

Stage Set for First Virtual Currency Trial

Singapore's first reported virtual currency dispute is headed to trial amid measures to preserve confidentiality of information, following the refusal of the Singapore International Commercial Court ("SICC") to grant summary judgment in *B2C2 Ltd v Quoine Pte Ltd* [2017] SGHC(I) 11 and the SICC's orders for document production and appointment of an independent expert in *B2C2 Ltd v Quoine Pte Ltd* [2018] SGHC(I) 04.

Comments

Several interesting questions are expected to be determined at the trial of this action, including:

- What is meant when a contract states that fulfilled orders are "irreversible"?
- Can a contract validly provide that one party may unilaterally change any of its terms without informing the other party of the change?
- 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?
- In this case, would the contracts constituted by the fulfilled orders be void under the common law doctrine of unilateral mistake?

These are issues on which the court's guidance will be eagerly anticipated, especially in light of the continued growth of virtual currencies and other fintech products and services and the yet-unanswered questions of how conventional legal principles will evolve to deal with such innovations.

This Update takes a look at the SICC's decisions.

Background

B2C2 Ltd ("**B2C2**") alleged that Quoine Pte Ltd ("**Quoine**") wrongfully reversed B2C2's trades in two virtual currencies fulfilled on a currency exchange platform ("**Platform**") operated by Quoine, in breach of a set of terms and conditions governing B2C2's trading account with Quoine ("**Agreement**").

On 19 April 2017, an error by a member of Quoine's operations team resulted in incorrect passwords and cryptographic keys being keyed into the software programme which, among other things, displayed real-time pricing data for trades completed on the Platform and other major virtual currency exchanges and price charts indicating fair market prices. This caused the software programme to cease working as it could not connect to a database to perform market price updates.

Just over 20 minutes after the error occurred, B2C2 placed seven orders to sell Ethereum for Bitcoin on the Platform at a price approximately 250 times that quoted by Quoine and traded by B2C2 in other orders placed earlier that very day ("**Seven Orders**").

In ordinary trading circumstances, B2C2's offer price would likely not have been matched as the software programme would have quoted a real market price far lower than that offered by B2C2.

However, as the software programme was unable to access the data necessary to establish a true market price, the programme tried to establish the market price by reference to the only data available to it, which was the data from the Seven Orders. This data caused the Platform to incorrectly reassess the leveraged positions of some other market traders using the Platform

and to close out their positions to prevent further loss. In doing so, the Platform automatically placed orders to sell their Bitcoin to B2C2 at B2C2's offer price. As a result, B2C2 received 3,092 Bitcoin. At the time, the 3,092 Bitcoin was worth approximately US\$3.8 million, but owing to the end-of-year spike in the bitcoin exchange rate, it was worth approximately US\$47.5 million at the time B2C2's application for summary judgment was dismissed. It is now worth approximately US\$25.3 million.

The next day, Quoine learned about the software glitch and unilaterally reversed the Seven Trades.

On 18 May 2017, B2C2 commenced this action, alleging, among other things, that the reversal was in breach of the Agreement and seeking relief for such breach. On 8 September 2017, B2C2 applied for summary judgment.

Decisions

In dismissing B2C2's application for summary judgment, Simon Thorley J of the SICC identified the following key issues which are anticipated to be considered at the trial of this action.

What is meant when a contract states that fulfilled trade orders are "irreversible"?

B2C2's case was that the Agreement expressly provided that "once an order is filled, [the relevant parties] are notified via the Platform and such an action is irreversible". On that basis, B2C2 contended that the reversal of the Seven Orders breached that express term.

In finding that B2C2 had established a *prima facie* case, the SICC noted that as the word "irreversible" was not qualified in any way, and when read in context, the proper inference was that the provision must have been included to

ensure certainty for all parties. It therefore could not be interpreted to allow the correction of "errors' (whatever they may be)".

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

The Agreement contained a term which provided that Quoine may change "any of the terms, rights, obligations, privileges ... with or without providing notice of such change". Quoine asserted that this term gave it the right to rely on a new term introduced in the form of a risk disclosure statement which it uploaded to its website on 22 March 2017.

That new term permitted Quoine to cancel a transaction if it had taken effect "based on an aberrant value" ("**Cancellation Rights Term**"). Quoine contended that, once the risk disclosure statement was uploaded, the Cancellation Rights Term automatically came into effect without notice to the users of the Platform, and regardless of whether they had seen it or not. Quoine therefore argued that it was contractually entitled to reverse the Seven Trades as they were based on an aberrant value.

The SICC found that Quoine's contentions on this issue raised an arguable defence which should be considered at trial.

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?

B2C2 argued, among other things, that the risk disclosure statement was a "mere summary of risks" and not a document which a reasonable reader would expect to contain contractual terms.

In response, Quoine contended that there was no legal requirement for a document, parts of which contained terms which were said to be incorporated into a contract, itself to have contractual force as long as the particular terms sought to be incorporated were capable of having contractual effect. The Cancellation Rights Term was plainly such a term.

The SICC took the view that this legal argument on the incorporation of terms into contracts merited full argument at trial.

Would the contracts constituted by the fulfilled orders be void under the common law doctrine of unilateral mistake?

The SICC noted that, to succeed in rendering a contract void under the common law doctrine of unilateral mistake, Quoine had to establish that B2C2 must have had actual knowledge of the mistake and that there was a sufficiently important or fundamental mistake as to a term of the contract.

Quoine contended that B2C2's offer price could not have represented a genuine offer to sell in a realistic market as B2C2 knew that its offer price was wholly out of line with all the other prices it had been seeking to trade at during the day.

