Neutral Citation Number: [2025] EWHC 22 (Ch)

Case No: BL-2024-CDF-000009

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

Cardiff Civil Justice Centre
2 Park Street, Cardiff, CF10 1ET

Date: 9 January 2025

Before:

HIS HONOUR JUDGE KEYSER KC
sitting as a Judge of the High Court

- -

Between:

JAMES HOWELLS	**Claimant**
- and -	
NEWPORT CITY COUNCIL	**Defendant**

- -
- -

James Goudie KC and **Olivia Chaffin-Laird** (instructed by **Interim Head of Law and Standards**) for the **Defendant**
Dean Armstrong KC, **Maria Mulla** and **Bruce Drummond** (instructed by **Manleys Solicitors**) for the **Claimant**

Hearing date: 3 December 2024

- -

Approved Judgment

This judgment was handed down remotely at 10 a.m. on 9 January 2025 by circulation to the parties or their representatives by email and by release to the National Archives.

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HIS HONOUR JUDGE KEYSER KC

Judge Keyser KC :

Introduction

1. The claimant, Mr Howells, says that in August 2013 a hard drive containing the private key to his Bitcoin was deposited in error at Docksway Landfill Site, Newport, which is owned and operated by the defendant, Newport City Council. He says that his Bitcoin are now worth in excess of £600 million and that, without the hard drive containing the private key, he is unable to access them. By his claim issued on 17 May 2024 he contends that he is the owner of the hard drive and of everything on it, and he seeks declarations to that effect, an order that the defendant either deliver the hard drive or allow his team of experts to excavate the landfill in order to find it, and (in the alternative) compensation equivalent to the value of the Bitcoin that he can no longer access.

2. By an application notice dated 20 June 2024 the defendant has applied for an order striking out the claim on the grounds that the particulars of claim disclose no reasonable grounds for bringing the claim or are an abuse of process or likely to obstruct the just disposal of the proceedings; or, alternatively, summary judgment on the grounds that the claimant has no realistic prospect of success and there is no other compelling reason for the matter to be disposed of at trial.

3. This is my judgment on the application. It is structured as follows.

    1) Paragraphs 5 to 10 summarise the procedural law dealing with how the court approaches an application of this nature.

    2) Paragraph 11 provides some background understanding of the issues in the case by quoting a short summary of how Bitcoin works.

    3) Paragraphs 12 to 18 summarise the claimant's claim and the facts on which he relies or which are not in dispute.

    4) Paragraphs 19 to 54 contain the discussion of the issues. The conclusion is in paragraph 55.

4. I am grateful to all counsel who contributed to the oral and written submissions on the application: for the defendant, Mr James Goudie KC and Miss Olivia Chaffin-Laird; for the claimant, Mr Dean Armstrong KC, Miss Maria Mulla and Mr Bruce Drummond. It should be recorded that the claimant's counsel and solicitors represented him at the hearing on a *pro bono* basis.

Strike-out and Summary Judgment: The Law

Strike-out: Part 3

5. CPR rule 3.4 provides in part:

> "(2) The court may strike out a statement of case if it appears to the court –

> (a) that the statement of case discloses no reasonable grounds for bringing … the claim;
>
> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; …"

6. CPR Part 3 is supplemented by Practice Direction 3A, which provides in part:

> "1.2 The following are examples of cases where the court may conclude that particulars of claim (whether contained in a claim form or filed separately) fall within rule 3.4(2)(a):
>
> (1) those which set out no facts indicating what the claim is about, for example 'Money owed £5000',
>
> (2) those which are incoherent and make no sense,
>
> (3) those which contain a coherent set of facts but those facts, even if true, do not disclose any legally recognisable claim against the defendant.
>
> 1.3 A claim may fall within rule 3.4(2)(b) where it is vexatious, scurrilous or obviously ill-founded.
>
> …
>
> 1.5 A party may believe they can show without a trial that an opponent's case has no real prospect of success on the facts, or that the case is bound to succeed or fail, as the case may be, because of a point of law (including the interpretation of a document). In such a case the party concerned may make an application under rule 3.4 or apply for summary judgment under Part 24 (or both) as they think appropriate."

7. Although the defendant has relied in the alternative both on r. 3.4(2)(a) and on r. 3.4(2)(b), the application has been advanced simply on the basis that the claim cannot succeed. It is common ground that, when considering an application advanced on that basis, the court ought to assume that the facts relied on by the claimant are true: that is, the defendant's contention is that, *even if* (which it does not necessarily accept) the facts alleged by the claimant are true, his claim must fail.

Summary judgment: Part 24

8. CPR rule 24.3 provides, so far as relevant to this application:

> "The court may give summary judgment against a claimant … on the whole of a claim or on an issue if –
>
> (a) it considers that the party has no real prospect of succeeding on the claim … or issue; and

> (b) there is no other compelling reason why the case or issue should be disposed of at a trial."

9. Many cases have explained the correct approach to applications for summary judgment. The classic summary of the principles is that of Lewison J in *EasyAir Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15], approved by the Court of Appeal in *Global Asset Capital Inc v Aabar Block SARL* [2017] EWCA Civ 37, [2017] 4 WLR 163. Other significant summaries or discussions of the relevant principles include: *ED&F Man Liquid Products Ltd v Patel* [2003] EWCA Civ 472 at [8]–[10] (Potter LJ);; *Elite Property Holdings Ltd v Barclays Bank Plc* [2019] EWCA Civ 204 at [41]-[42] (Asplin LJ, dealing with the similar test for permitting amendment of a statement of case); *Skatteforvaltningen v Solo Capital Partners LLP* [2020] EWHC 1624 (Comm) at [3]-[4] (Andrew Baker J); *Foglia v The Family Officer Ltd* [2021] EWHC 650 (Comm) at [11]-[18] (Cockerill J); *Lex Foundation v Citibank NA* [2022] EWHC 1649 (Comm) at [33]-[39]. I have regard to what was said in these cases but do not need to set out the relevant dicta here.

