

CITATION: Lochan. v. Binance Holdings Limited, 2025 ONSC 6493
COURT FILE NO.: CV-22-00683059-00CP
DATE: 20251125

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: CHRISTOPHER LOCHAN and JEREMY LEEDER, Plaintiffs

– and –

BINANCE HOLDINGS LIMITED, BINANCE CANADA CAPITAL
MARKETS INC., and BINANCE CANADA HOLDINGS LTD., Defendants

BEFORE: Justice E.M. Morgan

COUNSEL: *James Orr, Kyle Taylor, Johathan Careen, and Alexandra Da Dalt*, for the
Plaintiff

Paul Steep, Moya Graham, Adam Kanji, and Sabih Ottawa, for the Defendants

HEARD: November 21, 2025

MOTION FOR ANTI-SUIT INJUNCTION

I. The motion and proceedings to date

[1] The Plaintiffs move for an anti-suit injunction to stop an arbitration from taking place in Hong Kong between Nest Services Limited (“Nest”) – a Seychelles corporation that for present purposes (and as explained below) acts on behalf of the Defendants (collectively “Binance”) – and the representative Plaintiffs.

[2] The action has been certified as a class action under section 5(1) of the *Class Proceedings Act, 1992*, SO 1992, c. 6: *Lochan. v. Binance Holdings Limited*, 2024 ONSC 2302, aff’d 2025 ONCA 221 (“*Binance 2024*”). The claim was succinctly described by the Court of Appeal in *Binance 2024*, at para. 1:

...an action brought on behalf of Canadian investors who purchased cryptocurrency derivative products through an asset trading platform operated by the appellants. The respondents propose to represent investors who purchased such products between September 13, 2019 and the date of certification (the “Class”). They allege that the appellants engaged in the business of trading in securities without registering, and distributed securities without complying with applicable prospectus requirements, in violation of the *Securities Act*, R.S.O. 1990, c. S-5 (the “OSA”) and various other Canadian securities laws, giving rise to both common law and statutory causes of action (the “Claim”).

[3] The arbitration agreement in issue is not unfamiliar to this Court. Two years ago, at the outset of this action and prior to certification, Binance sought to stay the proceedings based on the same agreement. That motion by Binance was unsuccessful: *Lochan. v. Binance Holdings Limited*, 2023 ONSC 6714, aff'd 2024 ONCA 784 ("*Binance 2023*"). Again, the conclusion with respect to enforcement of the arbitration agreement was succinctly set out by the Court of Appeal in *Binance 2023*, at para. 6:

The motion judge dismissed the motion for a stay in favour of arbitration. He found that exceptions to the competence-competence principle applied that justified the Ontario court deciding whether the arbitration clause was void as contrary to public policy or on the basis of unconscionability. He found that a stay in favour of arbitration should be refused because the arbitration clause was void both as contrary to public policy and because it was unconscionable.

[4] The Court of Appeal in *Binance 2023*, at paras. 8-9, summarized the central findings of this Court in respect of the arbitration agreement, as follows:

[8] The motion judge found that the starting cost to access the arbitral tribunal of approximately \$36,000 CAD plus legal fees and travel expenses rendered the forum inaccessible to the average crypto investor:

Given that the OSC report discloses that the average crypto investor will have something like a \$5,000 claim, the choice of Hong Kong as an arbitral forum – a forum with no connection to either the potential claimants or Binance itself as a Cayman Islands company – could effectively amount to a grant of immunity to Binance.

[9] He further found:

The Plaintiffs and other prospective class members signed an unnegotiable 'click' contract where not only were the details, including the changeable location, of the arbitration clause buried out of sight, and the logistical complexity and expense of arbitration were not revealed anywhere.

Binance, as the party that designed and whose professionals drafted the contract, engineered the arrangement to take advantage of the complexity that was hidden behind that superficially benign appearance of an arbitration clause.

[5] Despite these rulings, Binance, using Nest as its vehicle, has commenced arbitration proceedings against the two representative Plaintiffs in Hong Kong. Nest's Notice of Arbitration, which also incorporates the arbitral Statement of Claim, is dated November 6, 2025. Under Hong Kong arbitration rules, the Plaintiffs have 30 days from that date to file a response.