Quoine further argued that, even though the Seven Orders were ultimately fulfilled by the acts of a computer, the mistake arose from a human error by a Quoine employee which in the final event resulted in the computer causing the other market traders' Bitcoin holdings to be sold when they should not have been sold and at an abnormal price. The market traders who transacted with B2C2 were therefore mistaken as to both the need for the contracts (constituted by the fulfilled orders) and the sale price, which was a fundamental term of those contracts.

The SICC accepted that "a more thorough investigation of the facts behind the setting of [B2C2's] abnormally high offer price" was justified. It also observed that, while the doctrine of unilateral mistake is well-developed in cases involving human error, the law is "less well developed" where computers are concerned. In addition, this case has brought into focus the question as to when the workings of a computer or computer programme can constitute actual knowledge on the part of the programmer or operator of the computer.

The SICC therefore concluded that, after the full facts are established, it would be possible at the trial of this action to examine in greater detail the law on unilateral mistake where computers are involved.

However, to establish those facts, documents relating to the workings of B2C2's automated trading system would have to be produced and evaluated by an expert. B2C2 contended that those documents embodied highly confidential information which it did not wish to disclose. B2C2 was particularly concerned that Quoine was a competitor and considered it of "paramount importance" that Quoine should not be placed in a better competitive position than it would have been if this action had not been commenced.

To address those concerns, the SICC has, among other things, ordered that:

- B2C2 indicate which of those documents contain information which B2C2 considers confidential, and that such documents should not be inspected by or on behalf of Quoine without an order of the court; and
- B2C2 be at liberty to instruct an independent expert who would have access to the documents relating to the workings of B2C2's automated trading system and prepare a report on the factual issues which would answer the question how B2C2's automated

trading system came to place the Seven Orders at the unusual exchange rate. Once the report is prepared, B2C2 should identify which parts of the report and which documents referred to it considers confidential. A redacted version of the report (in which the parts containing information which B2C2 contends is confidential are

obscured) is to be filed in court, served on Quoine and free for normal inspection. Only Quoine's solicitors would be supplied a copy of the unredacted report, on condition that they provide certain stringent confidentiality undertakings.

If you would like information on this 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:

**Joy TAN**

Deputy Head – Commercial & Corporate Disputes Practice
Joint Head – Corporate Governance & Compliance Practice
Joint Head – Financial Services Regulatory Practice

d: +65 6416 8138

e: joy.tan

[@wongpartnership.com](mailto:joy.tan@wongpartnership.com)

Click [here](#) to view Joy's CV.

**LAM Chung Nian**

Head – Intellectual Property, Technology and Media, Telecommunications and Data Protection Practices

d: +65 6416 8271

e: chungnian.lam

[@wongpartnership.com](mailto:chungnian.lam@wongpartnership.com)

Click [here](#) to view Chung Nian's CV.

**TIAN Sion Yoong**

Partner – Financial Services Regulatory Practice

d: +65 6416 2488

e: sionyoong.tian

[@wongpartnership.com](mailto:sionyoong.tian@wongpartnership.com)

Click [here](#) to view Sion Yoong's CV.

WPG MEMBERS AND OFFICES

- contactus@wongpartnership.com

SINGAPORE

-

WongPartnership LLP
12 Marina Boulevard Level 28
Marina Bay Financial Centre Tower 3
Singapore 018982
t +65 6416 8000
f +65 6532 5711/5722

CHINA

-

WongPartnership LLP
Beijing Representative Office
Unit 3111 China World Office 2
1 Jianguomenwai Avenue, Chaoyang District
Beijing 100004, PRC
t +86 10 6505 6900
f +86 10 6505 2562

-

WongPartnership LLP
Shanghai Representative Office
Unit 1015 Link Square 1
222 Hubin Road
Shanghai 200021, PRC
t +86 21 6340 3131
f +86 21 6340 3315

MYANMAR

-

WongPartnership Myanmar Ltd.
Junction City Tower, #09-03
Bogyoke Aung San Road
Pabedan Township, Yangon
Myanmar
t +95 1 925 3737
f +95 1 925 3742

INDONESIA

-

Makes & Partners Law Firm
Menara Batavia, 7th Floor
Jl. KH. Mas Mansyur Kav. 126
Jakarta 10220, Indonesia
t +62 21 574 7181
f +62 21 574 7180
w makeslaw.com

wongpartnership.com

MALAYSIA

-

Foong & Partners
Advocates & Solicitors
13-1, Menara 1MK, Kompleks 1 Mont' Kiara
No 1 Jalan Kiara, Mont' Kiara
50480 Kuala Lumpur, Malaysia
t +60 3 6419 0822
f +60 3 6419 0823
w foongpartners.com

MIDDLE EAST

-

Al Aidarous Advocates and Legal Consultants
Abdullah Al Mulla Building, Mezzanine Suite 02
39 Hameem Street (side street of Al Murroor Street)
Al Nahyan Camp Area
P.O. Box No. 71284
Abu Dhabi, UAE
t +971 2 6439 222
f +971 2 6349 229
w aidarous.com

-

Al Aidarous Advocates and Legal Consultants
Zalfa Building, Suite 101 - 102
Sh. Rashid Road
Garhoud
P.O. Box No. 33299
Dubai, UAE
t +971 4 2828 000
f +971 4 2828 011

PHILIPPINES

-

ZGLaw
27/F 88 Corporate Center
141 Sedeño Street, Salcedo Village
Makati City 1227, Philippines
t +63 2 889 6060
f +63 2 889 6066
w zglaw.com/~zglaw