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Case No: KB-2025-004313

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/03/2026

Before :

MR JUSTICE COTTER

- -

Between :

PING FAI YUEN	**Claimant**
- and -	
FUN YUNG LI	**(1) Defendant**
LAI YUNG LI	**(2) Defendant**

- -
- -

Jim Sturman KC (instructed by **Egan Meyer Solicitors**) for the **Claimant**
Josephine Davies KC & James Lamming (instructed by **Russell-Cooke LLP**) for the **1st Defendant**

Hearing dates: 02 March 2026

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Approved Judgment

This judgment was handed down remotely at 2:00pm on 10 March 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE COTTER

Mr Justice Cotter:

Introduction

1. This is the Judgment following a hearing to consider the following;

    a) The Claimant's Application to amend the Claim Form/Particulars of Claim
    b) The First Defendant's Application for strike-out/summary Judgment
    c) The First Defendant's Application for security for costs
    d) The Claimant's outstanding application for substituted service on the Second Defendant

Facts

2. The factual issue at the heart of the claim can be shortly summarised. It is not in dispute that the Claimant (who was resident in the United Kingdom) is the lawful owner of 2,323.28423347 Bitcoin which was, until 2nd August 2023, at an address on the blockchain. His private key was contained in a "cold wallet" (i.e. not connected to the internet) on a physical device referred to as the "Trezor". The Trezor was protected by a six-digit PIN, so that, even if it was physically stolen, the contents remained protected. However, any person with access to the Claimant's "seed phrase" (a randomly generated set of 24 words) could use it to recreate the wallet on a separate device.

3. On 2nd August 2023, without the Claimant's knowledge or consent the Bitcoin was transferred from its then address and, after a number of transactions, is now at 71 addresses (not held at third party exchanges). The Bitcoin has a value which has varied during the proceedings to date between £180 -160 million.

4. It has remained at those addresses i.e. there have been no transactions of the Bitcoin since 21 December 2023.

5. The Claimant's case is straightforward. At a time when divorce was contemplated his (now estranged) wife, the First Defendant, obtained his seed phrase and "stole" the Bitcoin; either acting alone or with her sister (the Second Defendant). She did so by covertly recording the Claimant to obtain the seed phrase. The First Defendant (who was born in China) is a Hong Kong resident.

6. As confirmed in Affidavit evidence produced by his solicitor, in early July 2023 the Claimant was told by his eldest daughter that the First Defendant was trying to take the Bitcoin. As a result he installed audio recording equipment.

7. It is also the Claimant's case that audio recordings obtained on 29th July and 31st July 2023 prove beyond doubt (a fortiori, on the balance of probabilities) that it was the First Defendant who obtained the seed phrase and exfiltrated the bitcoin.

8. A recording of 29th July 2023 has been described on behalf of the Claimant as capturing her discussing CCTV which has been set up in the house, where the Claimant sat and hid the password, using the wallet. Reference has been made to exchanges such as

> "In that case can he see that the item has been transferred to your.."

> "not at this moment it is back. The Bitcoin has transferred to me but can it be seen that you have taken it?"
>
> "Oh.it doesn't know where it was taken to"
>
> "oh oh oh Uh"
>
> "it is OK. Take all of it. It is Afterwords"
>
> "Take it first, Take it first. Fortunately"

And after discussing depositing it in the bank;

> "You claim that your money was Bitcoin, such large amount, so many questions, how are you going to explain about it? Such large amount even 10 Banks which it's not enough to put them into, you cannot explain how you obtain such large amount of money."

There is then further discussion during which it is said the First Defendant is considering how to realise a very large sum of money (there being specific mention of the risk of being reported to the Police for money laundering) and the comment "...the Truth is I don't know it can be cashed out". There is discussion about buying things in Hong Kong where virtual currency is legal (it is not legal in China) and

> "I know, but where did the Bitcoin come from? They will ask you about your first pot of gold ,if you used your own money to buy it, where did the money come from...about proof, proof so if you cannot proof it then it will be banned, also, since your income is so little, how can you but so many."

There is also discussion about using the funds in small amounts.

9. The recording of 31st July refers to the need to

> "be careful, yes...he can't track it. If he cannot track you then he cannot figure out who I am",

also using a second wallet and calling a hacker.

10. When the Claimant discovered that his Bitcoin had been moved he confronted the First Defendant and assaulted her. He was arrested and spent a period of weeks in custody before bail conditions were imposed. He was later convicted upon guilty pleas, on 13 September 2024, of assault occasioning actual bodily harm and two offences of common assault.

11. The Claimant reported the alleged theft of the Bitcoin to the police which resulted in the First Defendant's arrest on 23 December 2023. At the time of the arrest it appears that the Police searched her home and seized property, specifically a number of

valuable watches (presumably given that this was an alleged theft of a substantial amount of digital currency they considered that they may be evidence and/or the proceeds of criminal activity). I will return to the issue of these watches in due course.

12. The Police also seized 10 cold wallets (one of which was a Trezor; the same make of device as used by the Claimant) and five recovery seeds. They could gain access to four of the wallets and another three had names attributable to the Claimant.

13. The First Defendant gave a no comment interview and was released on Police Bail. The police have since confirmed they would take no further action pending new evidence.

History of the Claim

14. On 21 November 2025 the Claimant made a without notice, before issue, application against the First and Second Defendants for a proprietary asset preservation injunction, and a disclosure order. It was said that the urgency arose because monitoring of the addresses to which the bitcoin had been transferred had been the subject of a "crypto dusting" attack on 17th November 2025. Whilst this process does not directly steal funds it can expose wallet identities and make them targets for third parties.

15. An unsealed claim form and particulars of claim were exhibited to the first affidavit of Mr James Meyer of Egan Meyer Solicitors in support of the injunction application.

16. The Claim Form set out that the Claimant sought

The Claimant seeks:

- Damages for conversion, conspiracy to convert, trespass to goods and conspiracy to trespass to goods arising from the unauthorised transfer and concealment of 2,323.28422137 Bitcoin (BTC);
- A declaration of ownership of the BTC;
- A worldwide freezing order over the Defendants' crypto assets;
- An order for the return of the BTC or its equivalent value in GBP;
- Costs and interest pursuant to section 35A of the Senior Courts Act 1981

The draft Particulars of Claim stated as follows;

Cause of action: conversion

6. The Defendants' actions constitute the tort of conversion, namely the wrongful interference with the Claimant's proprietary interest in the BTC.
7. The BTC is recognised as property under English law (see Tulip Trading Ltd v Bitcoin Association for BSV & Ors [2023] EWCA Civ 83.
8. The Defendants intentionally and without lawful justification:
    a. Accessed the Claimant's wallet.
    b. Transferred the BTC to a wallet or wallets under their control.
    c. Concealed the assets through laundering mechanisms.

Causes of action: trespass of goods

9. The Defendants have also committed trespass to goods by unlawfully interfering with the Claimant's physical Trezor digital currency wallet and associated recovery seed.

And as regards relief

Relief Sought

14. The Claimant seeks:

a. Damages for conversion and trespass of goods arising from the unauthorised transfer and concealment of twenty-three point two eight four two two one three seven (2,323.28422137) BTC.

b. A declaration of ownership of the BTC.

c. A worldwide freezing order over digital currency controlled by or on behalf of the Defendants.

d. A disclosure order requiring the Defendants to provide full particulars of any and all Personal Identification Number ("PIN") codes, passphrases, recovery seeds, and Shamir Secret Sharing components in their possession, custody or control that relate to any cold wallet device capable of accessing or restoring the Claimant's BTC holdings.

e. An order for the return of the BTC or its equivalent value in British pounds sterling.

15. Costs and interest pursuant to section 35A of the Senior Courts Act 1981.

17. On 27th November 2025 a proprietary asset preservation order with related relief was made by Mr Justice Sweeting with a return date listed for 18 December. The order required the First Defendant to provide information in relation to the Bitcoin which had been transferred from the Claimant's address including relevant PINs passphrases, recovery seeds and the whereabouts of the wallet capable of accessing or restoring the Bitcoin).

18. The First Defendant filed the affidavit required by the order of Sweeting J on 5 December 2025. It was essentially a one sentence response confirming that she was "*unaware of any information required to be provided in response to the matters...*" In my judgment it can be properly described as a bare denial of any involvement in the matters alleged in the straight forward factual claim as presented.