[6] The introductory portion of the Notice of Arbitration states, *inter alia*:

1. This Notice of Arbitration is submitted pursuant to Article 4 of the 2024 Hong Kong International Arbitration Centre Administered Arbitration Rules (“HKIAC Rules”)...

5. In 2021, the Respondent opened a Binance Account (as defined below), as a precondition of which he agreed to the Binance terms of use (the “Terms of Use”). The Terms of Use are governed by Hong Kong law and contain an arbitration agreement (the “Arbitration Agreement”) which requires that any disputes between the Respondent and the Claimant be submitted to arbitration in Hong Kong under the HKIAC Rules...

6. The Terms of Use also contain an express provision restricting the Respondent from initiating or participating in any form of class or collective action against any Binance Operator including the Claimant.

7. In 2022, however, and in clear violation of the Terms of Use, the Respondent initiated and is currently participating in a class action lawsuit against three entities in the Binance Group –Binance Holdings Limited, Binance Canada Capital Markets Inc. and Binance Canada Holdings Ltd. (together the “Canadian Binance Defendants” in the “Canadian Proceedings”). The gist of the allegations advanced in the Canadian Proceedings is that Binance sold cryptocurrency derivatives to Canadians through its website and in so doing breached Canadian securities law for failure to file or deliver a prospectus.

8. All of these claims arise under the Terms of Use and should therefore have been referred to arbitration in Hong Kong. The Respondent's decision to initiate proceedings in the Canadian Courts (and to do so by way of a class action) is therefore a clear breach of contract.

[7] Binance has taken the position that while the rulings by this Court and the Court of Appeal may be binding in Ontario, they are not binding in Hong Kong. It also argues that it is Nest, not Binance, that now seeks to take the Plaintiffs to arbitration in Hong Kong, and that Nest is not a party to the present action and so is not bound by the rulings in this action.

[8] Counsel for Binance further contend that the present motion is premature. They argue that the Plaintiffs should first challenge the Hong Kong arbitration before the Hong Kong arbitrators to determine whether they will take jurisdiction over this claim before seeking an injunction from this Court.

[9] Finally, Binance submits that the cause of action in the arbitration proceedings commenced by Nest against the Plaintiffs in Hong Kong is entirely different than the cause of action pursued by the Plaintiffs against Binance in Ontario. They argue that the Ontario cause of action is based on breach of the *OSA* while the Hong Kong claim is based on breach of contract, and pose those causes of action as existing independently of each other.

[10] None of these are cogent arguments.

[11] With respect, and to borrow the language of the previous stay ruling, Binance is again attempting to engineer matters to take advantage of the complexity of operating across jurisdictions behind the superficially ordinary appearance of a breach of contract claim. The pending arbitration commenced by Nest against the representative Plaintiffs is little more than a transparent attempt to render Ontario court rulings ineffective. In effect, Binance seeks to grant itself immunity from judgment in any legal process but the one already adjudged to be unconscionable and contrary to public policy – a Hong Kong arbitration.

II. The role of Nest

[12] Nest does not explain its ownership or management structure sufficiently to determine its formal relationship to Binance. However, paragraph 29 of the Notice of Arbitration explains how Nest’s business relates to Binance:

29. In August 2023, the Claimant [i.e. Nest] was incorporated in the Seychelles and became the operator of the Binance exchange, and became ultimately responsible for the provision of services on Binance’s digital platforms. The 2025 Terms of Use specifically identify the Claimant as a counterparty. Consequently, the Claimant is a Binance Operator as that term is defined under the Terms of Use and is entitled to bring this claim as the successor to any previous Binance Operator, and as the current Binance Operator under the Terms of Use.

[13] Counsel for the Plaintiffs points out that the 2025 Terms of Use reference in the Notice of Arbitration post-dates the class period and is different from the one in force during the class period. It is of little relevance. Having said that, it is Nest’s view that since its creation it has been part of “Binance” or a “Binance Operator”. Nest explains at paragraph 57 of its Notice that these terms “are defined broadly and include relevant entities which offer services within the Binance ecosystem.”

