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Comity and crypto: court blocks Binance's arbitration gambit

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In *Lochan v. Binance Holdings Limited*[1], the Court granted an anti-suit injunction against the defendant in an Ontario class action, prohibiting an affiliate of the defendant from pursuing arbitration against the plaintiffs in Hong Kong.

What you need to know

- **Foreign arbitral proceedings may be easier to enjoin than court proceedings.** Canadian courts' reluctance to enjoin foreign court proceedings is premised on the principle of comity, which is rooted in state sovereignty. Since arbitral tribunals do not constitute organs of the state in the way courts do, those concerns may not necessarily arise in motions to enjoin foreign arbitral proceedings, at least to the same extent as court proceedings.
- **Substance over form.** Anti-suit injunctions may be granted where a foreign proceeding effectively attempts to relitigate issues from, or otherwise undermine, domestic court proceedings. In making that assessment, courts will focus on the substance of the foreign dispute over formalities such as how the claim is framed in the foreign proceeding.
- **Injunctions can bind non-parties.** Where the test is made out, Canadian courts can bind non-parties to the proceeding before them, such as affiliates of the court parties.

Background

Crypto class action certified

Binance is the world's largest cryptocurrency trading platform. It sold crypto derivative products to Canadian investors between 2019 and 2022.

In 2024, the plaintiffs' class action against Binance, on behalf of Canadian investors who purchased Binance products, was certified in Ontario. The plaintiffs allege that Binance operated as an unregistered securities dealer and distributed securities without meeting prospectus requirements under the Ontario *Securities Act*[2].

Arbitration clause deemed unenforceable

Prior to certification, Binance tried to stay the Ontario action because of a mandatory arbitration clause in its terms and conditions, which required disputes to be resolved by arbitration in Hong Kong. Users had agreed to these terms and conditions in order to use Binance's platform.

The Court denied the request to stay the action in favour of arbitration. It held that the arbitration clause was unenforceable because it was unconscionable and contrary to public policy, as the costs of arbitration would be prohibitive for most investors, and the clause was buried in a standard form contract[3].

The Court of Appeal for Ontario upheld that decision.

The anti-suit injunction

Plaintiffs move for an anti-suit injunction

Despite the Court's rulings, Binance—using a Seychelles corporation called Nest acting on behalf of Binance—commenced an arbitration against the two representative plaintiffs in Hong Kong (the Hong Kong Arbitration). Binance took the position that the Ontario court rulings are not binding in Hong Kong and that Nest is not bound by those rulings.

In the Hong Kong Arbitration, Nest alleged that the representative plaintiffs had breached their contractual obligations by initiating and participating in a class action against Binance when they agreed under Binance's terms and conditions to resolve all disputes via arbitration in Hong Kong. Through the arbitration, Nest sought to recover all legal costs and any damages that might be awarded against Binance in the class action.

In response, the representative plaintiffs brought a motion before the Court in Ontario to enjoin the Hong Kong Arbitration.

Comity does not apply to private arbitral proceedings

Binance argued that the plaintiffs' motion was premature because, pursuant to the competence-competence principle, the plaintiffs were required to first challenge the arbitral tribunal's jurisdiction in the arbitration before resorting to the Court.

The Court rejected this argument, holding that the reason Canadian courts frequently require parties to first make jurisdictional challenges in foreign court proceedings is because the principle of comity requires a Canadian court to show a degree of respect and deference to foreign courts[4]. Comity is rooted in respect for state sovereignty because foreign courts are organs of foreign states. Since arbitral tribunals are not state organs in the same way courts are, arbitral proceedings do not engage the same concerns around comity[5].

Additionally, the Court noted that the same competence-competence argument was rejected by the Court of Appeal in the earlier Binance stay motion. That is because considerations of justice to the litigants—cost, distance and choice of law—served to displace the principle which holds a tribunal to generally be competent to assess and adjudicate its own competence. The Court held that same logic and conclusion applied in this case, as it would be unconscionable and contrary to public policy to compel the plaintiffs to challenge jurisdiction in Hong Kong[6].