10. For present purposes, I can summarise the position as follows. Summary judgment will be given against a claimant on a claim or issue only if the court is satisfied that the claim or issue has no real, as opposed to fanciful, prospect of success; a claim or issue that is merely arguable but carries no degree of conviction will not have a real prospect of success. The court will not conduct a mini-trial and, where necessary, will bear in mind that full disclosure has not yet taken place and that there might be more evidence to come. Accordingly, where there are disputed questions of fact, it will not generally attempt to determine where the probabilities lie. However, the court ought to carry out a critical examination of the available material and is not bound to accept the mere say-so of anybody; where it is clear that a factual case is self-contradictory or inherently incredible or where it is contradicted by the contemporaneous documents, the court, after careful consideration of the evidence that is currently before it and having regard to the nature of such further evidence as might reasonably be expected to be available at trial, is entitled to reject that case even on a summary basis. The court will not be dissuaded from giving judgment by mere Micawberism—the unsubstantiated hope that "something might turn up". (I should record that the defendant in the present case does not invite the court, on this application, to question the factual basis of the claimant's claim.) Where the claim turns on a point of law that can properly be determined on the available evidence, the court is entitled to go ahead and determine it. The complexity of litigation is not itself a reason for refusing summary judgment: the circumstances may be such that determination of the case is impossible without a trial; on the other hand, it might be possible to analyse the case sufficiently at an early stage and thereby avoid the unnecessary time and expense of the continuation of litigation until trial. In all cases, r. 24.2(b) falls to be considered in principle.

How Bitcoin Works

11. In order to understand what this case is, and is not, about, some idea of how Bitcoin works is helpful. For that purpose, I can cite the remarks of Birss LJ in *Tulip Trading Limited v Van Der Laan* [2023] EWCA Civ 83, [2023] 4 WLR 16, at [21]-[24].

> "21. In the bitcoin scheme transactions are recorded in a ledger or database known as a blockchain, with each network having its own ledger. The blockchain constitutes a public registry

recording every transaction. A given amount of bitcoin is simply a number held at a certain digital address. A transaction simply involves reducing the value at one address and correspondingly increasing it at another. ... The amounts held at every address are public, but the identity of the parties is not. The blockchain does not reveal the relationship between the digital addresses and any persons.

22. Each digital address is associated with a pair of public and private cryptographic keys. The public key identifies the address on the network. The relevant private key is the means by which bitcoin can be dealt with. The holder of the private key uses it to cryptographically sign a record of the transaction moving bitcoin from one address to another. The record is called a cryptographic hash. The public/private key pair means that the person signing with the private key is proving that they are associated with the public key (and so the address), without revealing the private key itself. The hash ensures that any attempt to alter the record would be noticeable, because even the smallest change would alter the hash.

23. For each network there are devices on the network that undertake 'mining'. This is the means whereby transactions are validated. The latest transactions are gathered together into a block, which also includes a hash of the previous block (hence each block is chained to its predecessor, making a 'blockchain'). The miners work in competition with each other to produce an appropriate hash of this new block. The competition is to find a unique 'number used once' or nonce, which causes the hash of the new block to have certain defined characteristics. This is called a 'proof of work'. Blocks that have been validated this way are broadcast to the network and incorporated into further work. Miners receive both transaction fees and new bitcoin.

24. The signing of the hashed transaction record with users' private keys in the first place, and the incorporation of these records into a hashed chain of blocks produced by the proof of work, solves the double spending problem. This characteristic of bitcoin does not emerge as a matter of law or convention, it is a characteristic which arises as a matter of fact from the way the software works. As a result it is meaningful to describe bitcoin not merely as something which is transferable but as 'rivalrous' (see the Law Commission's recent Digital Assets: Consultation Paper [Law Com No 256]). For a transferable thing to be rivalrous, the holding of it by one person necessarily prevents another from holding that very thing at the same time. Because the holder cannot double spend their bitcoin, such that it is rivalrous, the cryptoasset can be said to be capable of assumption by a third party (see the definition of property in *National Provincial Bank v Ainsworth* [1965] 1 AC 65). Thus, as Bryan

> J held in *AA v Persons Unknown* [2019] EWCH (Comm) 3556 (paragraphs 55-61) citing *Ainsworth*, a cryptoasset such as bitcoin is property."

The Nature of the Claim

12. The defendant is the council for the city of Newport in South Wales. With regard to the collection and disposal of waste, it is both a collection authority and a disposal authority for the purposes of the Control of Pollution Act 1974 ("CPA 1974"): see section 30(6).

13. Docksway Landfill Site ("the Site") is a household waste recycling centre within the locality of the defendant council. It incorporates a waste reception area and the landfill and is the main waste disposal facility for the whole of the city of Newport. The evidence of Mr Mike Wallbank, the defendant's Interim Head of Law and Standards, is that the landfill contains around 350,000 tonnes of waste with a further 50,000 tonnes added annually. Once the skip at the reception area is full, the waste is emptied into the landfill, where it is then covered with inert material to minimise the release of gases or liquids and then compacted.

14. The Site is operated by the defendant under a permit issued by the Natural Resources Body for Wales ("NRW") under regulation 13 of the Environmental Permitting (England and Wales) Regulations 2010

15. For the purposes of the application I assume the following facts, which are averred in the particulars of claim. (Whether or not those facts are correct does not fall for my determination on this application.) On 15 February 2009 the claimant ran Bitcoin software for the first time at his home in Newport, South Wales. In early 2009 he was able to mine 8,000 Bitcoin, which "are currently located in their original wallet addresses" (particulars of claim, paragraph 9). The Bitcoin software created a "wallet.dat" file for the claimant containing a public and private key address, which was saved on an internal laptop hard drive ("the Hard Drive"). The private key, stored within the wallet.dat file, is the only information that can enable access to the claimant's Bitcoin. The Hard Drive was 2½ inches in size and black and silver in colour, and it had a white label, on which was black writing. The Hard Drive was owned and in the possession of the claimant. In 2010 the claimant placed the Hard Drive in a drawer located within his home office. (In his evidence he explains why he removed it from the laptop.) Thereafter he accessed the Hard Drive periodically, using a USB connector cable, because it contained not only the wallet.dat file but numerous other files, documents and photographs. The Hard Drive was fully operational and accessible. On 4 August 2013 the claimant had a clear-out from his home office, placing everything that he thought he did not need into two black bin-liner bags. In his drawers he found two hard drives: one was the Hard Drive, and the other was a blank hard drive that contained no data. He meant to throw out the blank hard drive, but instead he mistakenly picked up the Hard Drive and put it into one of the black bin-liners. He then left the two bin bags downstairs in his house and asked his partner at the time to take them to the landfill at the Site the following day after completing the school run. However, she said that she did not want to take the black bin bags to the Site and refused to do so. The claimant was not overly concerned at her refusal, because he decided that on the following morning he would check to make sure that he had put the correct hard drive in the bin bags. However, when he awoke at 9 o'clock the following morning he