[14] “Ecosystem” is not, of course, a legal term of art. However, one can take it from the overall claim that as Binance Operator, Nest is, in effect, Binance itself. That is, it is responsible for and operates the very Binance system that the class members paid to join. It is, for all intents and purposes, no more and no less than Binance.

III. The Hong Kong claim

[15] The claim outlined in the Notice of Application, and especially the relief sought therein, confirms beyond any doubt that Nest is nothing but the alter ego of Binance.

[16] As indicated above, it is Binance’s submission in the present motion that the arbitration claim in Hong Kong raises an entirely different legal claim – i.e. breach of contract – than does the action in Ontario – i.e. breach of the *OSA*. One might think, therefore, that the Notice of Arbitration is such that it could stand on its own, and might have been served on the Plaintiffs even if they had not brought the Ontario action.

[17] Even a cursory read of the Notice of Arbitration reveals that that is not the case. Any distinction between the two cases is manufactured by Nest as a strictly formalistic one; in fact, the

arbitration claim is a spin-off of the Ontario class action, and the difference between them are all form and no substance.

[18] The “breach” alleged in the Nest’s Notice of Arbitration is, simply, that the Plaintiffs have commenced an action in Ontario. In other words, the Hong Kong arbitration is parasitic on the Ontario claim; it is designed to characterize the claim in Ontario as being an actionable event in and of itself. Nest does not make any mention of the *OSA* in its cause of action since a Hong Kong arbitration panel has no interest in enforcing that Ontario statute; but Nest has sued the Plaintiffs in Hong Kong for their supposedly ‘wrongful’ act of having sued Binance for breach of the *OSA*.

[19] In Binance’s world view, there is no possibility of the Plaintiffs, or any other investor in the class, claiming against it for its breach of the *OSA*. Such a claim does not exist outside of Ontario and so would not directly be the subject of a Hong Kong arbitration; and a claim raising the *OSA* breach brought in Ontario is derided as an allegedly wrongful act in Hong Kong.

[20] Nest’s true role in bringing the arbitration is not to claim a separate wrong done to itself, but to undermine the Plaintiff’s claim in the Ontario action. The proof of this is in the relief sought in the Notice of Arbitration. After setting out the legal grounds of Hong Kong arbitral jurisdiction, the Notice details the relief sought by Nest:

86. In light of the above, in addition to a declaration that the Respondent has breached the Arbitration Agreement by initiating and maintaining the Canadian Proceedings, the Claimant seeks an indemnity for costs and damages arising from such breach on that basis. This includes:

- a legal and procedural costs incurred in the Canadian Proceeding, and
- b any adverse judgments or settlements arising from the Canadian Proceedings.

87. As the Canadian proceedings are ongoing, the Claimant reserves its right to quantify the amount of such damages in due course, once the full consequences of the Respondent's breach have crystallised.

[21] In reality, Nest is not a separate party from Binance and the Hong Kong arbitration claim is not separable from the within Ontario action. What Nest claims is a claw back of all legal costs and any damages the Ontario court might award the Plaintiffs against Binance. Apparently, for Nest, Binance’s losses are Nest’s losses, and *vice versa*. Far from being an independent proceeding which should be seen as being advanced on its own merits, the one and only point of Nest’s/Binance’s Hong Kong arbitral proceeding is to render the Ontario case meaningless.

[22] Nest’s supposed separate identity from Binance and its claim’s supposed distinct legal framing is all a façade. Binance lost its stay motion and then lost its certification motion in the Ontario courts; it is now trying to recast the case to recoup any eventual monetary losses in a Hong Kong arbitration – the very forum that this Court and the Court of Appeal have said would be unconscionable and contrary to public policy to engage.

IV. Is the motion premature?

[23] Counsel for Binance submit that the present motion is premature in that the Plaintiffs should have first brought their objection to arbitration in Hong Kong. They explain that in that way the arbitration panel could at least have a chance to determine its own jurisdiction. As Binance’s counsel put it in their factum: “Because serious issues of comity arise when a Canadian court effectively determines whether a foreign court or tribunal can take jurisdiction, a party is generally required to seek a stay of proceedings in the foreign jurisdiction before moving for an anti-suit injunction in the domestic court.”