19. The Claimant undertook to issue the claim form within 24 hours of the making of the Sweeting Order. On 10th December 2025, the Claimant applied for relief from sanctions in relation to this failure and produced an amended version of the claim form (adding the Claimant's address) together with a different version of the particulars of claim now including a statement of truth. On 16th December 2025, Mr Justice Sweeting granted the application and time was extended to 4th December.

20. The matters came before me on 18th December 2025 at the return date. The First Defendant did not attend but instructed her current solicitors, Russell-Cooke to attend on a "watching brief". I continued the order of Sweeting J until further order.

21. On 24 December 2025, Russell-Cooke wrote to the Claimant's solicitors (Egan Meyer) requesting security for costs. On 30th December, Egan Meyer replied refusing to provide security.

22. On 30th December 2025, the Particulars of Claim was served on Russell-Cooke.

23. On 5th January 2026, the First Defendant filed an acknowledgment of service.

24. On 27th January 2026, the First Defendant filed an application to strike-out the claim on the basis that the claims in conversion and trespass to goods were bad in law and for security.

25. On 16th February 2026, the Claimant filed an amendment application, seeking to amend the claim form and Particulars of Claim.

Second Defendant

26. I am satisfied on evidence produced that the Second Defendant has taken steps to evade service. There is a further application to amend my order as regards substituted service. Suffice to set out at this point she has not engaged in the proceedings (which I am satisfied she is aware of) to date.

Application to amend

27. Within the proposed amended claim form the Claimant seeks

> "…damages and proprietary remedies including restitution arising from the unauthorised access to and misappropriation of 2,323.28422137 Bitcoin (BTC). The causes of action include conversion, trespass to goods and conspiracy, unjust enrichment, breach of confidence, misuse of private information, causing loss by unlawful means and proprietary restitution/constructive trust."

28. The Claimant also seeks a declaration of ownership of the BTC, a worldwide freezing order, an order for the return of the BTC or its value, interest pursuant to section 35A of the Senior Courts Act 1981, and costs.

29. Within the Particulars of Claim under the rubric "the Claims" the amended claim states

> "23. By matters pleaded above, the Defendants wrongfully interfered with the Claimant's proprietary rights in the BTC and the Claimant's Trezor wallet and associated recovery seed, acted without lawful authority or consent, and did so dishonestly and in concert with one another and/or persons unknown. Those matters give rise to the causes of action pleaded below."

30. The Claims are then set out as

31. Conversion (unamended)

32. Trespass to Goods (unamended)

33. Unjust enrichment (by amendment)

34. Breach of confidence and misuse of private information (by amendment).

35. Causing loss by unlawful means (by amendment).

36. Proprietary restitution claim and constructive trust (by amendment).

37. Mr Sturman KC submitted that the following factors militate in favour of allowing the amendments sought:

    a. The application has been made at an early stage of the proceedings.

    b. The factual matrix is unchanged. The factual case for the Defendants to meet is therefore unaffected.

    c. The First Defendant has not provided any alternative (or any) explanation for the movement of the Bitcoin. The amendments have been sought prior to the service of any Defence (or evidence addressing the factual allegations) and causes neither Defendant any prejudice or any substantial extra cost.

    d. The Amendments principally add new causes of action based on the same, unchanged, allegations of fact.

    e. The amendments will not: (a) jeopardise any directions (as no CMH has taken place); (b) derail any disclosure exercise; or (c) imperil a trial date as no date has been identified.

38. The First Defendant's position before me at the hearing was that the application to amend to introduce what was characterised as "a slew of new causes of action" was not opposed save for the addition of a claim for causing loss by unlawful means. Miss Davies KC submitted that this cause of action plainly did not have a real prospect of success (the core test) because it is bad in law on the facts pleaded. This is because causing loss by unlawful means is a three-party tort: **OBG -v- Allan** [2008] 1 AC 1 at [51] within which Lord Hoffmann stated that the elements of the tort are:

> "(1) Unlawful acts used against, and independently actionable by, a third party; (2) Interference with the actions of the third party in which the claimant has an economic interest; (3) Intention to cause loss to the claimant by the use of unlawful means; and (4) Loss in fact caused to the claimant."

39. As no third party was identified as the target of an unlawful act, let alone one in which the Claimant had any economic interest; there could be no claim for causing loss by unlawful means.

40. I indicated during the course of submissions that during my very limited reading in time (which was in no way the fault of the parties) I had considered Clerk & Lindsell on Torts [24th Edition] and that it appeared to me that matters may not be as straightforward as Miss Davies KC suggested. It is stated at 23-97 -

> "So far, the tort of causing loss by unlawful means has been discussed as it applies to cases involving three parties, that is where a defendant has used unlawful means on a third party in order to cause loss to a claimant by restricting the third party's freedom to deal with the claimant. Pivotal elements of the tort

> as described to this point, such as the requirement that the unlawful means must be "actionable" by the third party, assume that the tort *only* operates in three-party contexts, and a two-party variant does not exist. The premise for this assumption is that where a defendant uses "actionable" unlawful means directly against a claimant with the intention of causing loss, the claimant will be able to base any action that he chooses to bring on the actionable wrong; so a two-party tort of causing loss by unlawful means would be tautologous. There are two situations, however, where a two-party tort of causing loss by unlawful means could be useful: the first relies on the exception to the requirement that the unlawful means must be actionable that allows the tort to cover threats and other means that could have been actionable but for the absence of actionable damage, whilst the second depends on the possibility that unlawful means could be defined more broadly for the purposes of a two-party tort."

And at 23-99

> "The second potential situation where a two-party tort of causing loss by unlawful means could avoid redundancy depends on unlawful means being defined more broadly for the purposes of the two-party tort. At first sight, the idea of using different definitions of unlawful means for two-party and three-party forms of a tort might seem counter-intuitive and unattractively complex. However, in *Revenue & Customs Commissioners v Total Network SL*, when explaining why a broader definition of unlawful means could be used as an element in the definition of the tort of unlawful means conspiracy, the House of Lords suggested that a narrower definition was only required in *OBG v Allan* because the tort in that case involved causing loss to a claimant through the medium of a third party. In practical terms, a two-party tort with a broader definition of unlawful means would allow a court to assist a "claimant whose economic interests had been deliberately injured by a crime committed against him by the defendant". The objections to extending tort liability in this way, however, would include that such an extension would allow statutes to have consequences beyond those intended by Parliament and might require the development of a complex jurisprudence as to *which* crimes and statutory wrongs a claimant could invoke as the foundation for a two-party civil claim. Furthermore, such an extension might under-cut established limits on over-lapping liabilities such as those for public nuisance or misfeasance in public office. Most importantly, the recognition of the extended two-party tort would indirectly undermine the limit imposed on unlawful means for the purposes of the three-party tort: a claimant in a three-party case could claim that the "actionable civil wrong" that the defendant committed to a third party was the extended

> two-party tort, at least where the defendant intended to cause loss to the intermediate party as well as to the claimant."

41. Given the very unusual issues at the heart of the strike out application included the extent to which the Claimant has a cause of action for the interference with his property under the present law in circumstances where his economic interests have been (on his case) deliberately injured by a crime committed against him by the defendant I suggested that this may well be an area of developing jurisprudence. On instructions Miss Davies KC withdrew her opposition to the amendment adding this cause of action.

42. I accepted Mr Sturman's submissions in relation to the amendments and I allowed the application.

Strike Out Application

43. The effect of allowing the amendment was that the strike out application did not seek the strike-out of the entirety of the Claimant's claim, but was limited to two elements;

44. The first element is striking out the claims in conversion and Trespass to Goods. In short Miss Davies KC submitted that these pleaded causes of action disclosed no reasonable grounds for bringing the claim and had no real prospect of success, on the basis that the torts of conversion and trespass to goods cannot apply to intangibles such as Bitcoin and that no physical interference with the Claimant's property was alleged.

45. The second element is that because the First Defendant "does not – and has never – asserted that the Bitcoin is hers"; there is no dispute as to ownership and, on that basis, the claim for a declaration, and the proprietary and injunctive relief, should be struck out.