found that his partner had had a change of heart and had already taken the bin bags to the Site and manually deposited them into the general waste bins at the Site. In October and November 2013 the value of Bitcoin rose sharply and the claimant's holding increased in value to approximately £9 million. (It is implied in the particulars of claim and expressly stated in his evidence that this increase in value of Bitcoin alerted the claimant to the need to check that he had indeed disposed of the correct hard drive.) The claimant first met with a local representative of the defendant (Mr Gwyn Jones, the Operations Manager) on 25 November 2013 to discuss the question of access to the Hard Drive. Thereafter he made repeated requests to the defendant for access to the Site in order to find and retrieve the Hard Drive, but these were largely ignored by the defendant. The claimant then set about securing investment and expertise to enable a team of experts to undertake a landfill excavation and recovery operation and in 2023 he began to advance his case formally to the defendant.

16. In his particulars of claim, the claimant makes the following key averments:

> "9. The claimant was able to mine 8000 Bitcoin in early 2009 and has a complete record of the mining history which shows all block numbers and transaction identification. The mined Bitcoin are currently located in their original wallet addresses [these are set out] and this can be evidenced by publicly available and independently verifiable blockchain data.
>
> …
>
> 10. When running the Bitcoin Client software for the first time the software created a 'wallet.dat' file for the claimant containing a public and private key address which was saved on an internal 2.5 inch laptop hard drive ('the hard drive') at all times owned and in possession of the claimant.
>
> …
>
> 12. The wallet.dat file is where the public and private key data is stored. The private key (which is located inside the wallet.dat file) is the only information which can enable access to the claimant's legally owned Bitcoin.
>
> …
>
> 27. The claimant never intended to dispose of the hard drive. The hard drive was taken from his home without his permission or consent on the morning of 5th August 2013.
>
> …
>
> 29. With the hard drive containing the only wallet.dat key the claimant is unable to access his Bitcoin and is unable to transfer, or undertake any transactions with, his Bitcoin. The claimant has access to the Bitcoin database and ledger where on any given day he can view the value of his digital property (the bitcoins).

> 30. Without the wallet.dat file contained on the hard drive the claimant is unable to access his Bitcoin. There is no other way for him to access the Bitcoin without the wallet.dat file.
>
> …
>
> 39. For the first time on 25 September 2023 the defendant asserted in writing to the legal representatives appointed by the claimant that, as the hard drive had been deposited at [the Site], they were the legal owners of the hard drive.
>
> …
>
> 43. The claimant has been able to identify the precise location where the hard drive is placed within Cell 2 - Area 2 of Docks Way landfill site and has also established a recovery team who have set out in substantial detail in writing to the defendant, how the hard drive may be successfully recovered (at no cost, and at minimal risk to the defendant).
>
> …
>
> 45. By asserting ownership of the hard drive, the defendant has substantially interfered with the claimant's rights and has denied the claimant access to not only the tangible property of the hard drive, but additionally has deprived the claimant of his intangible property and his access to the same."

17. On this application the claimant has produced evidence that he has assembled an expert team of recovery specialists, who consider that there is a good chance of locating and recovering the Hard Drive and of successfully using recovery technology to recover the private key even if the Hard Drive is damaged. The defendant does not accept that this is so, and I make no findings as to whether it is so, but for the purposes of this application I shall assume the evidence to be correct.

18. The particulars of claim raise three heads of claim:

    (i) A proprietary restitutionary claim (paragraphs 46-50)

    (ii) An equitable proprietary claim (paragraphs 51-54)

    (iii) A claim for declarations that the claimant is the legal owner of the Hard Drive and all tangible and intangible property on it, together with either (a) an order for delivery up of the Hard Drive or (b) damages for its wrongful retention (paragraphs 55-58).

    I shall comment on these heads of claim later in this judgment.

Discussion

This Case is not about Ownership of the Bitcoin

19. In my judgment, the only relevant issues in this case concern ownership of, and rights of access to, the Hard Drive. It is necessary to make this clear at the outset, because at the hearing of the defendant's application there was reference to rights regarding Bitcoin and intangible property. I shall explain briefly why I consider those matters to be irrelevant to the real issues in the case.

20. The law of England and Wales has historically recognised two different kinds of personal property[1]: things in possession (tangible property), and things in action (intangible property). In broad terms, things in possession are physical things, and things in action are rights that have existence only as being enforceable within a legal system (such as debts that one is owed, or intellectual property rights). It is now generally recognised that cryptocurrency, such as Bitcoin, is also property, although it does not fit within what the law recognises as tangible or intangible property; as such, it is commonly said to constitute, or to be within, a "third category" of personal property. On this, see: *Tulip Trading* at [24] (paragraph 11 above); Law Commission, *Digital Assets: Final report* (Law Com No. 412, 2023), chapter 3; and the recent decision of Mr Richard Farnhill, sitting as a deputy High Court judge, in *D'Aloia v Persons Unknown and others* [2024] EWHC 2342 (Ch), especially at [104] and [173].

21. The only thing that went into the landfill was the Hard Drive. The defendant has made remarks to the effect that this included all the intangible property on the Hard Drive (see, for example, paragraph 17 of the defendant's skeleton argument). That does not make good sense, in my view, because intangible property has no location and cannot be "on" anything tangible. However, the remarks led Mr Armstrong KC for the claimant to mock the inference that, if the defendant is the owner of physical items in the landfill and of intangible property on those physical things, it is the owner of (for example) Microsoft's intellectual property of programmes on any hard drive in the landfill. The conclusion would, of course, be absurd; but the absurdity results from the notion that the intellectual property could be located on the hard drive. (If a copy of the novel that won the Booker Prize in 2024 were thrown into the landfill, the author's copyright would not go with it.) In order to avoid going down blind alleys, one needs to focus on what property one is talking about.