[24] Citing *Amchem Products Incorporated v. British Columbia (Workers' Compensation Board)*, [1993] 1 SCR 897, at 914, Binance’s counsel argue that an injunction would only be justified where “a serious injustice will be occasioned as a result of the failure of a foreign court to decline jurisdiction.” They then compare the present case to the jurisdictional dispute in *PCI Chemicals Canada Company v. ABB Trasmisione & Distribuzione S.P.A.*, 2005 NSSC 18, where the court in Nova Scotia declined to issue an anti-suit injunction against litigation in Italy without knowing whether the Italian court would assert jurisdiction over the claim. As the Nova Scotia motion judge put it, there was no evidence “that the Italian Court has assumed jurisdiction on a basis inconsistent with our rules of private international law and an injustice results to a litigant in our courts”: *Ibid.*, at para. 14.

[25] The impulse to send litigants to the foreign court for a ruling on jurisdiction before issuing any kind of injunction against foreign litigation is born of a respect for international comity: *Amchem*, at 932. However, private arbitral proceedings, unlike judicial proceedings, do not implicate state sovereignty and therefore do not raise the issue of comity: *Sodzawiczny v Smith*, [2024] EWHC 231, at para. 63. The British Columbia courts have expressed the view that “[e]ven if the law in this province mandates a strict requirement to first seek a ruling on jurisdiction in a foreign court, it would not extend to foreign arbitration proceedings”: *Axion Ventures Inc. v Bonner*, 2024 BCSC 45, at para. 33.

[26] Binance’s argument, here cast as a matter of prematurity, is a replica of the competence-competence argument that Binance submitted, and that was rejected, in *Binance 2023*. In fact, in *Binance 2023*, the question of whether an injustice will be done if judicial process in Ontario is deferred to the arbitration process in Hong Kong – i.e. whether “an injustice results to a litigant in our courts”, to use the Nova Scotia phrase – was expounded upon at great length. As the Court of Appeal described it, at paras. 22-23:

[22] The motion judge recognized that the starting point is the competence-competence principle that the validity of an arbitration clause should be decided by the arbitral tribunal...

[23] The motion judge found, based on the record before him, that the competence-competence principle was displaced... He also found that the exception discussed in *Uber* applied because a superficial review of the record showed that, because of the inaccessibility of the arbitration forum due to cost, distance, and choice of law, there was a real prospect that the challenge to the validity of the arbitration clause would never be resolved if it were referred to the arbitral tribunal.

[27] In *Binance 2023*, 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 same logic and the same conclusion apply here. The Plaintiffs are no more able to access the Hong Kong venue to argue for it to decline jurisdiction over the Nest claim than they were at the time of stay motion to attend in Hong Kong to argue for the arbitrators to decline jurisdiction over Binance’s claim. The Court of Appeal reviewed this very point and concluded, at para. 27, that the ability of the Hong Kong arbitrators to determine their own jurisdiction does not apply here:

[27] Nor do we agree that the motion judge erred in considering whether an average cryptocurrency buyer could access the arbitral tribunal in order to raise the issue of validity of the arbitration clause. As the motion judge noted, there is no nuance in the arbitration clause. All disputes, regardless of the specific subject-matter raised, are required by the clause to be arbitrated. We see no palpable and overriding error in the motion judge considering the issues of public policy and unconscionability on the basis of the typical cryptocurrency investor and the nature of disputes likely to arise under the arbitration clause.

[28] It would be unconscionable and contrary to public policy to compel the Plaintiffs to arbitrate their claim in Hong Kong, and it would be equally unconscionable and contrary to public policy to compel the Plaintiffs to challenge jurisdiction in Hong Kong. As Lord Scarman said in *Castanho v. Brown & Root (U.K.) Ltd.*, [1981] AC 557, at 574, “[t]he principle is the same whether the remedy sought is a stay of English proceedings or a restraint upon foreign proceedings.”