Conversion and Trespass to Goods

46. Miss Davies KC conceded that Bitcoin is property. However she argued that it is not, as clearly required for the long established torts of conversion and trespass to goods; tangible, so no claim under those torts can succeed, such being made clear by the binding judgment of the majority of the House of Lords in **OBG -v- Allan.**

47. Mr Sturman KC submitted that whether Bitcoin is capable of being converted is not a question that should be determined on a summary judgment application and that the law was in a state of flux given the recent recognition of a third category of property by the **Property (Digital Assets etc) Act 2025** ("the 2025 Act"). He submitted that the common law could develop the tort of conversion (and Trespass to Goods) to recognise the new category; something which was not considered in **OBG -v- Allan**. Authority in other common law jurisdictions supported such a step.

48. It is sensible to start my analysis with law before **OBG -v- Allan**. As is observed in Clerk & Lindsell [16-01] the law concerning the protection of interest in chattels remains complex and much of that complexity stems from history. The English law never developed a single wrong of wrongful interference with goods. Conversion (also referred to as "trover") arose as a cause of action to fill in the gaps left by trespass and detinue. However the law developed solely in relation to chattels/goods and recognised two distinct categories of personal property rights: rights relating to things in

possession (tangible things), and rights relating to things (choses) in action (legal rights or claims enforceable by action). In the case of **Colonial Bank -v- Whinney** [1885] 30 ChD261 Lord Justice Fry said

> "All personal things are either in possession or in action. The law knows no tertium quid between the two."

49. In **OBG -v- Allan** the three appeals before the Court were principally concerned with claims in tort for economic loss caused by intentional acts. In OBG Ltd v Allan itself the defendants were receivers appointed under a floating charge which was admitted to have been invalid. Acting in good faith, the Defendants took control of the claimant company's assets and undertaking. The Claimant claimed that this was not only a trespass to its land and a conversion of its chattels but also the tort of unlawful interference with its contractual relations and claimed damages which included the value of the contractual claims. The case in conversion was rejected by all the judges at first instance and on appeal to the Court of Appeal. The House of Lords dismissed the appeal by a majority and confirming that strict liability for conversion applied only to an interest in chattels and not to choses in action and it would be too drastic a reshaping of the law to extend it to cover choses in action. Lord Hoffman stated;

> "95. Everyone agrees that conversion is historically a tort against a person's interest in a chattel, being derived from the action for trover, which included a fictitious allegation that the plaintiff had lost the chattel and that the defendant had found it. Secondly, and consistently with its ancient origin, conversion is a tort of strict liability. Anyone who converts a chattel, that is to say, does an act inconsistent with the rights of the owner, however innocent he may be, is liable for the loss caused which, if the chattel has not been recovered by the owner, will usually be the value of the goods."

And

> "99. By contrast with the approving attitude of Cleasby J to the protection of rights of property in chattels, it is a commonplace that the law has always been very wary of imposing any kind of liability for purely economic loss. The economic torts which I have discussed at length are highly restricted in their application by the requirement of an intention to procure a breach of contract or to cause loss by unlawful means. Even liability for causing economic loss by negligence is very limited. Against this background, I suggest to your Lordships that it would be an extraordinary step suddenly to extend the old tort of conversion to impose strict liability for pure economic loss on receivers who were appointed and acted in good faith. Furthermore, the effects of such a change in the law would of course not stop there. Hunter v Canary Wharf Ltd [1997] AC 655, 694 contains a warning from Lord Goff of Chieveley (and other of their Lordships) against making fundamental changes to the law of tort in order to provide remedies which, if they are to exist at all, are properly the function of other parts of the law.

> 100. As to authority for such a change, it hardly needs to be said that in English law there is none. I need go no further than Halsbury's Laws of England, 4th ed reissue (1999) vol 45(2), para 547, which says "The subject matter of conversion or trover must be specific personal property, whether goods or chattels." The Law Revision Committee was invited, in 1967, to consider "whether any changes are desirable in the law relating to conversion and detinue." In its 18th Report in 1971 (Cmnd 4774) the Committee treated them both as confined to wrongful interference with chattels. They made various recommendations for changes in the law but none for the extension of conversion to intangible choses in action. On the contrary, the Torts (Interference with Goods) Act 1977, which was passed as a result of their recommendations, defined "wrongful interference with goods" to include "conversion of goods" (section 1) and defined "goods" in section 14(1) to include "all chattels personal other than things in action and money."
>
> 101. Mr Randall relied upon authorities in Canada and the United States. I can find no discussion in the Canadian cases of whether a claim for conversion can be made in respect of a chose in action. These cases are analysed by Peter Gibson LJ in his judgment in the Court of Appeal ([2005] QB at pp. 777-778) and I do not think that I should lengthen this judgment by adding to his comments. For the reasons which he gives, I derive no assistance from them. There are certainly cases in the United States which support Mr Randall's submission and which form part of the profligate extension of tort law which has occurred in that country. Perhaps the most remarkable is the decision of the Federal Court of Appeals (9th Circuit) in Kremen v Online Classifieds Inc (2003) 337 F 3rd 1024, in which it was held that a publicly-funded company which provided gratuitous registration of internet domain names could be liable in conversion, on a footing of strict liability, for transferring a registered name to a third party, having acted in good faith on the authority of a forged letter. The court held that the domain name was intangible property which could be converted in the same way as a chattel and that the registration company could be liable for its value. I have no difficulty with the proposition that a domain name may be intangible property, like a copyright or trade mark, but the notion that a registrar of such property can be strictly liable for the common law tort of conversion is, I think, foreign to English law."

50. Fast forward 141 years from 1885 and to a digital world unimaginable to Lord Justice Fry and things are not so straightforward as his demarcation states. The Law Commission recognised as such in its 2023 report "Digital assets" and that this statement was "no longer entirely correct" and

> "Rather, the common law of England and Wales has over the last ten years clearly moved toward the explicit recognition of a "third" category of things to which personal property rights can relate. Over time, the courts of England and Wales have deliberately and iteratively redefined the scope of things that the common law treats as capable of attracting personal property rights even where those things do not fall easily within either of the two traditionally recognised categories. (paragraph 33)

51. The commission recommended statutory reform; in effect to revise the analysis in **Colonial Bank -v- Whinney** and to recognise the potential existence of a third category of property. The existence of such a category recognised a concurrent right or ownership or possession and the Commission considered causes of action and associated remedies stating at paragraph 9.1- 9.3

> "This chapter considers some of the causes of action and associated remedies that parties might pursue in the context of third category things. Broadly, our conclusions follow those in our consultation paper. We discuss:
>
> (1) breach of contract and associated remedies;
>
> (2) vitiating factors, and the remedies that might be awarded if a contract involving a third category thing is void or set aside because of a vitiating factor;
>
> (3) the evidential processes of following and tracing;
>
> (4) breach of trust, equitable wrongs and constructive trust;
>
> (5) proprietary restitutionary claims at law;
>
> (6) unjust enrichment;
>
> (7) conversion and principles of tortious liability; and
>
> (8) injunctions and enforcement.
>
> 9.2 We conclude that much of the current law concerning causes of action and associated remedies can be applied to third category things without law reform. In the majority of cases the law does not distinguish between causes of action and associated remedies that apply to things in possession or to things in action. We conclude that, in general, this is also likely to be true of causes of action and associated remedies that apply to third category things. Therefore, in those cases there is no need for bespoke rules or for law reform. Instead, what is required is that the courts continue to recognise the nuances or idiosyncrasies of third category things (including their distinct functionality and technical characteristics) and apply existing legal principles to such things as appropriate. This is consistent with our conclusions throughout this report that further common law development is preferable where possible.
>
> 9.3 However, we identify a potential lacuna in the law which would prevent a superior legal title holder (or, in certain circumstances, a person with a control-based legal proprietary interest) from pursuing a cause of action in certain, limited factual scenarios. We conclude that it would be possible for the courts to develop specific and discrete principles of tortious liability by analogy with, or which draw on some elements of,

> the tort of conversion to deal with wrongful interferences with third category things such as digital objects. This conclusion acknowledges that the lacuna we identify within the law is small and arises in situations where a claim based on unjust enrichment or proprietary restitution cannot be made out."

52. It is noteworthy that the suggestion was that the common law could develop tortious liability "by analogy with" or drawing on "some elements of the tort of conversion" to deal with a lacuna in relation to the unauthorised burning of digital tokens. This was because the Commission concluded

> "…that the third category of things are currently incapable of being converted under the existing law…" (9.66).

