

Singapore International Commercial Court's Ruling in First Virtual Currency Trial

The much awaited decision of Singapore's first reported virtual currency trial is out: the Singapore International Commercial Court ("**SICC**") held that the operator of a currency exchange platform was liable for breach of contract and breach of trust when it reversed trades of certain virtual currencies made at a highly abnormal exchange rate by an electronic market maker (***B2C2 Ltd v Quoine Pte Ltd*** [2019] SGHC(I) 03).

The SICC made two interesting holdings on novel issues:

- Cryptocurrencies, although not legal tender, have fundamental characteristics of intangible property and can be treated as property that may be held on trust; and
- When raising an argument of unilateral mistake to render trading contracts void or voidable where algorithmic trading is involved, an important factor to consider is the state of mind of the programmer of the software at the time of writing the relevant part of the software.

Our Comments

In light of the academic debate on whether cryptocurrencies can be characterised at law to be property, SICC's holding is significant as it is the first time a Singapore court has held that cryptocurrencies have fundamental characteristics of intangible property and can be treated as property that may be held on trust. This could potentially open the door to future lawsuits based on a claimant's ownership rights over cryptocurrencies.

It is also noteworthy that SICC took into account the programmer's state of mind at the time of writing the software in determining whether there was unilateral mistake. This could be indicative of

how the Singapore courts would analyse the responsibility of programmers in the context of other autonomous programs or systems such as self-driving vehicles or self-executing smart contracts, decentralised applications or decentralised autonomous organisations on a blockchain.

This Update takes a look at the salient points of the SICC's decision. Our earlier update on the SICC's decision at the summary judgment stage can be accessed [here](#).

Background

Quoine Pte Ltd ("**Quoine**") operates a currency exchange platform ("**Platform**") which enables third parties to trade virtual currencies for other virtual or fiat currencies. B2C2 Ltd ("**B2C2**"), an electronic market maker, is a party who traded on the Platform.

On 19 April 2017, due to certain internal incidents which caused the software program for the Platform to not function properly, seven trades placed by B2C2 for the sale of Ethereum for Bitcoin were done with its counterparties ("**Counterparties**") at an exchange rate of 1 Ethereum for 10 Bitcoin, a rate that was approximately 250 times more than the previous prevailing exchange rate. The proceeds of the sale were automatically credited to B2C2's account held with Quoine by the Platform and corresponding amount of Ethereum automatically debited from that account. When Quoine became aware of the software glitch the following morning, Quoine cancelled the seven trades and reversed the debit and credit transactions.

B2C2 commenced action against Quoine alleging that by unilaterally reversing the seven trades, Quoine was in breach of the terms and conditions

governing B2C2's trading account with Quoine. B2C2 also claimed that by unilaterally withdrawing the proceeds credited to B2C2's account, Quoine was in breach of trust.

Decision

The SICC considered, among others, the following key issues:

Can a trust be created over cryptocurrencies?

To create a trust, there must be certainty of intention, certainty of subject matter and certainty of objects. For certainty of subject matter, the SICC held that cryptocurrencies have the fundamental characteristic of intangible property and can be the subject matter of a trust. Regarding certainty of objects, the intended beneficiaries must be identifiable. In this case, the beneficiaries were identifiable from the individual accounts of each user held by Quoine. On the certainty of intention, looking at the agreement between Quoine and the users of the Platform as a whole and Quoine's conduct of holding the assets of users of the Platform (including B2C2's assets) separately from its own assets, the SICC found that there was an intention to create a trust. This meant that if Quoine was not entitled to reverse the trades, the unilateral removal by Quoine of Bitcoin from B2C2's account held with Quoine was a breach of trust.

Can trade orders be reversed on the basis of terms being implied into the governing contract? What is meant when a contract states that fulfilled trade orders are "irreversible"?

As a matter of law, a term could be implied into a contract if it does not contradict an express term of that contract, and is necessary to give business efficacy to that contract and to give effect to the intention of the parties.

One of the terms and conditions ("**Agreement**") between Quoine and users of the Platform expressly provides that "once an order is filled,

you are notified via the Platform and such an action is irreversible".

Quoine sought to rely on certain implied terms including one which would enable it to reverse any trades executed at an abnormal rate or price as a result of any technical or system failure or error affecting the Platform. Quoine also argued that the word "irreversible" was meant for the contracting parties who traded on the Platform but did not preclude Quoine from reversing trades.

The SICC disagreed and held that the word "irreversible" was not qualified in any way, and when read in its context, extended to all parties (including Quoine) so as to ensure certainty for all parties. The SICC also held that the terms sought to be implied by Quoine would contradict an express clause of the Agreement and cannot be implied. Further, there was no necessity for such terms to be implied to give business efficacy to the Agreement or to give effect to the intention of the parties.