[29] I will briefly digress to acknowledge that the motion record submitted by Binance contains an expert affidavit of the Hon. Geoffrey Ma Tao-Li, former Chief Justice of the Hong Kong Court of Appeal. Mr. Ma provides a thorough review of the Hong Kong arbitration system and the legislation supporting it, describing it as a sophisticated global arbitration centre that operates in the context of Hong Kong’s constitutionally entrenched common law legal system. He points out that in *Uber Technologies Inc. v. Heller*, [2020] 2 SCR 118, at para. 208, the Supreme Court of Canada listed it among the “leading UNCITRAL Model Law jurisdictions such as Germany, Australia, Hong Kong, and Singapore...”

[30] There is no reason to doubt Mr. Ma’s assessment of the important and respectable place of Hong Kong as an international arbitration centre. The Plaintiffs do not criticize arbitration in Hong Kong at large; and nothing in this motion or in the *Binance 2023* judgment casts doubt on the quality of arbitration proceedings that take place there. Rather, the argument is specific to the context of Binance’s business model. It is the insertion of the arbitration clause in standardized contracts, and within small-scale consumer sales concluded with the instantaneous ‘click’ of a mouse, that makes the arrangement unconscionable and contrary to public policy.

[31] The present motion is not “premature” in the sense that term is used by Binance’s counsel. As the Court of Appeal indicated in *Binance 2023*, at para. 20, “[t]he circumstances [fall] within an exception to the competence-competence principle.” The step that Binance says ought to have come first – determination of Hong Kong jurisdiction by a Hong Kong arbitrator – has already been determined to be a non-starter.

V. The collateral attack

[32] Plaintiffs’ counsel submit that the Notice of Arbitration amounts to a collateral attack on the *Binance 2023* judgment of this Court and the Court of Appeal. It is “an attack made in proceedings other than those whose specific object is the reversal, variation, or nullification of the order or judgment”: *Wilson v. The Queen*, [1983] 2 SCR 594, at 599. Binance, in the guise of Nest, is “a party, bound by an order, seeking to avoid the effect of that order by challenging its validity in the wrong forum”: *Garland v. Consumers’ Gas Co.*, [2004] 1 SCR 629, at para. 72.

[33] The Supreme Court of Canada has stated that “[p]rohibited ‘collateral attacks’ are abuses of the court’s process”: *Toronto (City) v. C.U.P.E., Local 79*, [2003] 3 SCR 77, at para. 34. As a general rule, they must be struck: *BM v. Ontario*, 2025 ONSC 4575, at para 67. As Plaintiffs’ counsel point out, Binance seeks a remedy for itself through arbitration proceedings commenced in the name of Nest, no doubt in an attempt to navigate around the doctrines of *res judicata* and issue estoppel. That said, the tactic is as ineffective as it is transparent; those doctrines preclude relitigation where the parties to the judicial decision *or their privies* were the same persons as the parties to the proceedings in which the estoppel is raised *or their privies*: *Danyluk v. Ainsworth Technologies Inc.*, [2001] 2 SCR 460, at para. 33 [emphasis added].

[34] The Plaintiffs also submit that the attempt to start arbitration against them in Hong Kong when the arbitration clause on which that process is based has been declared to be void and unenforceable amounts to an abuse of process. In *R. v. Scott*, [1990] 3 SCR 979, at 1007, McLachlin J. (as she then was) instructed that “abuse of process may be established where: (1) the proceedings are oppressive or vexatious; and, (2) violate the fundamental principles of justice underlying the community’s sense of fair play and decency.”

[35] This would “preclude relitigation in circumstances where the strict requirements of issue estoppel (typically the privity/mutuality requirements) are not met, but where allowing the litigation to proceed would nonetheless violate such principles as judicial economy, consistency, finality and the integrity of the administration of justice”: *C.U.P.E.*, at para. 37. It would also prohibit “[t]he relitigation of matters already and finally determined, the pursuit of unmeritorious claims or arguments, the failure to comply with procedural rules and court orders (including filing out of time and failure to satisfy costs awards), and the unnecessary incurrence of delay and expense...”: *Appleyard v. Zealand*, 2022 ONCA 570, at para. 50.

