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ERRARE EX MACHINA: A Case Study

B2C2 Ltd v Quoine Ptd Ltd [2019] SGHC(I) 3

The first local judgment relating to digital currencies

Introduction

The Singapore International Commercial Court (“**SICC**”) found that the operator of a virtual currency exchange platform was liable for breach of contract and breach of trust in reversing trades made at an abnormal exchange rate.

Several novel issues arose in what is the first digital currency related matter to come before the courts in Singapore, *inter alia* recognising that digital currencies have the characteristics of property, and the applicability of the doctrine of mistake to contracts made through algorithmic trading.

Judge Simon Thorley QC’s decision in *B2C2 Ltd v Quoine Ptd Ltd* [2019] SGHC(I) 3 is a landmark judgment which clarifies some of the legal issues which are likely to continue to arise in disputes in the developing and largely unregulated markets of international cryptocurrency trading.

Background

The Plaintiff, B2C2 Ltd, traded as an electronic market maker for digital currencies – *i.e.* it provides liquidity on exchange platforms by trading at quoted prices for digital currency pairs. The trading is automated, and conducted through its algorithmic trading software.

The Defendant, Quoine Pte Ltd, is a Singapore company operating a digital currency exchange platform (“**the Platform**”) which enabled account holders to exchange digital currencies for other digital currencies, or for fiat currencies. The Defendant also traded on the Platform as a market maker, using its own proprietary program to generate liquidity on the Platform (“**the Quoter Program**”).

The dispute was in respect of a Bitcoin (“**BTC**”)/Ethereum (“**ETH**”) trade on 19 April 2017.

On 13 April 2017, the Defendant made changes to login passwords for several critical systems on the Platform for security reasons. Due to an oversight, some necessary changes to the Quoter Program were not made.

As a result, the Quoter Program was unable to access data from other exchanges, and so stopped creating new ETH/BTC orders on the Platform (“**the Error**”). Over the next few days, existing

orders on the Platform were matched with customer orders, resulting in the eventual depletion of the Platform order book. The Defendant was not aware of this oversight until after 19 April 2017.

On the evening of 19 April 2017, two margin traders were trading in the ETH/BTC market using ETH borrowed from the Defendant. The depletion of the orders on the Platform resulted in the Platform triggering margin calls, resulting in the placing of buy ETH orders on the Platform.

The Platform started to purchase ETH at the best available price and worked its way through the existing orders sequentially from the lowest to highest. This culminated in the Platform purchasing ETH at the rate of 10 BTC for 1 ETH, 250 times the going rate, from the Plaintiff ("**the Subject Trades**").

These Subject Trades were also the result of automatic offers from the Plaintiff's trading software. The software calculated the bid on the ask side of a trade, by evaluating the existing bid and ask trades on the Platform. But if the order book was empty (as it was in this case because of the Error), the software defaulted to a deep price (10 BTC for 1 ETH). It was these prices that the Platform executed for its forced buy, resulting in an unexpected gain for the Plaintiff.

The next morning, Quoine discovered the Subject Trades and reversed the debit and credit transactions.

The Plaintiff's Claim

The Plaintiff's claim before the SICC was essentially for breach of contract on the basis that the Defendant had no contractual right to reverse the Subject Trades.

The Defendant raised various defences. We will focus on those from the doctrine of mistake and unjust enrichment. In particular, the Defendant argued that it was entitled to reverse the subject trades under the doctrines of (i) unilateral mistake at common law, (ii) unilateral mistake at equity, and (iii) mutual mistake at common law.

Breach of Contract

The agreement between parties ("**the Agreement**") contained an express term that the filling of an order was "irreversible". It was on this basis that the Plaintiff claimed a breach of contract by the Defendant in reversing the trades.

The Defendant contended that there was an implied term that it was entitled to reverse the Subject Trade. The Court rejected this argument, holding that such an implied term would contradict the express term providing for irreversibility of trades.

Unilateral Mistake at Common Law

For this, the Defendant had to show that the offeror (i.e. the margin traders) did not intend to make the offer, and the Plaintiff was aware of it. Given that this was an automatic trade, the novel issue was whose knowledge would be relevant. The Court determined it would be the programmer of the Plaintiff's trading software, and the Court was satisfied that he did not have the requisite knowledge of the mistake (i.e. the Error).

Unilateral Mistake at Equity

To succeed on this argument the Defendant had to show that any reasonable person in the programmer's position would have known that no other trader would have contemplated trades being executed at those prices. The Court ruled that a reasonable trader would not know this, the Plaintiff's motives were not sinister, and that the Plaintiff was only ensuring that in the unlikely scenario coming to pass, it would end in profit rather than loss.

Mutual Mistake at Common Law

This would only apply if both parties shared a common assumption. This was too artificial given that this was algorithmic trading between computer programs, and not face to face between individuals.

Unjust Enrichment

Finally, the Defendant argued that it was entitled to reverse the trades on the basis of unjust enrichment – which provides a cause of action for one party against another party who received a benefit from the first party in circumstances making it unjust for the second party to retain the benefit.

The Court noted that three elements were to be present in any such claim: (i) there must have been a benefit received by the second party, (ii) the enrichment must have been at the expense of the first party, and (iii) the enrichment must have been unjust (*Singapore Swimming Club v Koh Sin Chong Freddie* [2016] 3 SLR 845 at [90]).

Ultimately, the Court held that it was only in exceptional cases that a claim for unjust enrichment could succeed where a contract was held to be valid. The Plaintiff was enriched as the Defendant failed to take sufficient steps to protect itself, or the margin traders.

As such, the present case could not be characterised as the Plaintiff getting an unjustified windfall, but was instead the inevitable result of the way parties had chosen to trade with each other. The defence of unjust enrichment therefore failed.

Relief Ordered

The SICC decided against ordering specific performance requiring the Defendant to transfer BTC to the Plaintiff at the price of the date of judgment, as it was substantially higher than when the trades were executed. Instead, the Court held that the Plaintiff's remedy lay in damages, which were to be assessed if not agreed.

Conclusion

The case is particularly important for setting down definitive standards for the treatment of digital currencies as assets at law. Here, questions were asked of whether digital currencies could amount to property, and of the element of knowledge where actions conducted by machines run on automated algorithms were concerned – and were emphatically answered.

The Defendant should have provided itself a contractual right to reverse the trades.

What happens next?

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