22. The particulars of claim seek a declaration that the claimant is the legal owner of both the tangible and the intangible property of and in the Hard Drive (paragraph 56). The tangible property is simply the Hard Drive, which is what went into the landfill. Paragraph 58 of the particulars of claim identifies the intangible property on the Hard Drive as the Bitcoin, and in his oral submissions Mr Armstrong KC ended up contending that the Bitcoin were "on" the Hard Drive. That is plainly wrong. Bitcoin are not tangible property and cannot be on the Hard Drive or in the Landfill. Bitcoin are also not intangible property (on this, see the helpful discussion in the Law Commission's *Digital Assets: Final report*, at paragraphs 3.52 to 3.54), and neither intangible property nor property within the third category has physical location. Mr Armstrong's late contention is, in fact, contrary to the case advanced in the witness statement of the claimant's solicitor, Mr Manley, which says in paragraph 33 that the Bitcoin "exist independently on the Blockchain, away from the hard drive".

[1] More properly, three kinds. But the category of "chattels real", which comprises interests in land other than freehold estates and interests, has become for practical if not taxonomical purposes part of the land law. Anyway, it has nothing to do with the present case.

23. Anyway, the defendant has not asserted and does not assert that it is the owner of the Bitcoin. It accepts that it does not own the Bitcoin and that (if it is true, as the claimant says, that he mined them and has not thereafter divested himself of them) the claimant is the owner of the Bitcoin. Mr Goudie KC accepted unequivocally that this was so. The defendant's case is not that it owns the Bitcoin. Its case is that it owns the Hard Drive and that the claimant has no right to have it or to gain access to it. There simply is no issue between the parties about ownership of the Bitcoin.

24. What is on the Hard Drive is at most a digital record of the private key, which is a code provided to the claimant to enable him to operate his cryptocurrency account. Mr Armstrong KC began by accepting in terms that the private key was information, not property. In my judgment that is clearly correct. (See the brief discussion in Bridge et al. eds., *The Law of Personal Property*, 3rd edition, at paras 10.44 to 10.46.) But any question on the point would be immaterial. The Hard Drive contains not the private key but a record of the private key. The position is no different in principle from what it would be if the record of the private key had been written on a piece of paper that had been put into the landfill. If the claimant had a separate record of the private key, he could use the private key to access the Bitcoin. If the record that in fact exists is a digital file on the Hard Drive, it can indeed be said to be "on" the Hard Drive: a digital record, being mere information, must be embedded in a physical medium. (That, I think, is what the defendant has meant in saying that it owns the Hard Drive and any intangible property on it.) No doubt, the private key is confidential information and its use by others to gain access to the claimant's cryptocurrency account would be unlawful. (See, for example, the remarks of HHJ Pelling QC, sitting as a Judge of the High Court, in *Fetch.AI Ltd v Persons Unknown* [2021] EWHC 2254 (Comm), at [10].) Mr Goudie KC again accepted that, if somehow the defendant were to gain knowledge of the private key, it could not use it to access the claimant's Bitcoin account. There is, again, no issue between the parties on this point. Thus, even if it be arguable that *the right to use the private key* is capable of constituting property, the claimant's case is not advanced, because the defendant does not claim such a right and the record of the private key on the Hard Drive in the landfill is different from a right to use the private key. Mr Armstrong's submission that, even if the defendant owns the Hard Drive, its refusal to deliver it to the claimant is a wrongful interference with his property rights is a *non sequitur* and without any proper basis in law.

The Hard Drive

25. The primary contention of the defendant is that, even if all the facts asserted by the claimant are true and correct, his claim cannot succeed, because the Hard Drive is the property of the defendant.

26. Section 12 of CPA 1974 imposes on each collection authority a duty to arrange for the collection of household waste in its area. Section 14 imposes on each disposal authority a duty to arrange for the disposal of the waste collected by it in pursuance of section 12; and, for the purpose of the performance of that duty, it empowers each disposal authority to provide places at which to dispose of the waste, plant and equipment for processing or disposing of waste, and places at which to deposit waste before it is transferred to a place or plant and equipment for the sorting and processing of waste: section 14 (1), (3), (4). Section 14 (6) provides (emphasis added):

> "(6) **A disposal authority or a collection authority may permit another person to use facilities provided by the authority in pursuance of the preceding provisions of this section and may provide for the use of another person any such facilities as the authority has power to provide in pursuance of those provisions**; and—
>
> (a) subject to the following paragraph, it shall be the duty of the authority to make a reasonable charge in respect of the use by another person of the facilities unless the authority considers it appropriate not to make a charge;
>
> (b) no charge shall be made in pursuance of this subsection in respect of household waste; **and**
>
> (c) **anything delivered to the authority by another person in the course of using the facilities shall belong to the authority and may be dealt with accordingly.**"

27. What was delivered to the landfill was the Hard Drive. The defendant's simple contention is this: it is the claimant's case that the Hard Drive was delivered to the Site by "another person", namely his partner at the time; she delivered it "in the course of using the facilities"; and, in those circumstances, the Hard Drive belongs to the defendant and the claimant is not entitled to it.

28. In my judgment, the defendant's argument is correct and provides a complete answer to the claim.

29. Several arguments in response were advanced on behalf of the claimant. Before addressing them, I observe that a thread running through the submissions to me on behalf of the claimant was that the case concerns an area of law that is complex, uncertain and developing and that accordingly it is unsuited to a summary determination. However, even if the area of law has the features attributed to it by the claimant, this is not enough to justify permitting the case to proceed if in truth there is no reasonable basis for advancing the claim or no realistic prospect that the claim will succeed: see, in a slightly different procedural context, the observations in *Tulip Trading* at [63] and [68]. Another submission, made by Miss Mulla, was that the case is unsuitable for summary disposal because there are many (she listed nineteen) issues of fact that could only be resolved at trial. Again, however, the existence of factual issues does not prevent summary disposal if it is possible to say that, however the issues might be decided, there is no reasonable basis for bringing the claim or the claim has no realistic prospect of success.

