BC Court of Appeal Affirms Application of Traditional Contract Law to Bitcoin Loan Agreements

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The British Columbia Court of Appeal's decision in Tambosso v. Nguyen, 2025 BCCA 338, provides a salient analysis of how established Canadian contract law principles apply to loan agreements involving cryptocurrency. While the judgment was rendered in chambers on a procedural application to extend time for an appeal, the court's reasons offer significant insight into the judicial treatment of digital asset transactions. The analysis, which required a thorough review of the proposed appeal's merits, affirms that the unique characteristics of cryptocurrency do not inherently displace foundational legal doctrines concerning contract formation, interpretation, and remedies.

The dispute arose from a short-term loan of cryptocurrency. The respondent loaned a total of 22 Bitcoin (BTC) to the appellant in September 2021. The loan was documented in two written agreements. The purpose of the loan was to facilitate the appellant's participation in a security protocol called the "Bypass Procedure" with a third party, which he believed would yield significant profits.

The contracts contained critical terms. They stipulated that the appellant was to repay the principal loan of 22 BTC within 48 hours, irrespective of the success or failure of the Bypass Procedure. Furthermore, the agreements expressly provided that the respondent would bear no responsibility for the actions or omissions of any third party involved.

The Bypass Procedure ultimately failed, appearing to be a fraudulent scheme perpetrated by the third party. The appellant did not repay the loan. The respondent commenced a civil claim and was granted summary judgment by the Supreme Court of British Columbia for approximately $1.2 million, representing the value of the 22 BTC, plus interest and costs (*Respondent v. Appellant*, 2024 BCSC 1551). The trial judge found the loan agreements to be valid and enforceable contracts, which the appellant had breached.

The appellant sought to appeal the trial decision. In assessing his application for an extension of time to file his appeal record, the Court of Appeal was required to consider whether the proposed appeal had any prospect of success. The appellant’s arguments centered on three primary areas: contract formation, the applicability of certain contractual defenses, and the overarching proposition that the law must adapt to the novel context of cryptocurrency fraud. The Court of Appeal’s methodical rejection of these arguments is instructive.

First, on the issue of contract formation, the appellant contended that no valid contracts existed. He argued that minor, un-initialed deletions he made to the first agreement constituted a counter-offer that the respondent never accepted. He further argued the supplementary agreement was invalid because the respondent had not signed it. The Court found these arguments unpersuasive. Justice Iyer affirmed the trial judge’s finding that the deletions did not alter the essential terms of the agreement. More significantly, the Court reiterated the established principle that acceptance of an offer can be implied by conduct. The respondent’s act of transferring the additional 4 BTC after receiving the supplementary agreement constituted objective acceptance of its terms, consistent with authorities such as *Saint John Tug Boat Co. Ltd. v. Irving Refinery Ltd.*, [1964] S.C.R. 614.

Second, the Court addressed the appellant's proposed defenses of mistake, frustration, and duress. The appellant argued that both parties were mistaken as to the legitimacy of the Bypass Procedure. He also submitted that its fraudulent nature was an unforeseeable event that frustrated the contract's purpose. The Court found no merit in these positions, concurring with the trial judge that the contracts had explicitly and intentionally allocated the risk of the Bypass Procedure's failure to the appellant. The doctrine of frustration applies only when an unforeseen event makes performance radically different from what was contemplated, not when the contract itself provides for the very contingency that occurred (*Naylor Group Inc. v. Ellis-Don Construction Ltd.*, 2001 SCC 58). Here, the failure of the third-party venture was the specific risk the appellant agreed to bear.

Regarding duress, the appellant argued that psychological manipulation by the third-party fraudsters nullified his consent to the loan agreements with the respondent. The Court noted that the jurisprudence does not typically support a finding of duress where the alleged coercion is imposed by a third party unknown to the other contracting party. The respondent was not a party to, nor did he take advantage of, the alleged duress.

The most significant aspect of the decision is its treatment of the appellant's submission that established legal doctrines must be interpreted differently for contracts involving cryptocurrency due to the prevalence of sophisticated digital fraud. The Court acknowledged the trial judge's finding that the appellant was likely the victim of a "nefarious scheme." However, it firmly rejected the notion that the subject matter of the contract necessitates a departure from core legal principles.

Justice Iyer concluded: "[A]s [the chambers judge] found, the complexity of cryptocurrency does not mean that all contracts involving cryptocurrency are necessarily complex or that contract law doctrines must change dramatically to respond to them. The Contracts here were straightforward loan agreements, and the judge made no reviewable error in characterizing them as such."

This statement underscores a crucial point for legal practitioners and participants in the digital asset market. Courts will look to the substance of an agreement, not merely its context. Where parties enter into a conventional legal structure, such as a loan, the transaction will be analyzed through the well-established lens of contract law. The fact that the asset loaned was digital did not transform a simple loan with clear risk allocation into a joint venture or an instrument requiring novel interpretive rules. The decision reinforces the principle of commercial certainty: clearly drafted terms, particularly those allocating risk, will be upheld.

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