# Ex NF v Munneke: A Supreme Court of South Australia Analysis of Private Keys, Insolvency, and the Tracing of Corporate Digital Assets

November 11, 2025

---

The judgment of the Supreme Court of South Australia in *EX NF PTY LTD (IN LIQ) & ANOR v MUNNEKE & ORS* [2025] SASC 165 (2 October 2025) represents a significant and forensically detailed application of orthodox corporate law principles to the distinct evidentiary challenges posed by digital assets. While the case involved the ownership and disposition of Bitcoin (BTC) and Ether (ETH), its true value, particularly for international digital asset disputes and arbitration, is not in the creation of novel “crypto law.” Rather, the judgment provides an authoritative framework for insolvency practitioners, creditors, and counsel on how established principles of beneficial ownership, directors’ duties, and shareholder ratification are to be applied when corporate assets are held in pseudonymous wallets controlled by a fiduciary. The court’s methodical approach demonstrates a refusal to be confounded by the technical nature of the assets, focusing instead on a rigorous, evidence-based analysis of off-chain records, competing narratives, and the objective conduct of the parties to establish title and remedy breaches of duty. This analysis will deconstruct the court’s reasoning, focusing on the key takeaways for digital asset disputes, specifically the court’s treatment of provenance over possession, its method for deconstructing “personal investment" claims, the primacy of off-chain financial records, the seamless application of tracing principles, and the critical invalidation of shareholder ratification once a company enters the "zone of insolvency."

A primary challenge in digital asset disputes is the common defense that technical control of a private key is tantamount to legal and beneficial ownership. The *Munneke* judgment provides a clear rebuttal to this presumption, establishing that a court's inquiry will prioritize the *provenance* of the asset over the mere *possession* of the keys. The director, Mr. Munneke, "contended that he…is presumed by law to be the owner of the cryptocurrency" [para 50], a claim supported by his exclusive control of the CoinJar account and the associated private keys [para 135]. The court, however, looked past this technical control to determine the asset's true character at its inception. The foundational finding was that "the bitcoin was purchased in February and August 2014…using Ex NF's funds from the NAB account" [para 798]. The court noted that the CoinJar exchange account "was linked only to the NAB account" [para 798], despite Mr. Munneke's awareness that he could have linked a personal bank account [para 798]. This direct, objective link between the company's fiat funds and the acquisition of the digital asset was the court's starting point and a fact that the director's defenses could not overcome. The director's claim that corporate funds "were used from the NAB account because it was convenient" [para 50] was implicitly rejected in favor of the court's finding that the purchases were, "on their face, company transactions" [para 830]. This demonstrates a clear judicial method: the "on-ramp", the source of the fiat currency used to acquire the asset, will be a paramount consideration in determining beneficial ownership, regardless of whose name is on the exchange account or who controls the subsequent wallet.

From this finding of provenance, the court's analysis then turned to dismantling the director's *post facto* rationalization for the holding. This is a crucial takeaway for the digital asset industry, where the line between corporate treasury and personal holdings is often blurred, particularly in founder-led enterprises. The court was faced with conflicting defenses: Mr. Munneke claimed the crypto was a "family investment" [para 50], possibly for the ZALD Trust [para 156], while Ms. Zaccara, the sole shareholder, "assert[ed] that the cryptocurrency was purchased for the benefit of only Ms Zaccara personally" [para 50]. The court systematically deconstructed these narratives by privileging contemporaneous evidence of *corporate purpose* over subsequent, self-serving claims of *personal investment*. The most compelling piece of evidence was an "unguarded" 2018 email from Mr. Munneke to a broker, written years after the acquisition but before the dispute. In it, Mr. Munneke explained his early involvement with Ethereum: "Bought in at the pre-sale to use it, never expected it to be an investment, just thought it was a cheaper way to get gas for development" [para 806]. The court was "ultimately persuaded that Mr Munneke's email…constitutes an admission" [para 841] that the asset was acquired for a specific business utility, not as a personal investment. This finding was bolstered by other objective evidence of corporate purpose, including the company co-hosting a "Blockchain Hackathon" [para 846] and expert testimony regarding the benefits for a developer to hold ETH at the time [para 112]. The court's finding was decisive: "I am satisfied that the ethereum was purchased by Ex NF in the course of its business for use in its business at some point in the future" [para 845]. This provides a clear test for future disputes, weighting contemporaneous evidence of business utility far more heavily than subsequent, inconsistent claims of personal ownership.

Further cementing the asset's corporate character, the court gave significant weight to the objective, off-chain financial records. This analysis was twofold. First, the court noted where the company's *own conduct* demonstrated ownership. It was submitted, and the court accepted, that Ex NF had “claim[ed] a tax credit in respect of the cryptocurrency in 2014” [para 400] and, critically, “assum[ed] a GST collection obligation in 2018” [para 431] upon the sale of the ETH to fund the Ward Street property. The respondents’ defense that these were simply “mistakes” by the accountants [para 432] was unpersuasive. This objective conduct, recorded in statutory filings, was treated as powerful evidence of the asset’s true character. Second, the court’s analysis of the company’s *failure* to keep proper records for its other transactions demonstrated the director’s breach of duty. The court found that contrary to section 286(1) of the *Corporations Act*, Ex NF “did not maintain written financial records that correctly recorded and explained its transactions…and which would enable true and fair financial statements to be prepared and audited” [para 775]. This failure meant the director was incapable of making an informed decision. As Mr. Munneke himself admitted in his s 597 examination, “he did not know in January 2016 whether Ex NF was solvent or insolvent” [para 738]. This dual focus, using the records that *did* exist to establish ownership of the crypto, and the *absence* of records to establish a breach of duty in disposing of it, highlights the central, determinative role that financial accounting plays in digital asset disputes.