30. I turn to consider the arguments advanced on behalf of the claimant in respect of CPA 1974. First, it was submitted: "'Belong' is not a term of legalese. It is necessarily a factual term" (skeleton argument, paragraph 51.2). Quite what this means is unclear. It is true that legal usage will commonly use the language of "property" rather than of belonging. But "belong" is a normal English word and I do not know why it should be thought have a "factual" rather than a legal import or what the difference might be.

Indeed, Mr Armstrong KC himself drew attention to a well-known example of the legal use of the language of belonging, namely section 1 of the Theft Act 1968 ("property belonging to another").

31. Second, it was submitted that section 14(6)(c) merely says that anything so delivered shall belong to the authority but does not say that it shall cease to belong to its former owner: that is, it does not preclude the possibility that existing property rights might be preserved, or that a thing might "belong" to a number of individuals concurrently. I was referred to section 5 of the Theft Act 1968, which explains what is meant by property "belonging to another" in that Act:

> "(1) Property shall be regarded as belonging to any person having possession or control of it, or having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest).
>
> (2) Where property is subject to a trust, the persons to whom it belongs shall be regarded as including any person having a right to enforce the trust, and an intention to defeat the trust shall be regarded accordingly as an intention to deprive of the property any person having that right.
>
> (3) Where a person receives property from or on account of another, and is under an obligation to the other to retain and deal with that property or its proceeds in a particular way, the property or proceeds shall be regarded (as against him) as belonging to the other.
>
> (4) Where a person gets property by another's mistake, and is under an obligation to make restoration (in whole or in part) of the property or its proceeds or of the value thereof, then to the extent of that obligation the property or proceeds shall be regarded (as against him) as belonging to the person entitled to restoration, and an intention not to make restoration shall be regarded accordingly as an intention to deprive that person of the property or proceeds.
>
> (5) Property of a corporation sole shall be regarded as belonging to the corporation notwithstanding a vacancy in the corporation."

32. Section 5 of the Theft Act 1968 illustrates that it is possible to speak of property belonging to more than one person at the same time. This, however, does not take matters much further. The question is how the words are used in a particular context. Thus, for the purpose of explaining what was meant by the theft of "property belonging to another", section 5 of the Theft Act 1968 extended the concept to almost any proprietary interest and, possibly, even beyond: see section 5(4). That represents a clear legislative decision with an obvious purpose. In my judgment, the position is quite different in respect of section 14(6)(c) of CPA 1974. First, there is no reservation, or recognition of the existence, of other rights in the things delivered. Second, the words "shall belong to the authority" are unqualified and unrestricted: it is not said, for example, that the authority shall have a possessory or other proprietary right in the

things delivered. Third, and correspondingly, the words "and may be dealt with accordingly" are important. If other persons are supposed to retain proprietary rights or interest in the things delivered, what (one may ask) could it mean to tell the authority that it may deal with the things "accordingly"? According to what? According to proprietary rights that are limited or qualified by co-existing or competing or superior rights? The words "and may be dealt with accordingly" confer a *practical* right: to put it rather colloquially, they tell the authority, in effect, "They are yours and you may do with them as you wish." Fourth, this is consistent with the context of the provision, namely the processing and disposal of waste by the disposal authority. It would be impractical for a disposal authority to be concerned with the possible existence of competing proprietary interests in the deposited waste. In theory it would be possible for such interests to exist but for the disposal authority to be empowered to deal with the waste in disregard of those interests. But one has only to identify that possibility to see that, as a construction of section 14(6)(c), it is not only unnecessary but absurd: any qualification of the words "shall belong to the authority" would be contrary to the point of the provision; therefore it makes no sense to introduce such a qualification into the interpretation of the words.

33. Third, it was submitted that it is arguable that the words "in the course of using the facilities" in section 14(6)(c) do not apply to someone, such as (allegedly) the claimant's partner at the time, who disposes of items without the owner's consent. I do not regard the point as arguable at all. Whether or not the claimant's partner had his authority to take the bags to the Site and dispose of them there (and it is far from clear to me that she did not have such authority), she was using the facilities. The statutory provision does not distinguish among users of the facilities on the basis of their authority, just as it does not distinguish among them on the basis of their state of mind. (So, if the claimant had himself taken the bags to the Site, he would have been "using the facilities", regardless of whether he was delivering the Hard Drive by mistake.) There is no proper basis for implying any limitation into the words of the provision, and there is every reason for not doing so, because the disposal authority's freedom to deal with items delivered to it as refuse cannot sensibly be contingent on things of which it has no knowledge or control.

34. In conclusion, therefore, I consider that the defendant's argument based on section 14(6)(c) is a sufficient answer to the claim.

35. In the light of that conclusion, I shall comment fairly briefly on the particular ways in which the claimant's claim has been advanced (see paragraph 18 above). I should note, however, that the argument before me contained very little analysis of precisely how the claimant's claim might arise; only the broad contours were apparent.

Legal Ownership of the Hard Drive

36. This head of claim, set out in paragraphs 55 to 58 of the particulars of claim, lies at the heart of the case. The claimant says that the Hard Drive (together with everything on it) is his; therefore, the defendant must either deliver it up to him or give him the opportunity to recover it or pay him damages for depriving him of it. Those damages are claimed in an amount equivalent to the value of the Bitcoin, which is said currently to exceed £600 million.

37. Section 14(6)(c) of CPA 1974 is a complete answer to this head of claim. In the circumstances, and as I did not receive any argument at the hearing in respect of issues concerning wrongful interference with goods, I shall say no more on the point.

