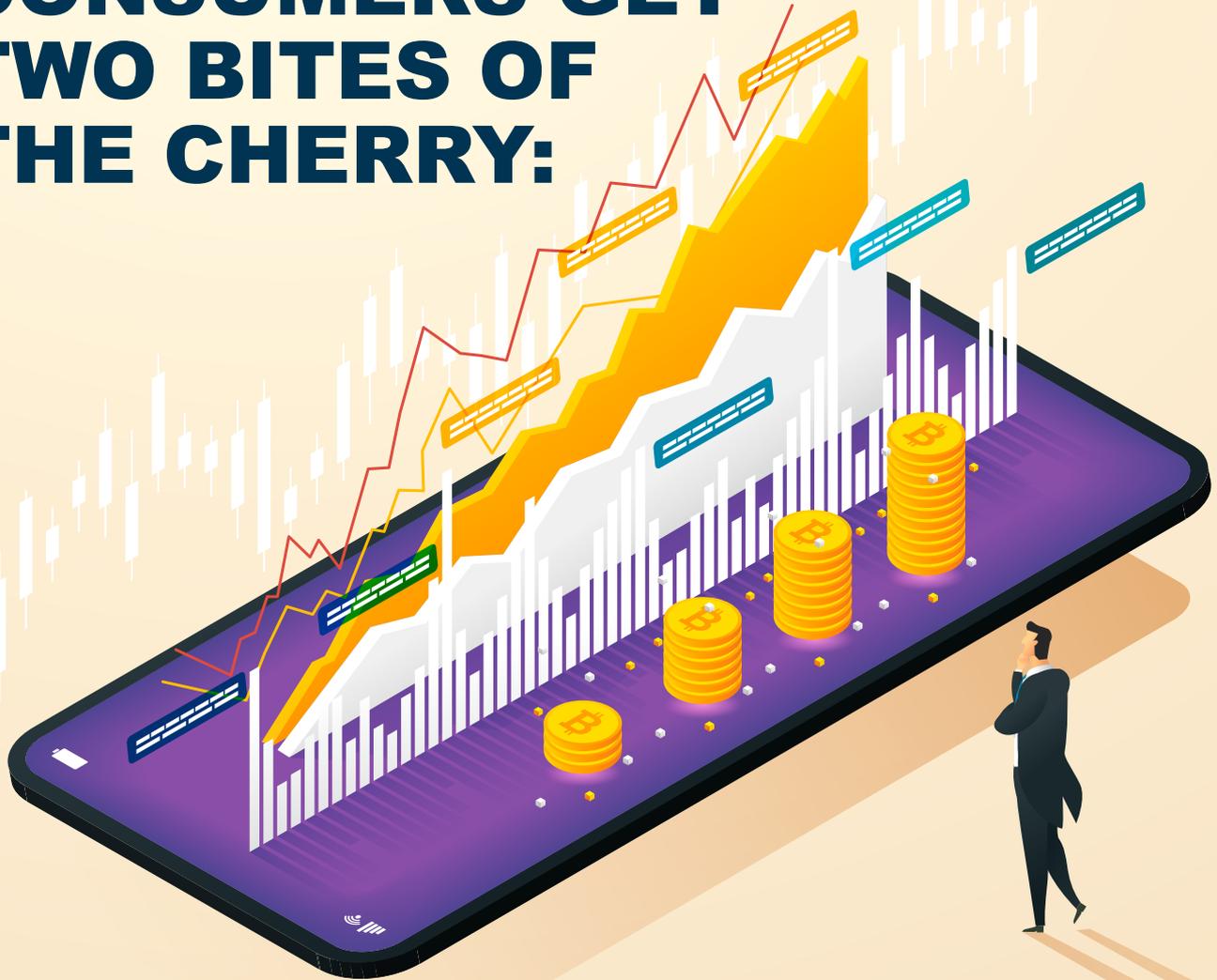


CONSUMERS GET TWO BITES OF THE CHERRY:



FINAL ARBITRAL AWARD DOES NOT AFFECT THE COURT'S JURISDICTION

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Introduction

In *Chechetkin v Payward Ltd and others* [2022] EWHC 3057 (Ch), the Chancery Division dismissed the defendant's application for a declaration under Part 11 of the Civil Procedure Rules that the English Court had no jurisdiction over a claim before it on the basis that a final arbitration award had already been rendered in relation to the same subject matter.



Facts

The claimant, Mr Chechetkin, undertook various trading activities on a platform provided by the defendants for the trading of digital currencies and brought a claim against Payward before the English Courts based on the Financial Services and Markets Act 2000 (FSMA) for the repayment of sums which he says he lost in breach of various requirements of that Act.

Clause 23 of the Payward terms and conditions that Mr Chechetkin had



accepted in order to trade on the platform, included an arbitration clause by which the claimant agreed to submit the disputes to arbitration, that the arbitration clause was binding, and that the claimant was therefore prevented by that clause from bringing proceedings in this or any other court. On this basis, the defendants filed an application challenging the court's jurisdiction to decide Mr Chechetkin's claim, under Part 11 of the CPR.

In the course of the arbitration proceedings, the arbitrator made a partial award in June 2022 to confirm her jurisdiction. In October 2022, she made a final award that Mr Chechetkin's claims fail and that Payward are under no liability to him with paragraph 2 of the final award deciding that Mr Chechetkin was "enjoined from filing or prosecuting a claim against Payward in court whether in the UK or other jurisdiction".

Accordingly, Payward commenced proceedings before the English Courts to enforce the award under section 101 of the Arbitration Act 1996 for New York Convention awards. Payward then submitted that in the circumstances, the hearing of the jurisdiction challenge application should be adjourned pending the determination of the enforcement proceedings on the basis that if their application to enforce the award is successful, they will be able to rely on the award and the proceedings before the English court, including the jurisdiction challenge, will effectively become academic.

Mr Chechetkin resisted the adjournment application on the grounds that the parties had already incurred the costs in preparing for the hearing, and that in any event, to resist the enforcement application would not be a breach of paragraph 2 of the final award.

The Court's Decision

Miles J rejected the adjournment application, and heard the jurisdiction challenge application there and then.

In his decision, Miles held that Mr Chechetkin was a consumer, as defined in the Civil Jurisdiction and Judgments Act 1982 (section 15), and on this basis, neither the arbitration clause, nor the Final Award, deprived the English court of jurisdiction to decide Mr Chechetkin's FSMA claims.

The basis for his decision was that regardless of his level of sophistication as a trader of cryptocurrencies, Mr Chechetkin was a lawyer, and the purpose of the contract with Payward in relation to dealings with digital assets, was outside his trade or profession.

As for the effect of the New York Convention award, Miles J clarified that pursuant to section 101 of the Arbitration Act 1996, where the award is recognised it does not deprive the court of jurisdiction in relation to the dispute. Instead, the true effect of a recognised award is that it may then be relied upon by the parties by way of defence, setoff or otherwise in any legal proceedings in England and Wales or Northern Ireland.

In his decision, Miles J explained that the Arbitration Act 1996 sets out a code whereby section 9 enables the court to stay proceedings where the parties have entered into a binding arbitration agreement. The effect of this is that where a party applies for a stay under this section, the court accedes to the application without this removing the court's jurisdiction over any existing proceedings.

Comment

This case gave rise to the analysis and clarification of complex issues in arbitration proceedings where a consumer is involved. With the number of cryptocurrency and other digital asset related disputes constantly rising, this decision is certainly a desirable starting point for further discussion as to how the existence of an arbitration clause in consumer relationships interacts with the jurisdiction of the court where the consumer is domiciled.