[36] The Plaintiffs submit that the arbitration proceedings in Hong Kong violate the principles of judicial economy, consistency, finality, and the integrity of the administration of justice. The Notice of Arbitration seeks findings in conflict with this Court and seeks to hold the representative Plaintiffs liable for any costs incurred and any damages ultimately awarded by an Ontario court. This is antithetical to the purpose of class proceedings and to the rule of law more generally.

[37] In short, it is improper and an abuse of process “to attempt to impeach a judicial finding by the impermissible route of relitigation in a different forum”: *C.U.P.E.*, at para. 46. In commencing arbitration under an arbitration agreement already determined to be unconscionable and contrary to public policy, and in seeking in that forum to claw back – effectively, to neuter – any award by the Court to the Plaintiffs, Binance has taken the very impermissible route against

which the Supreme Court warned. Preventing this type of “abuse of the courts” lies at the heart of the remedy of an anti-suit injunction: *Amchem*, at 928.

[38] It is no stretch to conclude that the requirements for an anti-suit injunction as set out by the Supreme Court in *Amchem* have been met. In the first place, the question of whether the Hong Kong arbitration panel will take jurisdiction of the claim on its own terms is not relevant under the circumstances. It has already been determined by this court that it would be excessively costly and burdensome to compel the Plaintiffs to contest the jurisdictional issue there.

[39] As for the next step in the *Amchem* analysis, applying *forum non conveniens* principles to this case undoubtedly yields the conclusion that Ontario is preferable to Hong Kong. The Plaintiffs and two of the three Defendants are located here, and the third defendant is in the Cayman Islands: see *Binance 2024*, at para. 3. Plaintiffs’ counsel point out that the only connection to Hong Kong is that Binance unilaterally chose it as the arbitration forum after previously discarding Switzerland and Singapore. More to the point, given that the arbitration provisions have been held to be null and void and unenforceable, the Defendants’ unilateral forum selection does not assist them.

[40] Furthermore, the question of whether it would be unjust to deprive the Defendants of the advantages in the foreign forum is also not pertinent to the present circumstances. By definition, it is not unjust to litigate in Ontario if the given foreign forum – Hong Kong arbitration – is not legally accessible to the Defendants because it has already been determined that no valid arbitration agreement exists.

[41] Finally, turning to the involvement of Nest, I will observe that although Nest is technically a non-party to the present action and motion, the courts have long held that non-parties can be bound by injunctions. The Supreme Court stated in *MacMillan Bloedel Ltd. v. Simpson*, [1996] 2 SCR 1048, at para. 31, and reiterated in *Google Inc. v. Equustek Solutions Inc.*, [2017] 1 SCR 824, at para. 28, that “if non-parties violate injunctions, they are subject to conviction and punishment for contempt of court. The courts have jurisdiction to grant interim injunctions which all people, on pain of contempt, must obey.” The same principle applies to permanent injunctions.

[42] This is particularly the case where Nest, as indicated earlier, is effectively the alter ego of the Binance parties to this action. Its Notice of Arbitration seeks no relief whatsoever for itself, and outlines a set of remedies that are strictly for the benefit of Binance. The remedies sought by Nest in Hong Kong are nothing more than a claw back of any remedies issued against Binance in Ontario.

[43] Accordingly, Nest may technically be a non-party to this action, but it is a non-party in name only. Nest has placed itself in Binance’s shoes in its Notice of Arbitration; it equally stands in Binance’s shoes for the purposes of any injunctive or other relief granted by this Court. An order in this matter that this Court issues against Binance can and should be valid and enforceable as against Nest and any other affiliate or agent – whether corporate or individual – of Binance.

VI. Disposition

[44] The Plaintiffs shall have an Order restraining Binance and their owners, shareholders, officers, directors, employees, agents, parents, subsidiaries, affiliates, assigns, and representatives, including Nest, and any other person acting under their instruction or control, from commencing

or continuing arbitration proceedings against the Plaintiffs or class members in Hong Kong or elsewhere, or from taking steps in furtherance of such proceedings.

[45] The parties may make written submissions on costs. I would ask counsel for the Plaintiffs to email brief submissions to my assistant within two weeks of today and for counsel for Binance to respond with brief submissions emailed to my assistant within two weeks thereafter.

Date: November 25, 2025

Morgan J.