The Proprietary Restitutionary Claim

38. In correspondence, those acting for the claimant have relied on the decision of Mr Stephen Morris QC sitting as a deputy High Court judge in *Armstrong DLW GmbH v Winnington Networks Ltd* [2012] EWHC 10 (Ch), [2012] 3 WLR 835 ("*Armstrong"*) in support of the proprietary restitutionary claim, and was one of the authorities put before me, though it was referred to only in passing at the hearing. The case concerned certain tradeable EU allowances ("EUAs") credited to operators under the European Union Emissions Trading Scheme. The EUAs were entirely electronic and were treated in the case as being a form of intangible property. The claimant, an operator of power plants that emitted carbon dioxide and were therefore within the Scheme, held EUAs in its accounts under the Scheme. An unknown third party committed a fraud that resulted in a large number of the claimant's EUAs being transferred to the account of the defendant, which was a legitimate trader in EUAs. The defendant immediately sold the EUAs to a regular customer. The claimant made three alternative claims against the defendant: first, a claim for restitution on the grounds of unjust enrichment (that is, to recover from the defendant a sum equal to the amount by which the defendant had been unjustly enriched by receipt of the EUAs or the proceeds of their sale); second, a proprietary restitutionary claim; third, a personal claim in equity for "knowing receipt", on the grounds that the fraudster had held the EUAs on constructive trust for the claimant and that the state of the defendant's knowledge was such as to render its receipt of the EUAs unconscionable, so that it in turn had held them on constructive trust for the claimant. The claim for restitution on the grounds of unjust enrichment failed: see [95]-[98]. The proprietary restitutionary claim also failed, because the deputy judge held that the fraudster had acquired legal title to the EUAs, which therefore had become subject of a constructive trust. Correspondingly, the claim for equitable compensation for knowing receipt of trust property succeeded.

39. In the present case, the claimant does not rely on an allegation of "knowing receipt", and no claim is advanced for restitution on the grounds of unjust enrichment. However, the claimant does apparently maintain a proprietary restitutionary claim. I regard that claim as misguided for reasons quite apart from the fact that it is precluded by section 14(6)(c) of CPA 1974.

40. In *Armstrong*, the proprietary restitutionary claim was described as a personal claim to vindicate the claimant's continuing legal title to the EUAs or their substitutes in the hands of the defendant: see [33]. It was "based on the notion that the claimant has, at all times, retained legal title to the relevant asset, which asset has been transferred away from the claimant and it (or its substitute) has found its way into the hands of the defendant. Here the claimant can claim restitution of value from the indirect recipient of the asset": see [63]. Having discussed at length a number of leading cases, the deputy judge stated his conclusion on the law as follows:

> "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. …
>
> 86. This type of claim does not arise where the relevant asset is a chattel or land or even a documentary intangible, because there are other distinct causes of action in tort covering these types of property. It does arise where the asset in the hands of the defendant is money (possibly, under the old common law action for money had and received).
>
> …
>
> 93. Finally, the fact that there can be no claim in conversion in respect of choses in action or other intangibles does not mean that there can be no proprietary restitutionary claim in respect of choses in action or other intangibles. Conversion is a strict liability tort with no room for defences of bona fide purchase. That is not the position with a proprietary restitutionary claim. … There is no reason why the law should provide protection for land, chattels, documentary intangibles and money but not for other intangibles.
>
> 94. In my judgment, as a matter of authority and principle, if and where legal title remains with the claimant, a proprietary restitutionary claim at common law is available in respect of receipt by the defendant of a chose in action or other intangible property."

41. I proceed on the assumption that both the decision and the reasoning in *Armstrong* are good in law, though both have proved a little controversial. Nevertheless, the case does not support the claimant's claim in the present case. First, the requirement that the claimant have subsisting property rights in an asset held by the defendant cannot be satisfied, by reason of section 14(6)(c) of CPA 1974. Second, the proprietary restitutionary claim was a common law claim based on the retention of legal title (not a claim in equity), and the remedy is not available where the asset is a chattel, as is the Hard Drive: see [63], [85] and [86]. Issues concerning the legal ownership of things in possession (tangible assets) are not dealt with at common law by anything akin to the *vindicatio* of Roman Law but rather by the law of torts, in particular the tort of trespass (direct interference with goods) and the tort of conversion. If, on the other hand, the proprietary interest is said to be equitable, the matter falls to be analysed in terms of "knowing receipt" (rightly not relied on in this case) or constructive trust (for which, see the following paragraphs).

The Equitable Proprietary Claim

42. In the particulars of claim (paragraphs 51 to 54) the claimant advances what he calls an "equitable proprietary claim". The formulation of the claim is not entirely clear: in paragraph 51 it is put on the basis that, if the defendant is indeed the legal owner of the Hard Drive, it is the constructive trustee for the claimant of "the intangible property contained on the hard drive including the wallet.dat file providing the key to the Bitcoin"; however, paragraphs 52 to 54 aver that the defendant holds the Hard Drive itself on constructive trust for the claimant. Anyway, the gist of the argument is that, if indeed the legal ownership in the property (namely, as explained above, the Hard Drive) has passed to the defendant, the claimant nevertheless has an equitable interest in the property under a constructive trust.

43. Any such equitable interest would have had to be newly created, for the reason given by Lord Browne-Wilkinson in *Westdeutsche Landesbank Girozentrale v Islington LBC* [1996] A.C. 669 at 706:

> "A person solely entitled to the full beneficial ownership of money or property, both at law and in equity, does not enjoy an equitable interest in that property. The legal title carries with it all rights. Unless and until there is a separation of the legal and equitable estates, there is no separate equitable interest."

Lord Browne-Wilkinson summarised the relevant principles of trusts law at 705:

> "(i) Equity operates on the conscience of the owner of the legal interest. In the case of a trust, the conscience of the legal owner requires him to carry out the purposes for which the property was vested in him (express or implied trust) or which the law imposes on him by reason of his unconscionable conduct (constructive trust).
>
> (ii) Since the equitable jurisdiction to enforce trusts depends upon the conscience of the holder of the legal interest being affected, he cannot be a trustee of the property if and so long as he is ignorant of the facts alleged to affect his conscience, i.e. until he is aware that he is intended to hold the property for the benefit of others in the case of an express or implied trust, or, in the case of a constructive trust, of the factors which are alleged to affect his conscience.
>
> (iii) In order to establish a trust there must be identifiable trust property. The only apparent exception to this rule is a constructive trust imposed on a person who dishonestly assists in a breach of trust who may come under fiduciary duties even if he does not receive identifiable trust property.
>
> (iv) Once a trust is established, as from the date of its establishment the beneficiary has, in equity, a proprietary interest in the trust property, which proprietary interest will be enforceable in equity against any subsequent holder of the property (whether the original property or substituted property

> into which it can be traced) other than a purchaser for value of the legal interest without notice."