Once the court established that the digital assets were the company’s property, it had no difficulty applying traditional equitable tracing principles to the asset’s subsequent metamorphosis. This is a vital confirmation for liquidators and creditors. The court seamlessly followed the company’s ETH, which it found was “the property of Ex NF” [para 850], through its liquidation by the director. It noted the fiat proceeds were deposited into the company’s NAB account, and that these specific funds were then “drawn from the NAB account to be paid as settlement monies for the purchase of Ward Street” [para 25]. The court also noted that the surplus funds from the sale, some $121,988.89, “were retained by Ex NF in the NAB account" [para 816], conduct which the court found was consistent only with corporate ownership. This clean application of tracing, from ETH to fiat in a corporate account, to the acquisition of a real property asset in a third party's name, affirms that these established equitable remedies are perfectly equipped to unwind complex misappropriations, allowing the liquidator to claim the resulting real-world property as a traceable proceed of the company's original digital asset.

The final and most critical legal disposition of the court was its invalidation of the director's primary defense: shareholder ratification. In the digital asset space, which is dominated by closely-held companies, the alignment of the director and sole shareholder often presents a significant hurdle for creditors. The respondents' case relied heavily on this alignment, arguing "that Ms Zaccara, as sole shareholder of Ex NF, agreed, ratified, and acquiesced to the release of Ex NF's funds" [para 54]. The court, however, deployed the established "zone of insolvency" doctrine to neutralize this defense completely. It first established that the *Kinsela* duty, which requires directors to consider creditors' interests, had been enlivened. For the 2015 O'Connell Street transaction, the court found "a 'real and not remote risk of insolvency'" [para 773]. For the 2018 Ward Street transaction, the company was "facing insolvency" [para 863]. The court then articulated the legal consequence by citing *Kinsela v Russell Kinsela Pty Ltd (In Liq)*: "where a company is insolvent the interests of the creditors intrude…It is in a practical sense their assets and not the shareholders' assets that…are under the management of the directors" [para 645].

This finding was fatal to the defense. The court held that the power of the shareholder to ratify the director's self-dealing was extinguished. "shareholders cannot," the court found, "ratify conduct of directors that is adverse to the interests of creditors in circumstances of doubtful solvency, near insolvency, or the like” [para 801(c)]. This principle was applied to both property transactions. Furthermore, the court invalidated the ratification defense on several other independent grounds. It found the consent was not “informed,” as “Ms Zaccara had no better knowledge of Ex NF’s financial situation…than Mr Munneke did” [para 801(d)]. Specific to the Ward Street transaction, the court identified a fatal contradiction: “no issue of ratification arises…given Ms Zaccara was, she says, unaware that Ex NF ever held cryptocurrency. Therefore, it follows that she was never consenting to Ex NF’s cryptocurrency being deployed” [para 876]. The court also affirmed that ratification is irrelevant for breaches of *statutory* duties, such as sections 180, 181, and 182, which it found the director had breached [para 801(a)]. This systematic rejection of the unanimous consent defense is perhaps the judgment’s most significant contribution, providing a clear path for liquidators to overcome collusive behavior between directors and shareholders in founder-driven companies.

Having defeated the ratification defense, the court found the director’s breaches of duty were plain. He failed to exercise care and diligence (s 180(1)), as a “reasonable director…would not have made a gift of the bulk of Ex NF’s cash…without any idea of Ex NF’s real financial position” [para 800(a)]. He acted for an improper purpose (s 181(1)), admitting the goal was to place an asset “not tied to the success or failure of Ex NF” [para 800(c)]. And he improperly used his position (s 182(1)) [para 800(d)]. The court also summarily rejected the statutory “business judgment rule” defense, as the director had a clear “material personal interest” and had failed to “inform themselves” [para 800(b)]. The transactions were therefore found to be voidable “unreasonable director-related transactions” under section 588FDA [paras 802, 877], allowing the liquidator to recover the assets for the benefit of the creditors.

In conclusion, the *Munneke* judgment is a powerful illustration of the judiciary's capacity to apply orthodox legal and equitable principles to complex digital asset disputes. It serves as an authoritative guide, confirming that beneficial ownership will be determined by a forensic examination of fiat provenance, corporate purpose, and off-chain financial records, not merely by the control of a private key. Most importantly, it reaffirms the power of the *Kinsela* "zone of insolvency" principle as a critical tool for creditors, demonstrating that shareholder ratification is no defense to the misappropriation of corporate assets when the interests of creditors have been placed at risk. The decision confirms that the established tools of corporate law and equity are robust, fit for purpose, and fully capable of providing remedies for malfeasance in the digital age.

**Author:** Mahmoud Abuwasel
**Title:** Partner – Disputes
**Email:** mabuwasel@waselandwasel.com
**Profile:** https://waselandwasel.com/about/mahmoud-abuwasel/