Can a contract validly provide that one party may unilaterally change any of its terms without informing the other party of the change?

The SICC accepted that one party may unilaterally change the terms of a contract without first obtaining the consent of the other party but there must be clear language in the contract to allow for this and the other party must be given the means of knowing that there has been a change, and what that change is.

Can a term which is capable of having contractual effect but which is contained in a document which does not have contractual force be incorporated into a contract?

Quoine argued that the uploading on its website of a "Risk Disclosure Statement" which contained an express clause permitting Quoine to cancel a transaction if it had taken place at an aberrant value ("**Aberrant Value Clause**") was sufficient to amend the terms of the Agreement, entitling Quoine to reverse the seven trades.

As a principle, the SICC accepted that a term of a contract may be contained in another document which does not have contractual force but it must be clear that such term is intended to have contractual effect and is sufficiently clear to be enforceable. Whilst the Aberrant Value Clause was sufficiently clear to be enforceable, the SICC held that there was nothing in either the Agreement or the “Risk Disclosure Statement” which required the two to be read together and no user would have reason to believe that the “Risk Disclosure Statement” would house amendments to the Agreement. As such, the uploading of the “Risk Disclosure Statement” did not serve to amend the Agreement.

Would a trading contract constituted by a fulfilled trade order involving algorithmic trading be void or voidable under the law of unilateral mistake?

Quoine raised a number of defences, including the defence of unilateral mistake, which it argued rendered the trading contracts between B2C2 and its Counterparties for the sale of Ethereum for Bitcoin void or voidable, and therefore it was not in breach of the Agreement *vis-à-vis* B2C2 when it reversed the seven trades.

To succeed under the doctrine of unilateral mistake at common law, it must be shown that there is a fundamental mistake as to a term of the contract (i.e., the party who made the offer did not intend the terms of the offer to be that which on its face was offered) and the non-mistaken party must have had actual knowledge of the mistake.

B2C2 trades on the Platform using a trading software to calculate the price when quoting either the bid side or ask side of a trade. B2C2’s software programmer had built into the software, two “deep prices” to the bid side and ask side so that B2C2’s trading position would always be protected. The software glitch on the Platform led to a series of events including, the triggering of margin calls on the Counterparties which resulted in the placement of orders to buy Ethereum and the triggering of the “deep prices” on the ask side

by the B2C2 trading software to sell 1 Ethereum for 10 Bitcoin. The trades were carried out even though the available Bitcoin balances in the Counterparties’ accounts were insufficient to meet B2C2’s orders at the price quoted by B2C2.

The SICC accepted that the Counterparties held the mistaken belief that no trade would be transacted on the Platform at prices which deviated so substantially from the actual market prices and that this is a belief which is fundamental to the trading contracts.

The difficulty in this case was that there was no human intervention at the time the seven trades were effected as it was all algorithmic trading, and no human knew about the trades until after the event. The SICC held that as the algorithmic programmes in this case only does what they have been programmed to do, the person (i.e., the non-mistaken party) whose knowledge would be relevant is that of the programmer at the time the program was written. On the facts, the SICC found that B2C2’s programmer did not have actual knowledge of the mistake.

To succeed under the doctrine of unilateral mistake at equity, it must be proven that the non-mistaken party ought to have known about the other party’s mistaken belief and there must also be an element of impropriety on the part of the non-mistaken party.

The SICC accepted that on the facts, a reasonable person in the position of B2C2’s programmer would not have known that no other trader would have contemplated trades being executed at those prices. On the question of whether there was any impropriety, the SICC concluded that at the time B2C2’s programmer wrote the program, his primary concern was to protect the integrity of the B2C2 trading system to minimise risk of any unwarranted exposure and although his programming was opportunistic, it was not sinister. As such, this defence of Quoine failed.

Is specific performance an appropriate remedy for breach of contract and breach of trust involving cryptocurrencies?

Specific performance is a discretionary remedy and will only be ordered by a court where damages would not be an adequate remedy and the party against whom such order is made would not suffer substantial hardship.

In this case, the SICC noted that an order for specific performance would require Quoine to transfer Bitcoin to B2C2 at the current price of

Bitcoin which is substantially higher than the price in April 2017 when the trades were executed. The SICC also noted that B2C2 are market makers, not investors and before the seven trades were reversed, B2C2 had already sold slightly under one third of its Bitcoin proceeds. In the light of these factors, the SICC declined to order specific performance as it would cause substantial hardship to Quoine. As such, B2C2's remedy will only be in damages, which if not agreed between the parties, will be assessed at a subsequent hearing.

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the partner at WongPartnership that you normally deal with or any of the following partners:



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