44. In argument before me, the possibility of a resulting trust was mooted, though it does not form part of the pleaded case. The contention that a resulting trust could have arisen seems to me to be impossible to maintain. The case does not fall within the recognised circumstances in which a resulting trust can arise. See the remarks of Lord Browne-Wilkinson in *Westdeutsche Landesbank Girozentrale* at 708-709 and 715-716.

45. The claimant's case on constructive trust was not developed before me in any detail. One might almost, uncharitably, have supposed that it was desired to leave the judge none the wiser and so unwilling to form any firm view on a summary basis. Miss Mulla's primary submission was that the existence of a trust would require analysis of the factual circumstances and that this could not be performed without a trial. However, a claimant faced with an application for summary determination has at least to show that there is a claim capable of coherent formulation and with a realistic prospect of success. So I have tried to understand the case on constructive trust as best I can. The case, as I understand it, is that, if indeed the defendant is the legal owner of the Hard Drive, it held the Hard Drive on trust for the claimant since it learned, in November 2013, that it had received the Hard Drive without the knowledge or consent of the claimant, because he did not know of its disposal, and so holds it on trust for him. This form of trust was considered by Lord Browne-Wilkinson in *Westdeutsche Landesbank Girozentrale*, in the context of a discussion of *Chase Manhattan Bank N.A v Israel-British Bank (London) Ltd* [1981] Ch 105, a case concerning the receipt of money paid under a mistake. He said at [1996] A.C. 669, 715:

> "The defendant bank knew of the mistake made by the paying bank within two days of the receipt of the moneys … [This fact] may well provide a proper foundation for the decision. Although the mere receipt of moneys, in ignorance of the mistake, gives rise to no trust, the retention of the moneys after the recipient bank learned of the mistake may well have given rise to a constructive trust".

46. A claim based on such a trust would, in my judgment, have no realistic prospect of success in the present case. First, the existence of the necessary equitable interest on the part of the claimant is precluded by section 14(6)(c) of CPA 1974, as already explained. This is the critical point, because it rules out any trusts claim, however formulated.

47. Second, the trust is based on *unconscionable retention* of property. In my view there would be no realistic prospect of a finding that the defendant's retention of the Hard Drive was unconscionable. The defendant was not retaining it for gain or because it wanted it. It was retaining it because it was buried in landfill. Even by 25 November 2013, when the claimant explained the position to the defendant's officer, Mr Gwyn Jones, at the Site, the Hard Drive was buried and the claimant was able only to identify "which area approximately within the Newport Landfill site the hard drive ha[d] been buried in": see paragraphs 56 and 57 of the claimant's witness statement dated 31 March 2024. The claimant has adduced a report prepared for him in March 2021 by Mr Gwyn Jones, according to which in November 2013 the Hard Drive was "probably" located "within an area of approximately 2,000 square metres of the site" and "within an

approximate volume of 10,000 – 15,000 tonnes of waste." It would be a criminal offence for the claimant or anyone acting for him to sort over or disturb any refuse deposited at the Site, unless he were authorised to do so by the defendant: see section 27 of CPA 1974 and section 60 of the Environmental Protection Act 1990. The defendant could only give such authorisation, or excavate the Site itself, if it were first to apply for and obtain a new environmental permit from NRW, as the Schedule of permitted activities in its existing permit does not allow excavation of the Site. The defendant has refused to give authorisation or to apply for a new environmental permit so as to give itself power lawfully to give such authorisation or excavate the Site itself. No challenge to that refusal by way of a claim for judicial review has ever been brought, and such a claim would now be well out of time. In any event, it is fanciful to suppose that the refusal of the defendant to permit disturbance and excavation of the landfill would be held to be unconscionable. For one thing, as already mentioned, there are obvious practical reasons for declining to permit such activities—even if, as the claimant asserts, they could be successfully carried out. But the matter goes further. The case is nothing like the typical case where the property in question is, for example, money sitting in a bank account or a car sitting in a garage, either of which might be readily restored. Here the asset (the Hard Drive) is both within land of which the defendant is in possession and buried under an amount of material of which the defendant is the owner. It did not get into that position by reason of any wrongdoing on the part of the defendant. I see no reasonable basis on which the claimant could assert an entitlement either (i) to require the defendant to excavate its own land to recover his Hard Drive—which, for obvious reasons, is not actually what he is seeking—or (ii) to enter himself onto the defendant's land and interfere with the defendant's property. In the course of oral argument, Mr Armstrong KC suggested that the matter would turn on a balance of competing interests. While that has obvious attraction for the claimant, when the balance is said to be on the one hand a Hard Drive giving access to hugely valuable Bitcoin and on the other hand a pile of rubbish, such a balance has no basis in property law. This seems to me to undermine any claim for delivery of the Hard Drive; more particularly, it undermines the contention that the retention of the Hard Drive in the landfill could be unconscionable.

48. Third, the claimant knew the facts material to his claim by November 2013 but did not commence proceedings until May 2024. In those circumstances, in my judgment, his claim is barred by lapse of time. Section 21 of the Limitation Act 1980 provides in relevant part:

> "(1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action—
>
> …
>
> (b) to recover from the trustee trust property or the proceeds of trust property in the possession of the trustee, or previously received by the trustee and converted to his own use.
>
> …
>
> (3) Subject to the preceding provisions of this section, an action by a beneficiary to recover trust property or in respect of any

> breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of six years from the date on which the cause of action accrued."

49. In view of the terms of section 21(1)(b), section 21(3) does not apply to an action to recover trust property from a trustee; no limitation period applies to such a claim. However, not all constructive trusts fall within section 21. *Lewin on Trusts* (20th edition), para 50-056, explains the distinction between two kinds of constructive trust (references omitted):

> "The first comprises those cases in which a defendant has assumed the duties of a trustee or other fiduciary, doing so by a transaction which was independent of and preceded the breach of trust complained of, e.g. where the defendant acts as a trustee de son tort or agrees to buy land for a claimant but then seeks to keep it for himself; the second comprises those cases in which the so-called trust obligation arises as a direct consequence of an unlawful transaction which the claimant impugns and in which the defendant is no more than a wrongdoer, e.g. where the defendant dishonestly assists the trustee in a breach of trust or obtains property from the claimant by fraudulent misrepresentation. The former, called in this section constructive trusts of the first kind, are true trusts, for the defendant has assumed a fiduciary duty. The latter, called in this section constructive trusts of the second kind, are not true trusts, for the defendant has never assumed any fiduciary duty; they are purely remedial and are described as constructive trusts merely as 'a formula for equitable relief'."

