HFW LITIGATION

HOW ARE CONTRACT AND TRUST LAW PRINCIPLES APPLIED IN CRYPTOCURRENCY DISPUTES?

We are beginning to see disputes arising from the use of virtual currencies in trade. How such issues will be tackled is subject to much speculation and debate.

Of help, is the recent Singapore International Commercial Court (SICC)'s[1] decision in *B2C2 Ltd v Quoine*[2], which provides an insight into how common law jurisdictions may apply contract and trust law principles to the trade of virtual currencies.

1. The SICC is a division of the Singapore High Court (https://www.supremecourt. gov.sg) and part of the Supreme Court of Singapore designed to deal with transnational commercial disputes.
2. https://www.sicc.gov.sg/docs/default-source/modules-document/judgments/ b2c2-ltd-v-quoine-pte-ltd_a1cd5e6e-288e-44ce-b91d-7b273541b86a_8de9f2e2- 478e-46aa-b48f-de469e5390e7.pdf

"Given that this decision has been rendered by a common law jurisdiction, it is likely to be useful guidance on how the courts in other common law jurisdictions will apply legal principles to disputes in the sphere of disruptive technologies."

In this case, the SICC considered how the intention of the parties was to be construed in the context of smart contracts "drafted'" (i.e. coded) by a programmer, drawing a distinction between the intention of the programmer and the automatic translation of his algorithm.

The dispute

The dispute concerned seven trades of Ethereum in exchange for Bitcoin over the Singapore-registered currency exchange platform operated by Quoine (the Defendants), all of which were executed on the instruction of the Plaintiff's B2C2's algorithmic trading software.

Quoine had recently installed software on its platform to ensure that trades would take place at the accurate market rate, by sourcing applicable market prices from external cryptocurrency exchanges.

However, due to an oversight, necessary changes were not implemented, and this resulted in outdated exchange rates being applied to the seven trades so that they were executed at approximately 250 times the Ethereum/Bitcoin market exchange rate, in favour of B2C2. The proceeds were then automatically credited to B2C2's account.

Upon discovery that these trades had been made, Quoine's CTO reversed the trades to remedy the consequences of what he considered to be a mere "software glitch".

B2C2 commenced proceedings against Quoine. It argued that Quoine's reversal of the trades was a breach of contract, and that Quoine held the cryptocurrencies on trust for B2C2, so that the reversal amounted to a breach of trust.

Quoine's main defence was that B2C2 was aware of the software error, rendering the trades null and void under the doctrine of unilateral mistake.

The SICC found in favour of B2C2, holding that the unilateral reversal of the trades by Quoine amounted to breach of contract and of trust and that no mistake capable of rendering the trades void existed. In doing so, it considered three central issues:

Issue 1: Were the trades reversible?

The SICC found that in reversing the trades following execution, Quoine was in breach of its own terms and conditions, which provided that *"once an order is filled, you are notified via the Platform and **such action is irreversible**"* (emphasis added). It dismissed Quoine's argument that an implied term enabling Quoine to reverse the trades was necessary to give the contract business efficacy.

Issue 2: Are cryptocurrencies property and if so, can they be held on trust?

The SICC held that cryptocurrencies met all the conditions to be treated as property capable of being held on trust. Further, there had been an intention to create a trust, as the proceeds of the trades were held in a separate offline wallet as *"member assets"*, distinct from Quoine's assets, and for the benefit of B2C2. Quoine's unilateral removal of the proceeds from B2C2's "wallet" was in breach of the trust.

Issue 3: How do the courts assess the knowledge and intention of the parties in algorithmic trading?

Quoine tried to argue that "unilateral mistake" at common law (a mistake committed by one party, of which the other party is aware) was committed by its pricing software which rendered the contract void, and that this entitled Quoine to reverse the trades, as if they had never occurred.

However, for a contract to be void for unilateral mistake, the mistake must relate to the fundamental terms of that contract, taking into account the knowledge of the parties at the time of entering into the contract. In this case, there had been no human involvement when the contracts were executed.

The SICC held that, here, the knowledge and intention of the *"operator or controller of the machine"*[3], namely *"the person who was responsible for causing it to work the way it did... the programmer"*[4] had to be considered, and *"when the law is faced with a contention that a contract by and between two computer systems is void or voidable for mistake... it is necessary to have regard to the mind of the programmer when the relevant programs, or... part of those programs, were written"*. More generally, *"where acts of deterministic computer programs are in issue, regard should be had to the state of mind of the programmer... at the time the relevant part of the program was written"*[5].

Here, the programmer's intention in elaborating B2C2's trading algorithm was to protect it from the risk of any unwarranted exposure, and not to manipulate the currency exchange rates by taking advantage of Quoine's software glitch. Accordingly, Quoine was not entitled to reverse the trades.

The remedy

B2C2 requested the specific performance of the trades on the basis that the relevant cryptocurrencies were too volatile for

their inherent value to be assessed accurately in damages, thereby retaining the proceeds resulting from the software error. The SICC declined to exercise its discretion to order specific performance on the basis that it could assess the value of the cryptocurrencies, as it would for other volatile assets.

At the time of this article, the judgment on the assessment of damages has not yet been published.

Conclusion

Given that this decision has been rendered by a common law jurisdiction, it is likely to be useful guidance on how the courts in other common law jurisdictions will apply legal principles to disputes in the sphere of disruptive technologies.

This case also demonstrates the importance of ensuring that the governing terms and conditions for algorithmic trading provide for situations where errors (both automated and human) may arise.

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3. Ibid, para 210
4. Ibid, para 210
5. Ibid, para 211

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