53. Having provisionally concluded in its consultation paper that were arguments in favour of extending the common law through the recognition of a conversion-type cause of action, grounded in control rather than possession, to third category things. The Commission stated;

> "We said that, in light of the decision in OBG Ltd v Allan, extending conversion to third category things would most likely need to be by way of statute, rather than by development of the common law…
>
> Conversion lies in respect of dealings with things in possession. Courts have held that intangible property cannot form the subject matter of the tort. In OBG Ltd v Allan the House of Lords ruled that, since contractual rights are a type of intangible property, and intangible property cannot be possessed, an action in conversion could not lie in respect of them. The existing judicial authority therefore prevents intangible things in action from being the subject matter of the tort of conversion, and we think this likely encompasses third category things as well. We therefore provisionally concluded in our consultation paper that third category things cannot be the subject matter of the tort of conversion under the law as it stands. However, we suggested that there are good policy arguments for the extension of the tort to third category things, noting that in light of the decision in OBG Ltd v Allan, any such development would most likely need to be by way of statute. We provisionally proposed that, if conversion were extended to third category things, the application of strict liability in that context could be mitigated by the introduction of a common law special defence of good faith purchaser for value without notice applicable to third category things."

54. Mr Sturman KC made the obvious point that the view of the Commission as to what was "likely" was not binding. He submitted that it would be possible for the courts to develop by extension the existing tort of conversion to cover the third category of property as recognised in the 2025 Act. That Act (of admirable brevity) followed the recommendations of the Commission and draft in its supplemental report and provides in section 1

> Objects of personal property rights
>
> A thing (including a thing that is digital or electronic in nature) is not prevented from being the object of personal property rights merely because it is neither—
>
> (a) a thing in possession, nor
>
> (b) a thing in action.

55. In its supplemental report when considering "consequences of being a thing" the Commission repeated its thinking as to the tort of Conversion stating at paragraph 3.82 that it had identified some situations, particularly in the case of legal concepts applicable only to things in possession, where an analogous equivalent might usefully be developed for third category things and that:

> "We concluded that, while claims in proprietary restitution and restitution for unjust enrichment will likely be available in the context of third category things, a claim in conversion will not. This is because conversion only applies to things in possession."

56. Miss Davies KC submitted that the decision in **OBG Ltd -v- Allan** was clear and binding as to the limits of conversion and this had been recognised not only by the Commission but also by the Court of Appeal when considering a lien in **Your Response Limited -v-Datastream Business Media Limited** [2014] EWCA Civ 281 (see the judgment of Lord Justice Moore-Bick at paragraphs 15, 17 and 23). No action in conversion could be brought in respect of anything other than tangible property. Further she submitted that the lacuna identified by the Commission in relation to the burning of tokens was not relevant on the facts of this case and there was no reason why the Claimant could not seek to use the other causes of action now pleaded as they had been relied upon in other cases such as **AA -v- Persons unknown** [2019] EWHC 3556 and **Jones -v- Persons Unknown** [2022] EWHC 2443**.**

57. In **AA** the court was concerned with the transfer of Bitcoins as a ransom payment and a claim was issued against the defendant hackers who had demanded the payment and the operators of the exchange on which the Bitcoin was being held. The causes of action were restitution and for a constructive trust. Bryan J granted a proprietary injunction.

58. **Jones** concerned the theft of Bitcoin and the successful causes of action used were deceit, unjust enrichment and for a constructive trust. The court also ordered a propriety injunction.

59. The Claimant's response to Miss Davies KC's submissions is neatly encapsulated within Mr Meyer's statement in opposition to the strike out application;

> "The Claimant does not accept that his causes of action fail as a matter of law. The legal landscape governing crypto assets, including Bitcoin, is a developing area of English law. The current judicial and statutory materials demonstrate a clear trajectory towards recognising such assets as capable of attracting personal property rights. This is reflected, for example, in the decision in Tulip Trading Limited (A Seychelles Company) v Bitcoin Association for BSV & Ors [2023] EWCA Civ 83, in the Law Commission's Digital Assets Reports of 2023 and 2024, at [2023] EWLC 412, [2024] EWLC 416 and [2024] EWLC SP001, and in section 1 of the Property (Digital Assets etc.) Act 2025."

60. As regards a trajectory towards recognising digital assets as capable of attracting personal property rights such is indeed clear from the work of the Commission and the enactment of its draft bill. However whether such protection could or should be by extension of the law of conversion is a very different question.

61. Mr Sturman KC submitted that Parliament's clear intention with the 2025 Act was that cryptocurrencies should attract the same or equivalent protection afforded to other forms of personal property and that the Act provides

> "a safe foundation for the Court to determine that conversion is in fact available as a cause of action where Bitcoin has been misappropriated, whether that be as a result of hacking by strangers, or the actions of a wife in the course of a matrimonial break down.**"**

Now that Bitcoin is recognised as property it would be

> "illogical and inconsistent with recent judicial and legislative developments to deny it the full suite of protections that the law of tort affords to personal property."

He argued that the task of defining the rights of such "third category" digital assets, including whether the tort of conversion would be available, was deliberately left to the courts through the incremental development of the common law, leaving it to Judges to develop the protections afforded to this "third category" of personal property by delineating its boundaries and the rights that attach to "third category" things. It is for the Courts to decide how those rights will evolve including whether and how principles drawn from the tort of conversion will apply to cases involving the unlawful interference with digital objects.

62. He also submitted that other common law jurisdictions have found that Bitcoin and electronic data can be the subject of conversion. In particular the judgment of the New York State Court of Appeals in **Thyroff -v- Nationwide** 8 N.Y. 3d283 in 2007, which found that a claim for conversion of electronic data was cognisable under New York Law. The Court observed (after rejecting the argument that intangibles could not be subject to the tort of conversion):

> "It is the strength of the common law to respond, albeit cautiously and intelligently, to the demands of commonsense justice in an evolving society."

63. Mr Sturman KC argued that Bitcoin is property that is vulnerable to misappropriation by persons other than the owner. Unlike intangible property (for instance rights under a contract) it can be stolen: see the Florida case of **Kleiman -v- Wright** Case No 18-CV-80176-Bloom/Reinhart SD Fla 2018 .Other states in the USA have also concluded crypto assets could be converted – see **BDI Capital -v- Bulbil Invs** 446 F. Supp. 3d 1127, where the Court in Georgia agreed with the decision in **Kleiman** and stated *"The Court agrees with Kleiman that bitcoins are sufficiently identifiable to be considered "specific intangible property subject to an action for conversion".* In California in the case of **Kremen -v- Cohen** 337 F. 3d 1024, decided as long ago as 2003, the Court concluded conversion was available for the conversion of intangibles (domain names).

64. Cases in Canada also concluded that Bitcoin could be the subject of conversion. In **Nelson -v- Gokturk** [2021] BCSC 813 and in **Canivate Growing Systems -v- Brazier** [2020] BCSC 232 the Court observed that it would be incongruous to limit conversion to tangible chattels in an electronic age, and held: *"modern conception of conversion must include wrongful interference with intangible goods, such as electronic data, websites and email."* In the judgment in **Canivate** the Judge referred to cases in Florida and New York that had also concluded conversion was a remedy available in relation to intangible property. A New Zealand Court concluded in **Henderson -v- Walker** [2019] NZHC 2184 that digital files were capable of possession to establish conversion because they were excludable and exhaustive. The court in **Henderson -v- Walker** considered the applicability of conversion to intangible property concluding at paragraph 270 with the observation;

> "Standing back, it seems obvious that digital assets should be afforded the protection of property law, They have all the characteristics of property and the conceptual difficulties appear to arise predominantly from the historical origins of our law of tangible property. There is a real difference between digital assets and the information they record. Such permanent records of information are already convertible when they take a physical form and it would be arbitrary to base the law on the form of the medium, especially now that digital media has assumed a ubiquitous role in modern life."

65. Although attractively and forcefully put I cannot accept Mr Sturman KC's submissions.

66. The purpose of the 2025 Act was to remove uncertainty as to the existence of a third category of property (to negate the analysis in **Colonial Bank -v- Whinney**) and to allow the common law to develop a robust framework of personal property rights for digital assets. However the decision of the Supreme Court in **OBG -v- Allan** is a clear block to the extension of the law of conversion for this purpose. The reasoning of the majority was clear as were the views of Lord Nicholls and Lady Hale when dissenting.

