

Posting Security: Digital Assets not a Replacement for Payments into Court

On 25 January 2022, the English High Court determined an application by an entity owned by Mr Craig Wright ("Tulip"), the self-proclaimed inventor of Bitcoin, to post digital assets as security to cover the future costs of its legal claim.

Background

Tulip has issued claims against 16 Bitcoin developers in the UK seeking to recover access to crypto assets valued in the region of US\$5.6 billion.

The catalyst for Tulip's claims came in February 2020, when hackers stole the private keys for two of its Bitcoin addresses. Copies of those keys were deleted from Mr Wright's computer, resulting in him being deprived of access to Tulip's digital assets.

By its claims, Tulip says that the Defendant developers have a fiduciary duty to help it recover access to those assets.

Crypto Assets as Security

The Defendants, having concerns that Tulip would be unable to pay future adverse costs of the litigation, sought security. In an earlier hearing, the English High Court agreed with the Defendants that security was payable in principle, but directed that the parties try to agree the precise amount out of court.

The parties being unable to agree, the court was required to determine the quantum and means by which security should be posted. The Defendants sought a payment into court in the sum of £354,791, and Tulip offered up a payment in the form of digital assets with a current value of £175,000, specifically Bitcoin Core and / or Bitcoin Satoshi Vision.

Importantly, Tulip refused to make a payment into court or to provide a guarantee from a first class London bank (per the requirements in *Monde Petroleum SA v Westernzagros Ltd*).

Tulip's request was rejected by the court on account of Bitcoin's high level of volatility. The judge held that the criteria in *Monde Petroleum* was not met by the posting of crypto assets as security, in that "*the security offered by the claimant would not result in protection for the defendants equal to a payment into court or first class guarantee... It would expose them to a risk to which they would not be exposed with the usual forms of security: namely of a fall in value of Bitcoin, which could result in their security being effectively valueless*".

This constitutes a further jurisprudential advancement in the crypto-sphere, following the recognition by the English Commercial Court of digital currency as falling within the definition of 'assets' and 'property' at both common law and under the Insolvency Act (see *AA v Persons*

*Unknown & Ors, Re Bitcoin*¹), which approach has since been adopted in the BVI (see *Smith v Torque Group Holdings Limited et al*²).

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¹ <https://www.bailii.org/ew/cases/EWHC/Comm/2019/3556.html>

² <https://www.eccourts.org/philip-smith-v-torque-group-holdings-limited-et-al/>