SUPREME COURT OF SINGAPORE

27 December 2017

Media Summary

Singapore International Commercial Court Suit No 7 of 2017
***B2C2 Ltd v Quoine Pte Ltd* [2017] SGHC(I) 11**

The facts

1 The present dispute arises from an alleged wrongful reversal of trades of two virtual currencies Bitcoin ("BTC") and Ethereum ("ETH"). The plaintiff is an electronic market maker incorporated in England and Wales. It carried out the trades in question via an account which it had opened on a virtual currency exchange platform ("the Platform") operated by the defendant, a Singapore registered company.

2 The Platform uses order books to record orders from buyers and sellers for each pair of currencies being traded on the Platform. These are all displayed electronically on a dashboard which displays real time pricing data both for completed trades on the Platform and for trades on several other major virtual currency exchanges. This is achieved through a software programme used by the Platform ("the Quoter Program").

3 Margin trading is done on the Platform. In the event that the margin trader's equity (calculated as a certain percentage of the total market value of his collateral) falls below a certain percentage of the value of his loans, the Platform will automatically respond by force closing all or part of the trader's positions to prevent further loss. This is achieved by making Stop Loss orders to sell the margin trader's assets at the best available price. The Platform relies on the data provided by the Quoter Program to assess the margin trader's position at any given time.

4 On 19 April 2017, the plaintiff sought to buy and sell ETH for BTC on the Platform. To that end, it placed 12,617 ETH/BTC orders of which only 15 were filled, including seven which formed the subject of the dispute. Other than the disputed orders, buy or sell orders were transacted at a price of around 0.04 BTC for 1 ETH.

5 The defendant contends that sometime after 23:30 on the same day, the Platform experienced a technical glitch. Changes had been made to the passwords and cryptographic keys to some of the plaintiff's critical systems but due to an oversight, the defendant's operations team did not implement the changes on the login credentials for the Quoter Program. This caused the Quoter Program to cease working. All the orders which were on the ETH/BTC order book thus ceased to be available and no true market price was available.

6 Between 23:52:52 and 23:54:33, while the Quoter Program was not functioning, the plaintiff placed seven orders for the sale of ETH for BTC at an exchange rate of between 9.99999 and 10 BTC for 1 ETH. This was approximately 250 times the rate at which the other orders made by the plaintiff were transacted.

7 There were some market traders ("the Force-closed Customers") involved in the ETH/BTC market at the time using ETH borrowed from the defendant. Because the Quoter Program could not access all the data necessary to establish a true market price, it sought to do so by reference to the only data available to it, namely, the data arising out of the plaintiff's seven orders. These new data caused the Platform to reassess the Force-closed Customers' leveraged positions and detect that the Force-closed Customers' collateral had fallen below the maintenance margins. The Platform thus automatically placed Stop Loss orders to sell the Force-closed Customers' assets.

8 However, because of the technical glitch, the only available price on the Platform was the price offered by the plaintiff. Hence, the computer matched

the plaintiff's seven orders (see [6] above) with the BTC held by the Forced-closed Customers. An aggregate of 3092.517116 BTC was credited to the plaintiff's account and 309.2518 ETH debited from that account with corresponding amounts being debited from and credited to the Force-closed Customers' accounts.

9 The following day, the defendant became aware of the technical glitch and unilaterally reversed the trades, returning the BTC to the Force-closed Customers' accounts and the ETH to the plaintiff's account.

The dispute

10 The plaintiff contends that this reversal, which denied them the fruits of the highly advantageous transactions on 19 April 2017, was in breach of the Terms and Conditions of the Platform ("the Agreement") and in breach of trust. On 18 May 2017, it commenced proceedings in the High Court seeking relief for those breaches. The action was transferred to the Singapore International Commercial Court on 24 August 2017. On 8 September 2017, the plaintiff filed an application for summary judgment.

The decision and reasons

11 The Court found that the plaintiff had a *prima facie* case. The Agreement expressly provided that "once an order is filled, [the user will be] notified via the Platform and such an action is irreversible". This provision was unqualified and, read in the context of the other terms of the Agreement, was included to ensure certainty for all parties including the defendant.

12 The defendant raised several issues which they argue merit a trial. Two were acknowledged by the Court to be appropriately arguable defences.

13 First, the defendant argued that the incorporation of terms in a Risk Disclosure Statement uploaded on the Platform's website on 22 March 2017 gave the defendant the right to reverse the trades.

(a) The "Representations and Warranties" section of the Agreement contained a clause ("clause (h)") which provided that the defendant could change any terms, rights, obligations and privileges without providing notice of such changes and that users of the Platform accepted responsibility for reviewing the information and terms of usage from time to time.

(b) The Risk Disclosure Statement provided that "if [the defendant found] that a transaction took effect based on an aberrant value, the [defendant] may cancel the transaction".

The defendant contends that the Risk Disclosure Statement introduced a new term expressly permitting the defendant to cancel a transaction if it had taken place based on an aberrant value. There was an issue therefore as to the effect of clause (h), and whether it incorporated what was provided for in the Risk Disclosure Statement.

14 Second, the defendant argued that the trades were void because of a unilateral mistake at common law as there was a sufficiently fundamental mistake as to a term of the contract and the plaintiff had actual knowledge of it. According to the defendant, the Force-closed Customers were mistaken as to both the need for the contract and the sale price, which was a fundamental term of the contract. As for actual knowledge on the part of the plaintiff, the defendant submitted that however the abnormally high limit order price came to be offered, it could not have represented a genuine offer to sell in a realistic market. The plaintiff must have known that the price was wholly out of line with all the other prices it had been seeking to trade at during that day (all of which were more than 250 times lower). The plaintiff explained that the orders

were placed automatically by the plaintiff's "proprietary system which seeks to quote prices which are at or near the best available prices on the Platform at a particular point in time". The Court did not find this explanation wholly satisfactory and expressed the view that an investigation at trial was necessary to understand why the system quoted a high price and specifically, why it selected 10 BTC for 1 ETH as the exchange rate.

15 The Court also observed that the present case was atypical because of the involvement of computer systems. While it was human error that caused the Quoter Program to malfunction, it was the plaintiff who offered to sell at an abnormal rate. Further, the Platform wrongly identified the Force-closed Customers as being in default and thus wrongly instituted Stop Loss orders selling the BTC held by the Force-closed Customers not at a true market price as would have happened in normal circumstances, but at the Plaintiff's abnormal rate.

16 Given that the plaintiff had made out a *prima facie* case and the defendant had convinced the Court that there were two arguable defences, the plaintiff's application for summary judgment was dismissed.

This summary is provided to assist in the understanding of the Court's judgment. It is not intended to be a substitute for the reasons of the Court.