50. The only kind of constructive trust that could possibly be alleged in the present case is a constructive trust of the second kind. In *Williams v Central Bank of Nigeria* [2014] UKSC 10, [2014] AC 1189, the Supreme Court confirmed that constructive trusts of the second kind fall under section 21(3), not under section 21(1), and that a claim by a beneficiary under such a trust to recover trust property or in respect of a breach of trust is subject to a six-year limitation period. Accordingly, I reject the claimant's contention that his claim under a constructive trust would be subject to no limitation period. The claimant's fall-back position, as I understand it, is that the cause of action accrued only when the defendant asserted ownership of the Hard Drive in its letter dated 25 September 2023: see paragraph 46.2 of his skeleton argument. The problem with that, as it seems to me, is that the constructive trust (if any) would have arisen upon the *unconscionable retention* of the trust property, and on the claimant's case the defendant had the requisite knowledge in 2013 but did not give him access to recover his property. As the trust in question arises from unconscionable retention of the property, it is not the terms of correspondence in 2023 that give rise to any cause of action. If the claimant were to attempt to evade this conclusion by saying that no trust arose until, at a much later date, he demonstrated to the defendant the feasibility of a recovery operation, the untenable nature of his contention that any trust at all existed would only be thrown into higher relief.

51. An argument was advanced on behalf of the claimant in reliance on section 32 of the Limitation Act 1980: that it was arguable that the defendant had deliberately concealed a fact relevant to his right of action (namely, the fact of its assertion of ownership of the Hard Drive) and that the period of limitation did not begin to run until he discovered that concealment upon receipt of the defendant's letter dated 25 September 2023. I regard this as a desperate argument. The claimant knew what had happened to the Hard Drive for a full ten years. The defendant concealed nothing. If it first asserted ownership of the Hard Drive, in reliance on CPA 1974, in September 2023, that was an assertion of law, not of fact. If the assertion itself be regarded as a fact, it had not been concealed because it had not previously been made. Anyway, as the supposed constructive trust rests on unconscionable retention of the property, it is not the assertion that founds the right of action. (If A receives B's money in circumstances that make his retention of it unconscionable but refuses to return it, nothing is added if at some later date A adds, "It's mine.")

52. If, however, the claimant were correct in the contention that no statutory limitation period applies to the claim, I would not accede to the defendant's invitation to conclude at this stage that the claim would be barred by the equitable doctrine of laches. In *P&O Nedlloyd B.V. v Arab Metals Co and others,* Moore-Bick J said at [52], "The equitable doctrine of laches … provides the court with ample power to refuse relief when delay on the claimant's part would make it inequitable to grant it". At [61] he said: "The question for the court in each case is simply whether, having regard to the delay, its extent, the reasons for it and its consequences, it would be inequitable to grant the claimant the relief he seeks." I would not be willing to hold on a summary basis that laches would provide an unanswerable defence to the claim. In particular, the consequences of delay are unclear, in circumstances where it is not certain on the evidence before me how much harder any excavation and recovery operation would be by reason of the lapse of time.

Other compelling reason for trial

53. As I do not consider that the present claim has any realistic prospect of success, it is necessary to consider whether there is any other compelling reason for the claim to be disposed of at trial rather than summarily. In my judgment, there is not. On behalf of the claimant, it has been submitted that there are a great many facts which could only be investigated at trial; however, even if that is so, findings as to any disputed facts are not required for the resolution of the case at this stage. Again, much was made on behalf of the claimant of his offer to give to the city of Newport 10% of the value he realises from his Bitcoin in the event that he recovers the Hard Drive and the private key. It was submitted that "the very fact that the claimant has pledged 10% of the value of the Bitcoin to the community of Newport dictates that the public are also entitled to have these matters fully adjudicated openly" (skeleton argument, paragraph 16). I do not regard this as a compelling reason why the case should be disposed of at trial. The claimant cannot compel the defendant to accept his offer. If he has no legally sustainable case, disposal at a trial will be fruitless for him and wasteful of the defendant's resources. And he is not entitled to maintain unmeritorious proceedings in existence for the purpose of imposing pressure on the defendant to accept an offer it has steadfastly rejected.

54. In that context, I ought to mention, though briefly, the reasons of substance for the defendant's stance in these proceedings. These have been set out in some detail in

correspondence and are summarised as follows in paragraph 40 of the first witness statement of Mr Wallbank:

> "The implications were the Council to allow the claimant access to excavate the site cannot be understated:
> (i) breach of the terms of its licence with NRW;
> (ii) escape of harmful substances into the environment;
> (iii) damage caused by ground movement during or after excavation work;
> (iv) risk to the health and safety of site staff whilst work is ongoing;
> (v) risk to health and safety of residents within the area of Docks Way whilst work is ongoing and subsequently;
> (vi) exposure to the Council's residents to potentially serious risks which raises public health issues and environmental concerns;
> (vii) the inability of the Council to discharge its statutory waste disposal functions whilst the site is excavated."

For the claimant, it is not accepted that these concerns are well-founded. I am not called on to decide whether they are or not. But it would be unfair, in a judgment concerned with fairly dry legal issues, to leave any impression that the defendant's stance is based merely on legal right or that it had failed to have regard to its own wider responsibilities or the interests of the people of Newport.

Conclusion

55. For the reasons given above, I consider that the particulars of claim do not show any reasonable grounds for bringing this case. I also consider that the claim would have no realistic prospect of succeeding if it went to trial and that there is no other compelling reason why it should be disposed of at trial. It follows that it is open to me to strike out the claim under CPR Part 3 or to give summary judgment for the defendant under CPR Part 24. The latter course seems preferable. There will be judgment for the defendant and the claim will be dismissed.