Substance over form

Binance argued that an anti-suit injunction was inappropriate because the Hong Kong Arbitration did not relitigate or collaterally attack the Court's prior decisions in Ontario. First, the claimant in the Hong Kong Arbitration—Nest—was a different party than the defendant in the Ontario action—Binance—and second, the class action in Ontario alleged breaches of the *Securities Act*, whereas the Hong Kong Arbitration alleged a breach of contract.

The Court rejected these arguments, describing them as a "façade"[7]. With respect to the former, the Court found that Nest was not truly separate from Binance because it is the entity that operates the Binance platform that class members paid to join[8]. He also pointed to the fact that Nest sought to recover all legal costs and damages that the Ontario court might award against Binance in the Ontario action, suggesting that Nest and Binance treat their losses

as one[9].

With respect to the latter, the Court held that the claim in the Hong Kong Arbitration was effectively the same as in the Ontario action, notwithstanding that it advanced a different cause of action. By suing the representative plaintiffs in Hong Kong for their allegedly wrongful act of advancing a class action against Binance in Ontario, the Court found that Nest was pursuing the same dispute as the Ontario action[10].

Anti-suit injunctions can be granted against non-parties

The Court found that the two requirements for an anti-suit injunction set out by the Supreme Court of Canada in *Amchem Products Incorporated v. British Columbia (Workers' Compensation Board)* were satisfied[11].

The first requirement is to determine whether the domestic forum is the natural forum by asking whether another forum is clearly more appropriate. The Court held that Ontario was the natural forum, as the only connection to Hong Kong was Binance's unilateral choice of it as the arbitration venue in its terms and conditions[12].

The second requirement is to assess the comparative prejudice to the parties of either restricting or allowing access to the foreign forum. The Court held that Binance was not prejudiced because there was no valid arbitration agreement[13].

Having reached this conclusion, the Court enjoined Binance and its affiliates, including Nest, from pursuing the Hong Kong Arbitration. The Court held that it had the jurisdiction to grant injunctions against non-parties and that this was particularly true given that Nest was a non-party in name only, as it effectively operated as Binance's alter ego[14].

Implications

Historically, obtaining an anti-suit injunction to restrain foreign arbitral proceedings has been very difficult. *Binance* suggests that obtaining an anti-suit injunction to restrain foreign arbitral proceedings might be easier than securing one against foreign court proceedings because arbitral proceedings do not engage the same concerns about respect for foreign legal systems and state sovereignty.

The extent to which this applies to cases where the arbitration clause at issue is held to be enforceable remains to be seen. The Court also emphasizes that in assessing whether to grant an anti-suit injunction, courts will focus on the substance of the foreign dispute and the extent to which it amounts to an inappropriate collateral attack on the domestic proceeding over more technical matters like the specific parties or causes of action involved.

FOOTNOTES

1. *Lochan v. Binance Holdings Limited*, 2025 ONSC 6493 [*Binance 2025*].
2. *Lochan. v. Binance Holdings Limited*, 2024 ONSC 2302.
3. *Lochan. v. Binance Holdings Limited*, 2023 ONSC 6714, aff'd 2024 ONCA 784.
4. *Amchem Products Incorporated v. British Columbia (Workers' Compensation Board)*, 1993 CanLII 124 (SCC), [1993] 1 SCR 897, at 931 [*Amchem*].
5. *Binance 2025* at para 25.
6. *Ibid.* at paras 27-28.
7. *Ibid.* at para 22.
8. *Ibid.* at para 14.
9. *Ibid.* at para 21.

10. *Ibid.* at para 20.

11. *Amchem* at 931-932.

12. *Binance 2025* at para 39.

13. *Ibid.* at para 40.

14. *Ibid.* at para 43.

To discuss these issues, please contact the author(s).

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