67. Lord Nicholls referred to Sir John Salmond's famous words:

> "Forms of action are dead, but their ghosts still haunt the precincts of the law. In their life they were powers of evil, and even in death they have not wholly ceased from troubling. In earlier days they filled the law with formalism and fiction, confusion and complexity, and though most of the mischief which they did has been buried with them, some portion of it remains inherent in the law of the present day. Thus if we open a book on the law of torts, howsoever modern and rationalized, we can still hear the echoes of the old controversies … and we are still called upon to observe distinctions and subtleties that have no substance or justification in them, but are nothing more than an evil inheritance from the days when forms of action and of pleading held the legal system in their clutches.
>
> In no branch of the law is this more obvious than in that which relates to the different classes of wrongs which may be committed with respect to chattels. In particular the law of trover and conversion is a region still darkened with the mists of legal formalism, through which no man will find his way by the light of nature …"

He noted that

> "Salmond was writing in the Law Quarterly Review at the beginning of the last century: 'Observations on Trover and Conversion', (1905) 81 LQR 43. But his observations still have a ring of truth in this area of the law."

68. Lord Nicholls, in what Lord Walker described as a powerful case for extending the tort of conversion stated that the better approach today was to discard old fictions and instead

> "…identify the common characteristic of the intangible rights in respect of whose misappropriation English law, as a matter of reality, already provides the remedy of conversion. The common characteristic, it seems to me, is that the rights protected in this way are contractual rights. No principled reason is apparent for attempting, for this purpose, to distinguish between different kinds of contractual rights";
>
> and
>
> "237. Whether the law on conversion should extend beyond contractual rights and embrace other forms of intangibles is not a matter to be pursued on this occasion. This further step has been taken elsewhere in some parts of the common law world. But other forms of intangible rights, such as intellectual property, raise problems of their own. These problems are best considered when they arise."

69. Lady Hale stated that in a logical world, there would be a proprietary remedy for the usurpation of all forms of property. The relevant question should be, not "is there a

proprietary remedy?", but "is what has been usurped property? Once the law recognises something as property, the law should extend a proprietary remedy to protect it.

70. Lord Walker in the majority stated of Lord Nicholls view

> "…his proposals would involve too drastic a reshaping of this area of the law of tort. The reshaping would be inconsistent with the basis on which Parliament enacted the Torts (Interference with Goods) Act 1977, after long consideration by the Law Revision Committee. It would have far-reaching consequences which this House is not in a position to explore or assess fully. This is an area in which reform must come from Parliament, after further consideration by the Law Commission."

71. I pause to observe that after a comprehensive analysis of the rights and remedies in respect of "third" category property the Commission did not recommend extending the law of conversion or by enactment reversing OBG.

72. Lord Brown stated at paragraph 321

> "In common with Lord Hoffmann and Lord Walker I too would regard the expansion of the tort of conversion to cover the appropriation of things in action, as proposed by Lord Nicholls, to involve too radical and fundamental a change in the hitherto accepted nature of this tort (see particularly the Torts (Interference with Goods) Act 1977) to be properly capable of achievement under the guise of a development of the common law. Lord Nicholls suggests that this would represent merely "a modest but principled extension of the scope of the tort". I see it rather differently—as no less than the proposed severance of any link whatever between the tort of conversion and the wrongful taking of physical possession of property (whether a chattel or document) having a real and ascertainable value. Indeed, I respectfully question whether such a proposed development in the law ought in any event to be welcomed.

73. I have set out the judgments of the Court in much greater detail than usual as they reveal that the reasoning of the majority would not permit of a third category of property being covered by the tort which they saw as set and limited in scope.

74. Mr Sturman KCs diligence in finding authority from other jurisdictions does not assist him to get around the roadblock. The Court was well aware that there were cases in the United States which supported the Appellant's submissions; but the majority were unpersuaded that "the profligate extension of tort law which has occurred in that country" should be reflected within a significant change to settled law in this jurisdiction. Lord Hoffmann had no difficulty with the proposition that a domain name may be intangible property, like a copyright or trade mark and would now have to add digital assets, but was clear that the notion of strict liability for the common law tort of conversion in respect of such property was "foreign to English law".

75. I recognise that in so far as there is any lacuna within the current range of protections and remedies for the rights of "third category" property owners there may be scope for development of another cause of action/remedy; with some elements similar to the law of conversion; but not of conversion itself. I asked of Miss Davies KC how such a

development would come before the Court; how would it be pleaded? Her answer was that it should not. For obvious reasons she did not argue that it would be born out of pleading conversion. In my judgment what flows from this is that in striking out, as I do, the claim currently pleaded in conversion I should make it clear that I have not concluded that there may not be, in some circumstances, scope for the Courts to develop a cause of action which the Law Commission described as comprising of specific and discrete principles of tortious liability by analogy with, or which draw on some elements of, the tort of conversion to deal with wrongful interferences with third category things such as digital objects. It may be that the claim advanced must draw on elements said to add up to an entitlement to protection and remedy. The need for such a cause of action is currently unclear to me given the scope of other causes of action and remedies. As I have set out above in this case a claim for a proprietary restitution claim has now been added by amendment. In Clerk and Lindsell (16-151) under the heading "wrongs relating to intangible property" it is stated by the authors;

Conversion, trespass and the other torts above are not available in respect of intangible property. It follows that a person deprived of intangible property, such as a computer file, the benefit of a contract, or some transferable government licence, will have to rely on some other cause of action. Sometimes a tort such as deceit will apply—for example, where a transfer is obtained by deception—and it may be that in practice the economic torts may protect the victim. However, it now seems that there may be a tort, or tort-like, remedy against a person who interferes with the claimant's rights in an item of intangible property. In **Armstrong DLW GmbH -v- Winnington Networks Ltd** [2012] EWHC 10 (Ch) the claimant was deprived of certain EU emissions trading permits as a result of a fraud: the permits passed through the hands of the defendant and from it to a legitimate holder. Julian Knowles J was satisfied that the claimant had a cause of action against the defendant, which he referred to as a proprietary restitutionary claim, less the latter were innocent of knowledge of wrongdoing, which in the circumstances they were not, having had at least a suspicion that the permits had been stolen. If this is correct, then there is possibly now a general cause of action for loss suffered available at common law against a person who with guilty knowledge or notice appropriates or deals with intangible property belonging to another. This could be significant in the case not only of the slightly unusual asset in **Armstrong DLW**, but of such things as computer files, NFTs, cryptocurrency, and possibly domain names.

76. In fact the Judge was Stephen Morris QC (as he then was) sitting as a Deputy High Court Judge and at paragraphs 84-94 he concluded

> "84. In my judgment, on the current state of the authorities and in particular the three leading cases referred to above, there is a basis of claim which can conveniently be labelled a "proprietary restitutionary claim" which is distinct from a claim for restitution on grounds of unjust enrichment…
>
> 85. The essence of such a claim at common law is that the claimant is seeking to enforce his subsisting legal property rights in an asset held by the defendant. The asset in respect of which the claimant is asserting a claim may be identified by "following" the claimant's original asset into the defendant's

> hands or by "tracing" it into a substitute asset in the defendant's hands. Furthermore, in a case of "following", where the asset claimed is the claimant's original asset, there is no scope for the conceptual difficulties identified in the academic debate surrounding the "tracing" claims.
>
> …..
>
> 87. Mr Joffe however submits that, whatever the position as regards money, there is no authority for there being such a basis of claim (or cause of action) where the asset in respect of which the claimant brings his claim is a chose in action or other intangible property. In such a case, he submits, there is no identifiable "cause of action" known to law. The only possible cause of action is "money had and received" and that only applies to money in the hands of the defendant. (The issue is not, as Mr Harris suggested, the nature of the original asset, but the nature of the asset received by the defendant) There is, he submits, no warrant for extending the law to cover such a cause of action, particularly in the light of the firm view of the majority in the House of Lords in *OBG* v *Allan,* supra, rejecting the possibility of there being a common law claim for conversion of a chose in action.
>
> 88. I do not agree with this submission. In my judgment, there is no reason why, in an appropriate case, a claimant does not have a personal claim at law to vindicate his legal proprietary rights in respect of a chose in action or form of other intangible property. Nor does any authority preclude such a claim."

