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PERSPECTIVE

Cryptocurrency sector arbitration provisions create jurisdictional uncertainties when applied to consumer claims

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The emergence of decentralized technologies such as blockchains, NFTs, smart contracts, and cryptocurrency have given rise to unique and unprecedented legal issues pertaining to Web 3.0. These disputes pose significant legal challenges, especially within the “crypto” industry due to complexities associated with navigating global and cross-border transactions, where parties are often on opposite sides of the world.

As Web3.0 continues to gain traction in being adopted by businesses, governments, and users worldwide, disputes will naturally arise over this new digital gold rush. For instance, litigators are facing jurisdictional challenges when handling claims related to cryptocurrency transactions in arbitration proceedings, because most cryptocurrency provider contracts have arbitration provisions. *How are we, as attorneys, going to deal with these Web 3.0 claims and the jurisdictional challenges?*

What is Web3.0?

Web 3.0, simply put, is the next generation of the World Wide Web. It encompasses Internet technologies that seek to set a more decentralized and user-focused Internet with the focus being on emerging technologies such as blockchain, smart contracts, NFTs and cryptocurrencies. It also promotes direct



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digital asset ownership by individuals, often extending into real world assets, items and experiences, while aimed at offering greater control and privacy in relation to certain items such as personal data and contributions.

Consumer claims in the cryptocurrency sector provide jurisdictional challenges:

The Kraken case

The interpretation of who qualifies as a consumer in the cryptocurrency sector varies among jurisdictions.

These jurisdictional conflicts in foreign courts, have, and often do interfere with arbitration proceedings and rulings. The recent case of *Chechetkin v. Payward Ltd* and others [2022] EWHC 3057 (Ch), rendered by the England and Wales High Court on Oct. 25, 2022, highlights the continuing uncertainty surrounding arbitrability of consumer claims. Notwithstanding an existing arbitration provision, arbitration proceeding, and final award rendered by JAMS in San Francisco, the UK’s High Court of Justice

knowingly went down its own path, asserting jurisdiction over the very same consumer’s claims for repayment of funds lost in cryptocurrency trading. This was despite the fact that the JAMS arbitration panel already declared the defendants not liable.

In February 2022, Kraken’s subsidiary Payward Limited was sued in the UK by a British citizen, Maxim Chechetkin, who sought to recover losses of more than £600,000 incurred in cryptocurrency trading on the Kraken platform between

March and September 2020. Mr. Chechetkin alleged that the transactions violated “*section 26 or 138D (2) of the Financial Services and Markets Act 2000*” (FSMA). Meanwhile, Kraken pursued arbitration in San Francisco, invoking an arbitration provision in its terms and conditions. JAMS ultimately dismissed Mr. Chechetkin’s claims and ruled in favor of Kraken. Despite this, Mr. Chechetkin argued in UK Court that as a consumer, his claims fell within the scope of sections 15B and 15E of the Civil Jurisdiction and Judgments Act 1982 (CJJA), and that, therefore, the English Court should have jurisdiction to hear his claims based on alleged FSMA breaches. (The CJJA is a key piece of UK legislation that regulates jurisdictional matters and the enforcement of judgments. Notably, the CJJA has provisions aimed at protecting consumers by defining the term “consumers” inclusively and providing leeway for UK courts to maintain jurisdiction.)

Meanwhile, Kraken argued in UK Court that Mr. Chechetkin, as an experienced banking lawyer, did not meet the definition of an unsophisticated “consumer” under the CJJA. Kraken cited as a reason why consumer classification should be denied was Chechetkin’s

decision to open “pro accounts” to increase margin trading facilities and to undertake leveraged trades, as evidence of his sophistication. Despite the previously mentioned circumstances and Mr. Chechetkin’s banking law experience, the UK Court accepted Mr. Chechetkin’s arguments – determining that he fell into the protected consumer category. The UK Court specifically ruled that Mr. Chechetkin still qualified as a consumer because his contract with Kraken’s purpose involved digital asset trading, which was “*outside his [traditional banking law] trade or profession.*” In short: The UK Court adopted a broad interpretation of who can be classified as a consumer under the CJJA, holding that if the purpose of the contract falls outside the claimant’s specific trade or profession, then claimants qualify as consumers and fall within the UK Court’s jurisdiction.

The UK court also rejected Kraken’s argument for upholding the previously rendered binding arbitration award against Mr. Chechetkin. Specifically, Kraken had argued that if an arbitration panel had already issued a decision and concluded that it had jurisdiction over the dispute, then the UK court would be deprived per se of jurisdiction. On this point, the UK court concluded that recognition of a

foreign award under the New York Convention does not necessarily divest the court of its jurisdiction in relation to the dispute. However, it can be used by parties, such as Kraken, as a shield in support of its defense.

Ultimately, neither the existence of the arbitration provision, nor the final arbitration award deprived the UK Court of its jurisdiction pursuant to the CJJA and Mr. Chechetkin’s consumer classification.

Conclusion

Legal professionals practicing in the cryptocurrency sector must keep

jurisdictional challenges in mind, particularly when dealing with arbitration-related issues.

Attorneys should inform their clients early on, and preferably before being retained, that consumer claims in arbitration may - depending on the circumstances - be susceptible to rulings by foreign jurisdictions, particularly if the terms are thought to be inequitable. Depending on where parties reside and the arbitration forum in play, it would also be prudent to advise cryptocurrency clients to consult with counsel who practice in the foreign jurisdictions at play.

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