current costs budget is premised on there being two separate hearings. As there will now only be one hearing, there will be considerable overlap between these preparation costs.[29]

(c) The proposed estimates for the CMC are excessive. The estimates include 180 hours' worth of solicitor time, as well as brief fees for counsel in the amount of £100,000, giving a combined estimated cost for the CMC in the amount of £161,950.[30]

(d) As regards the Preliminary Issue Application, D2-D12 have allocated a further 120 hours of solicitor time for reviewing any responsive evidence and preparing any reply evidence, which is excessive.

(e) Without prejudice to TTL's position that no order should be made for a PIT, it would be inappropriate to order security up to and including the hearing of any preliminary issues on the basis of the untested assumptions which underpin D2-D12's cost estimates. By way of example:

(i) Despite the indication in Elliss 1 and the draft costs budget that disclosure would be limited from both TTL and D2-D12, D2-D12 have estimated their costs in respect of the disclosure phase in the amount of £121,250 which includes 343 hours of solicitor time. These estimates are excessive in light of what D2-D12 say this phase of work will require of them.[31]

(ii) The draft costs budget has been prepared on the basis that evidence will be filed from up to 10 individuals (five on behalf of TTL and five on behalf of D2-D12). However, this is inconsistent with the statement in Elliss 1 that "*there is similarly likely to be limited factual evidence required*"[32] for the PIT.

(iii) As for expert evidence, while Elliss 1 states that this "*will be limited to forensic document analysis*" and that "*it is likely that forensic document experts will need to examine a relatively small number of documents*", the

[29] See pages 738-739 of Exhibit TWE-1.
[30] This includes £550 for "other disbursements".
[31] See Elliss 1 at paragraphs 71-73 and page 735 of Exhibit TWE-1.
[32] See paragraphs 74-76 of Elliss 1 and page 735 of Exhibit TWE-1.

estimated combined solicitor and counsel fees for the expert report phase is over £205,000. It is not clear why such a limited exercise would require 217 hours of solicitor time and expert fees in the amount of £100,000. [33]

(iv) D2-D12 have included estimated costs of a PTR in the amount of £81,200 (which includes counsel fees).[34] However, it is not clear whether a PTR would in fact be required for any PIT, should one be ordered.

Conclusion on D2-D12's SFC Application

55. In light of the above, TTL requests that:

(a) TTL be permitted to provide security by way of Tokens;

(b) D2-D12's request for security on an indemnity basis be rejected;

(c) any security be ordered on a staged basis; and

(d) the headline incurred and estimated costs put forward by D2-D12 be revised downwards for the purpose of any security to be provided for the reasons outlined above.

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.

DocuSigned by:
John Lee
43AE279A66A24B3...

SIGNED

YOON HYUNG LEE

29 August 2023

DATED

[33] See paragraph 77 of Elliss 1 and page 736 of Exhibit TWE-1.
[34] See page 737 of Exhibit TWE-1.

1.	On behalf of	Claimant
2.	Witness	Y H Lee
3.	Statement No	4
4.	Exhibit	YHL4
5.	Date	29 August 2023

Claim No. BL-2021-000313

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST (CHD)

TULIP TRADING LIMITED (A SEYCHELLES COMPANY)

Claimant

and

1. BITCOIN ASSOCIATION FOR BSV (A SWISS *VEREIN*)
2. WLADIMIR VAN DER LAAN
3. JONAS SCHNELLI
4. PIETER WUILLE
5. MARCO FALKE
6. SAMUEL DOBSON
7. MICHAEL FORD
8. CORY FIELDS
9. GEORGE DOMBROWSKI
10. MATTHEW CORALLO
11. PETER TODD
12. GREGORY MAXWELL
13. ERIC LOMBROZO
14. ROGER VER
15. AMAURY SECHET
16. JASON COX

Defendants

FOURTH WITNESS STATEMENT OF YOON HYUNG LEE

Travers Smith LLP
10 Snow Hill
London EC1A 2AL
Tel: +44 (0)20 7295 3000
Ref: C07293.00005/JXL/OZJ