77. In any event as this claim is currently pleaded on the facts I do not see it providing fertile grounds for analysis of the extent to which the Court needs to fill a lacuna in current rights/remedies. As I suggested during submissions if the case as the Claimant alleges is found to be made out on the facts i.e. his wife stole the bitcoin by transferring it away from the Claimant's control it would offend common understanding of property rights (and the analysis of the Commission) were the Claimant not not able to gain recovery of the Bitcoin (which remains at specified addresses) and/or damages for its value (or its diminution in value).

78. Finally I should also add that I accept Miss Davies KC's submission that even if I were of the view that the Supreme Court might develop or change the existing, clear legal principle as to the limit of the law of conversion, this is not sufficient to establish a real prospect of success before me; bound as I am, to follow **OBG**, the ratio of which is crystal clear.

79. For the reasons set out above I strike out the claim in conversion (paragraphs 24-27).

Trespass to Goods

80. The same issue arises about the nature of the third category of property i.e. given its intangible nature can there be a cause of action of trespass to goods.

81. As set out in Clerk & Lindsell on Torts, 24th Edition (2025) at paragraph 16-133, trespass to goods

> "…has always been concerned with the direct, immediate interference with the claimant's possession of a chattel…The interference must…be of a direct nature and involve some kind of physical contact or affectation."

And (at 16-136)

> "At common law, it is submitted that trespass, like conversion, lies in respect of interference with any corporeal personal property, and subject to the same limitations. It should be noted for these purposes that physical mediums on which information is stored, such as computer disks, USB sticks or "smart cards", are of course corporeal property, from which it follows that the alteration or erasure of that data should be capable of amounting to a trespass."

82. Miss Davies KC submitted that, as with conversion, the starting point (indeed she submitted the end point as well) is that trespass to goods is only possible in relation to tangible physical things. The Torts (Interference with Goods) Act 1977 which concerns *wrongful interference with goods* uses a single definition (section 14) of "*goods*" as "*all chattels personal other than things in action and money*". Also physical contact is necessary before a claim in trespass to goods can be made out, see **Hartley -v- Moxham** (1842) 3 QB 701 holding that *"to lock a room in which the claimant has his goods is not a trespass to them*". Miss Davies KC submitted that physical contact, and therefore interference, is impossible for crypto-assets (just as physical possession is impossible).

83. Mr Sturman KC did not address trespass to goods separately in his skeleton. During oral submissions he referred to the possibility that in order to transfer the Bitcoin the First Defendant had touched the wallet and/or used or altered property/data. As yet the precise mechanism for transfer was unknown. Miss Davies KC submitted that if such arguments were to be run they needed to be fully pleaded.

84. As with some other aspects of the law in relation to electronic data matters are far from settled and certain. The authors of Clerk and Lindsell (a work which has featured prominently in this judgment) state at paragraphs 16-137/138:

> "While the definition of corporeal personal property may normally be straightforward, questions may nevertheless arise in a number of borderline cases, in particular in respect of electronic technology. For example, it is hard to see why a deliberate attempt through the internet unlawfully to manipulate data on a computer should not amount to a trespass to that computer. The configuration of a computer hard disk is a physical feature of it, and the defendant's act in altering or accessing it changes that configuration, at least temporarily. American courts have fairly consistently so held, and it is suggested that English courts should do likewise.
>
> A more difficult question is whether accessing data rather than altering it ought to amount to trespass, for example where a defendant causes a search engine, "bot" or "spider" to access and extract data in circumstances where the owner of the computer concerned has made it clear that he does not wish this to be done. Although the formal requirements of trespass are made out here, it is suggested that the defendant should have a defence here analogous to that applicable in trespass to goods generally where the act complained of has not "gone beyond generally acceptable standards of conduct". The use of such devices is generally accepted practice, and the law should recognise this fact."

85. The Claimant has pleaded that a "cold wallet" is a type of (offline) digital asset storage device. It stores the private key and signs transactions inside the device and is a digital tool that enables a person to send and receive cryptocurrency securely. The currency is not stored in the wallet (despite the term) rather it is the key which is stored (the Bitcoins are actually the entries in the publicly accessible blockchain). It is also the Claimant's case that the First Defendant (acting alone or in concert with the Second Defendant) accessed the cold wallet whilst the Claimant retained physical possession of it in order to obtain the key so as to then be able to alter the data on the blockchain and thereby move the currency. My understanding is that on the Claimant's case the First Defendant did not need to touch the wallet and did not change the data on it; rather she accessed it and copied/used its data to gain the ability to change the data on the blockchain and move the bitcoin. I say understanding as I was not treated to any detailed analysis and the bitcoin storage is not a familiar area to me.

86. The position is somewhat unsatisfactory. Mr Sturman KC's oral submission took me by surprise as it did Miss Davies KC. On my understanding, difficult and uncertain as the applicability of the tort is to the use of electronic data storage devices generally, I cannot see how a cause of action could be successful on the facts as alleged. However, this is a strike out application, and in my experience during such applications sands can shift as arguments develop and the nature of a defect in a pleading become clear to the relevant party who has advanced it. Ordinarily the Court should consider whether a defect in a pleading may be cured by amendment and, if so, should consider giving the party concerned an opportunity to do so.

87. After some hesitation I will allow seven days from the handing down of this judgment for the Claimant to consider whether he wishes to apply to further amend the

Particulars of Claim and if so to file an application, to expand upon the basis of the claim for trespass to goods. In the absence of such an application the claim as to trespass to goods (paragraphs 28 and 29) will be automatically struck out. In the event of an application (assuming it is not the subject of consent) it will need to be determined before a defence is filed. Whether, given the matters set out above and the other causes of action/remedies pleaded, further argument on this cause of action is worth the candle is a matter which should be carefully considered.

88. Given the uncertainty as to the facts and the analysis as to the remedies set out above I refuse to strike out the Claim for a declaration and proprietary injunctive relief.

Security for costs

89. I turn to the First Defendant's application for security for costs. Here the sands certainly did shift during submissions.

90. CPR 25.26 provides that;

> "(1) A defendant to any claim may apply for security for their costs of the proceedings.
>
> ...
>
> (3) Where the court makes an order for security for costs, it must determine the amount of security, and direct the manner and time within which the security must be given."

91. CPR 25.27 provides, as material, that:

> "The court may make an order for security for costs if—
>
> (a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and
>
> (b) either an enactment permits the court to require security for costs, or one or more of the following conditions apply—
>
> (i) the claimant is resident out of the jurisdiction;"

92. It was not in dispute that the CPR 25.27 (b)(i) condition applies. The Claimant is resident out of the jurisdiction; currently, on his evidence in Thailand.

93. This means that the First Defendant's focus was on satisfying the Court, having regard to all the circumstances of the case, that it is just to make such an order. Much was made in the skeleton of financial issues, including a lack of clarity as to the Claimant's assets, and potential enforcement obstacles.

94. Once one of the qualifying conditions is established a necessary step in the evaluation of all the circumstances will be to consider what costs are likely to be incurred by the party seeking security in the determination of the litigation in respect of which security

is sought. In this case it is appropriate to start with this issue. It potentially requires evaluation of two elements;

i. The likelihood of having a costs order to enforce, and

ii. A realistic assessment, to the extent the Court is able to do so, of the amount of an adverse costs order which the Defendant may seek to enforce.

95. I take these issues in turn. As regards the first it is a well established principle that the Court should not go into analysis of the merits of the case unless it can be clearly demonstrated one way or another that there is a high degree of probability of success of failure. In **Porzelack -v- Porzelack** [1987] 1 WLR 420 the Vice Chancellor stated at 423D-F

> "…there have been attempts to go into the likelihood of the plaintiff winning the case or the defendant winning the case, presumably following the note in *The Supreme Court Practice* 1985, p. 384, under rubric 23/1–3/2, which says: "A major matter for consideration is the likelihood of the plaintiff succeeding." This is the second occasion recently on which I have had a major hearing on security for costs and in which the parties have sought to investigate in considerable detail the likelihood or otherwise of success in the action. I do not think that is a right course to adopt on an application for security for costs. The decision is necessarily made at an interlocutory stage on inadequate material and without any hearing of the evidence. A detailed examination of the possibilities of success or failure merely blows the case up into a large interlocutory hearing involving great expenditure of both money and time.
>
> Undoubtedly, if it can clearly be demonstrated that the plaintiff is likely to succeed, in the sense that there is a very high probability of success, then that is a matter that can properly be weighed in the balance. Similarly, if it can be shown that there is a very high probability that the defendant will succeed, that is a matter that can be weighed. But for myself I deplore the attempt to go into the merits of the case, unless it can clearly be demonstrated one way or another that there is a high degree of probability of success or failure.

96. Lord Justice Hamblen (as he then was) agreed with, cited and approved this statement in **Danilina -v- Chernukhin** [2019] 1 WLR 758 (CA) at paragraph 69.

97. In the present case it was front and centre of Mr Sturman KC's submission when seeking to resist an order for security for costs, as it had been in relation to other issues that, "it is difficult to conceive of any defence available to the First Defendant on the facts". He cast a fly in submitting that in order to address what is just in the case the Court would be assisted by understanding whether or not the First Defendant accepts moving the Bitcoin that she accepts did not belong to her. He received no bites. I was unsurprised. In his witness statement served on behalf of the Claimant Mr Meyer set out the history of repeatedly seeking clarification of the issue with no real response, save for the one sentence in the affidavit.

98. In short Mr Sturman KC submitted that it would be unjust to require the Claimant to provide security when he had been deprived of his principal asset and the

overwhelming evidence proves that the First Defendant had exfiltrated the bitcoin.

99. In response Miss Davies KC submitted that the Court could not be satisfied that the claim had a very high probability of success. She gave no details of the defence but stated that the transcripts of audio recordings were not accepted as accurate and suggested that it may have been the Second Defendant (and not the First Defendant) who had exfiltrated the bitcoin or some other third party.

100. What the Claimant has to establish to be successful in the claim is that, firstly, on the balance of probabilities, it was his wife, the First Defendant (alone or with the Second Defendant) who exfiltrated the bitcoin and secondly that he has a remedy in law. There is no counterclaim; so if those two elements are established he will succeed (and the starting point is that costs will follow the event).

101. The question for the purposes of this application is whether there is a very high probability of establishing the two elements. That the Claimant has a strong prima facie case in conversion, trespass to goods and a conspiracy involving the Second Defendant has already been accepted by Mr Justice Sweeting and was my view when I continued the interim order. The nature of the causes of action may have changed but the underlying allegations of fact have not. Also, as I have already set out, my view is that if the first element is established it would offend the common understanding of property rights were the Claimant not able to recovery the Bitcoin (which remains at specified addresses) and/or damages for its value (or its diminution in value). So the focus turns to the first issue.

102. I have reconsidered the evidence currently before the Court. In my judgment the Claimant has demonstrated a very high probability of success. The evidence is that he was warned of what the First Defendant was seeking to do, the transcripts are damning and when the First Defendant's property was searched the necessary equipment to exfiltrate the Bitcoin was found. She has had numerous opportunities to give her side of the story but has declined to do so. That the Bitcoin has remained at the addresses to which it was moved is consistent with the problems with realising its value which the First Defendant herself (on the Claimant's case) identified in the recorded conversations. Twenty four years as a first instance Judge have repeatedly highlighted the wisdom of applying Occam's razor. That the Second Defendant was involved with the First Defendant will provide no defence for her.

103. As a result the merits of the Claimant's case, or the corollary; that there is only a small possibility of the First Defendant having a costs order to enforce, is a circumstance which may, indeed sensibly must, be taken into account when considering whether it is just to make such an order for security for costs. It weighs heavily against it.

104. As regards the second issue a Court should not accept an estimate of future costs without scrutiny. Whilst it will not usually be the case that the Court will seek to replicate the detailed approach necessary for determining costs at a costs and case management hearing, or at an assessment, care must be taken to ensure that an inflated sum is not being sought. This is well established principle.

105. Here the First Defendant sought a sum of £678,715.80 in security excluding the costs associated with the applications before the Court. The relevant calculations and

underlying assumptions were contained in an (unsigned) costs schedule format. Miss Davies KC submitted that the costs were reasonable and proportionate given the value of the case and the seriousness of the allegations levied against the first Defendant.

106. Proportionality should be considered against CPR 44.3(5) factors. Costs incurred are proportionate if they bear a reasonable relationship to –

(a) the sums in issue in the proceedings;

(b) the value of any non-monetary relief in issue in the proceedings;

(c) the complexity of the litigation;

(d) any additional work generated by the conduct of the paying party,

(e) any wider factors involved in the proceedings, such as reputation or public importance;

107. The sum in issue is obviously very large with the value of the Bitcoin put variously between £160-£180 million. However the factual dispute is very far from complex. In many respects, as I have set out it is very straightforward. The estimate of costs should have reflected this but did not. It is necessary to expand upon this.

108. The First Defendant did not appear at the return date of the injunction. Her statement as required by the order amounted to little more than one sentence. The Particulars of Claim (even after amendment and before strike out of the conversion claim) extends to 12 pages (with broad spaced text) and 45 paragraphs (excluding service issues), lay witness evidence is likely to be limited to the Claimant and the First Defendant and, if she engages with the litigation, the Second Defendant. It is difficult to see who else, apart from the Claimant's daughter could assist with the factual issues. The First Defendant believes that it will only be one witness per party. There will likely to be limited disclosure; this cannot realistically be seen as a document heavy case. The First Defendant estimated that expert costs (a crypto tracing expert) would be £30,000 for the expert and a total of £56,300 (as I indicated during submission given the issues in the case and limited extent to which tracing can assist the starting point should be a single joint expert). The First Defendant based the costs estimate on a three day trial. Given this very broad analysis of the future of the claim the sum sought immediately failed "the eyebrow test". Analysis of the schedule, on a "broad brush basis" then revealed what I consider to be clearly unsustainable estimates of what would be reasonable and proportionate costs. I raised obvious examples with Miss Davies KC. I shall now set out a brief analysis;

(a) £106,814 sought for issues/statements of case (it bears repeating that this costs figure excludes any work on the strike out application which will have already required detailed consideration of the claim advanced). Apart from the costs of leading and Junior Counsel drafting the defence it is estimated that solicitors will spend 75 hours on the defence. Assuming an onerous seven hours of chargeable time a day; over 10 days. I asked Miss Davies KC; doing what? The affidavit served by the First Defendant denies any relevant knowledge of exfiltration.

(b) A two hour CMC in what should be a relatively straightforward case to manage is estimated to be likely to cost £59,250 with solicitors spending 75 hours; so over 10 days at 7 hours a day preparing for it (despite not having to even prepare the bundles). I suggested during submissions, and after time for reflection, I do not resile from the description, that this is nonsense.

(c) As for disclosure this cannot conceivably be a document heavy case (no disclosure issues are identified) yet the estimate is of a staggering 245 hours of solicitors time (at seven days chargeable time a total of 35 days or 5 working weeks) and a total cost of £66,375. Again it is difficult to see any sensible basis upon which this figure has been advanced.

(d) As for witness statements, as I have indicated the First Defendant has estimated costs as one witness statement per party with no supplemental statements. Despite the obvious simplicity and limited scope of the factual issue which the court will have to determine the estimate is that it will take 95 hours of solicitor's time; or over 13 working days at seven hours a day and a total cost for this stage of £40,975.

(e) PTR; again it bears repetition that this is an estimate based on a two witness, maximum two expert, case (on the Claimant's assumptions) that is not document heavy. Despite not having the task of preparing bundles the estimate is again of 75 hours of solicitors time (the third stage to be given this estimate) and a total figure of £44,250.

(f) Trial preparation; for a three day trial, with one conference and not having to prepare the bundles is estimated to require 95 hours of solicitors time (the second time this estimate has been given for a stage) or over 13 working days at seven hours a day. The total cost of this stage to include brief fees for two Counsel is £129,200.

109. I should make it clear that I have not considered other obvious issues that may fall for consideration when a budget is considered e.g. the use of two Counsel at every step. These are matters over which views may legitimately differ and given the matters which I have already identified, is unnecessary to go further. Rather I have just outlined only what is clearly unsustainable and, in my view, simply should never have been advanced. I can discern no sensible basis for these estimates which amount to a very large sum of money.

110. Miss Davies KC appeared somewhat shell shocked at my overarching analysis of the cost estimate and instructions were taken. The result was that rather than seeking security of costs to reflect costs for the whole case the First Defendant now sought only security in relation to the costs up to the case management hearing. Given that those costs will exclude the costs of the applications before me that was a huge shift (although as I have set out the estimate for the issue/statements of case stage is unsustainable and thus unreliable). However, the damage was already done and in my judgment, the fact that a demonstrably excessive figure for security has been sought within what was stated (as verified) to be "a detailed estimate of future costs" is a relevant circumstance to be taken into account at the stage of whether an order should

be made and not just in what amount. Indeed had this been a costs and case management hearing and the form signed with a statement of truth that the budget was a fair and accurate statement of incurred and estimated costs which it would be reasonable and proportionate for the First Defendant to incur in this litigation there may well have been other consequences.

111. The purpose of an order for security for cost is to protect a party against the risk of not being able to enforce any costs order the Court must ensure that it is not used as an instrument of oppression by seeking excessive security. The Claimant's conduct in this regard weighs against the making of any order.

112. Also if the Court does not have a reliable estimate of costs due to the conduct of the party seeking security the most that could properly be ordered would be based upon a conservative estimate with the benefit of any doubt to be given to the party against whom any order was to be made.

113. I now turn to a third circumstance which is, as I am sure was apparent during submissions, in my view important a fortiori as what is now sought is only security up to the case management conference.

114. As I have already set out when the First Defendant was arrested on suspicion of theft some valuable items of property were seized. Mr Meyer explained matters in his statement as follows:

> "The Claimant's property relevant to the Police Property Act proceedings
>
> 38. In addition to his main assets, the Claimant has provided me with material prepared in anticipation of the upcoming Police Property Act application, setting out the items seized by Sussex Police and their valuations. The items which the Claimant identifies as belonging to him include numerous high-value luxury watches – among them multiple Rolex Daytona, Submariner and Yacht-Master models, several Patek Philippe watches, and a Richard Mille RM030 – with individual estimated values ranging from approximately £3,600 to £94,500. The seized items also include cryptocurrency hardware wallets valued at £145 and £33,000 respectively. Taken together and based on the valuations recorded in the material provided, this property alone has a combined estimated value well in excess of £250,000. These assets further underline that the Claimant is financially capable of meeting any adverse costs order.
> "

115. So at the moment property with a significant realisable value is held by a third party within the jurisdiction. Given that the First Defendant has laid claim to some of the items they will not be released without her agreement or a Court order.

116. Miss Davies KC argued that the Claimant had not provided a detailed valuation. There would be force in that submission if the First Defendant was unaware of the likely

value of the property. However she well knows what the property is (it was seized from her house) and she has been in negotiations about its division. Miss Davies KC also submitted that any valuation may not be achieved in the event of "a fire sale" such as to provide adequate security for costs (as now only sought up to the case management stage and other than the costs relating to the applications before the Court). These are largely the costs of settling a defence. As there is no reliable estimate of costs a conservative estimate must be made on a broad brush basis. I need say no more than given the estimate of value and details given in correspondence Miss Davies KC's concerns are about "a fire sale" of the total goods not producing sufficient security are unrealistic. A more valid point is that some of the property may belong to the First Defendant. Mr Sturman KC's response was to point out that they are "men's watches". He relied upon an e-mail dated 24th October from Russell Cooke (so on behalf of the First Defendant) suggesting a division of the property which would leave the Claimant with six Rolex watches and two Patek Philippe watches (and other property).

117. The Court does not have to descend into detailed valuations of the retained property in circumstances given the first two which I have set out. Suffice to say I view it as highly likely that property of considerable value belonging to the Claimant is currently held by a third party within the jurisdiction with no current risk of dissipation without the First Defendant's consent or a court order. This would in all likelihood provide security to cover the costs up to case management stage in relation to what the First Defendant would recover, in the very unlikely scenario that she did obtain a costs order in her favour, following assessment of her costs up to the case management stage (as opposed to what she has estimated those costs to be; such estimate being demonstrably unreliable).

118. I have considered the other circumstances prayed in aid by Miss Davies KC in support of the application and in my judgment the matters set out above, taken cumulatively, weigh so very strongly against the making of an order that it is not necessary to deal with the other matters in detail and decide every contested point. However given the extent of the submissions (and authorities cited) I will deal with them briefly.

119. The Claimant is a wealthy man. Mr Meyer stated;

> "36. I have reviewed documentary evidence of the Claimant's financial position, including two mortgage-free properties in Dubai, a substantial investment portfolio, and a liquid account balance. Based on the GBP exchange rate as at 11 February 2026, the combined value of these assets is approximately £6.66 million, and I have verified both ownership and valuation. The Claimant does not disclose the underlying financial documents because they contain highly sensitive information – including investment identifiers, registration details and asset locations – that goes far beyond what is reasonably necessary for the determination of this application. Given the history of the exfiltration of his Bitcoin and the nature of the dispute, the Claimant has a genuine and well-founded concern that the First Defendant may attempt to

> exploit detailed financial disclosure for improper purposes. A verified summary by me therefore provides the Court with the assurance required on an application for security of costs, without exposing the Claimant to further risk."

120. He has disclosed his assets to his solicitor and given a reason why he is not prepared to share the details with the First Defendant. Given the unusual circumstances of this case his reluctance is to a degree understandable. However had I formed a different view about the other circumstances the provision of further detail may have been required if an adverse inference was to be avoided. As Miss Davies KC correctly stated there could be a confidentiality ring. This could have been a first step before ordering security.

121. A comment made about his inability to pay the First Defendant's costs fee should, as Mr Meyer has explained, have been a comment about his refusal to pay a fee.

122. CPR 25.27(b)(i) is a threshold condition only; it simply confers jurisdiction. The mere fact of residence abroad does not create a presumption in favour of security for costs, nor does it shift the burden onto the Claimant. Where only that condition is satisfied, the Court should not exercise its discretion to order security for costs unless it does so on grounds relating to a "real risk" of substantial obstacles to, or the burden of, enforcement of a subsequent order for costs in the context of the particular foreign claimant or country concerned (see **Nasser -v- United Bank of Kuwait** [2002] 1 All ER 401, at paragraphs 61to 64).

123. Mr Jerrum has produced an article and reference to a Supreme Court decision in Thailand (No 6565/2544 (2001) which he argues is directly contrary to the assertions that there would be a real risk of substantial obstacles to enforcement. Also there is force in Mr Sturman KC's submission that the First Defendant has not identified any special difficulty in enforcing English judgments in Thailand; none suggests material additional cost, systemic delay or any public-policy objection.

124. Further, whilst the Claimant is (on his evidence) currently resident in Thailand, as Mr Meyer has identified, he has real property (unencumbered) in Dubai and there has been no suggestion made that proceedings could not be issued in the United Arab Emirates to enforce a debt based on an order from this Court; no suggestion of a risk of serious enforcement difficulties in that jurisdiction. Dubai has long been a hub for cross-border business and international investment with an ancillary legal system.

125. The Claimant's conviction for an assault on the First Defendant having (on his case) discovered the theft of the Bitcoin is not a relevant circumstance. Convictions for dishonesty may have been relevant; but no suggestion has been made that the Claimant has been found to be dishonest.

126. For the reasons set out above I dismiss the application for security for costs.

Substituted Service.

127. I was, and remain, satisfied that the Second Defendant continues to evade service. I make the order sought subject to one amendment. I order that a copy of the order as to substituted service also be sent by e-mail to the address identified by Mr Meyer in his statement of 4th March 2026.

Order

128. I shall make an order striking out the claim in conversion, and dismissing the application for security of costs and giving time for the Claimant to consider amendment in relation to trespass to goods. I would welcome a draft order.

129. In the absence of an application the defence will then fall due.

130. In the absence of agreement, it will be necessary to consider any further consequential orders flowing from this judgment. In order to save costs my preliminary view is that they could be dealt with at a costs and case management hearing, which, given the matters set out in this judgment, it is appropriate to reserve to myself. To assist the parties in respect of such a hearing it may help to state that I remain of the preliminary view that a single joint expert could be instructed and that an early trial is necessary given the security threats to, and volatility of value of, the Bitcoin. I would not be the trial Judge, but may continue to manage the action.