

SUPREME COURT OF SINGAPORE

20 March 2018

Media Summary

Singapore International Commercial Court Suit No 7 of 2017
***B2C2 Ltd v Quoine Pte Ltd* [2018] SGHC(I) 04**

SICC discusses the principles governing the production of confidential documents and the appointment of single court experts for SICC proceedings

Background

1 On 27 December 2017, a judgment was handed down in this action dismissing an application by the Plaintiff for summary judgment: see *B2C2 Ltd v Quoine Pte Ltd* [2017] SGHC(I) 11. The present judgment arose out of consequential applications by the parties: by the Defendant for production of documents under O 110 r 17 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (“Rules of Court”), and by the Plaintiff for the appointment of a single court expert pursuant to O 40.

The facts and procedural history

2 The dispute arose from an alleged wrongful reversal of trades of two virtual currencies Bitcoin (“BTC”) and Ethereum (“ETH”). The Defendant operated a currency exchange platform (the “Platform”) enabling third parties to trade virtual currencies for other virtual currencies or for fiat currencies. The Plaintiff traded on the Platform.

3 On 19 April 2017, sometime after 23:30, 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 software used to calculate real time pricing data (the “Quoter

Program”). This caused the Quoter Program to cease working. All orders made on the Platform were dropped.

4 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 market rate. These orders were made using the Plaintiff’s automated trading system.

5 Some market traders involved in the ETH/BTC market at the time (the “Force-closed Customers”) were 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 orders to sell the Force-closed Customers’ assets.

6 Due to 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 to 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. The following day, the Defendant became aware of the technical glitch and unilaterally reversed the trades.

7 The Plaintiff contended that this reversal 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. By consent, the action was transferred to the SICC. On 8 September

2017, the Plaintiff made an application for summary judgment. On 5 December 2017, this application was heard and dismissed.

8 The Judge found that the Plaintiff had a *prima facie* case but that there were, at least, two arguable defences. First, a term that allowed the Defendant to cancel transactions based on aberrant values could have been incorporated into the terms of the Agreement. Secondly, the transactions in question could be void because of a unilateral mistake at common law. Both applications discussed in the judgment pertained to the second.

The production application

9 The production application was for documents relating to the workings of the Plaintiff's automated trading system, which were, the Plaintiff contended, embodied highly confidential information. ([8])

10 The Judge held that there was no hard and fast rule either requiring disclosure or denying inspection of confidential information. Each case would be decided on its own facts and would depend on the degree of confidentiality of the information. Crucial to determining where the line should be drawn in each case was the balancing of the degree of prejudice to one party of risking disclosure of its confidential information on the one hand, and the degree of prejudice caused to the other of being denied access to documents which were relevant and material to the resolution of the dispute in question on the other. ([16], [21] and [29])

11 Under O 110 r 17(2)(b)(v) of the Rules of Court, the court had no power to order production if the grounds of commercial or technical confidentiality were compelling. The word "compelling" did not require regard to be had only to the concerns and needs of the party whose confidential information was relevant and material. The circumstances of the case must be such that there was no solution which commended itself to the Court other than refusal. In this

regard, it was important to consider the possibility of limiting access to the documents, redactions, or other undertakings. ([32]–[33])

12 The Judge therefore rejected the Plaintiff's submission that O 110 r 17 mandated a different approach to dealing with discovery of confidential documents to the existing approach under the Singapore High Court regime. The guidance obtained from the authorities under discovery provisions in the other common law jurisdictions referred to above were equally applicable to proceedings before the Singapore International Commercial Court. ([34]–[35])

The application for a single court expert

13 The Judge held that the appointment of a court expert depended upon whether it would lead to a just, expeditious and economical disposal of an action (at [38]). In the circumstances, the Judge concluded that it would be unlikely to save time and costs to appoint a single court expert as the Defendant would wish to have the opportunity, in some way, to satisfy itself that the report was full and fair. The Judge held that it would be far quicker and cheaper for the Plaintiff to instruct an independent expert. Time would be saved in identifying the expert and the Plaintiff's in-house experts could assist the independent expert in getting up to speed on the precise technology involved. They could also answer the expert's questions and provide any further documents rapidly. The Judge therefore declined to appoint a single court expert. ([38], [45]–[47])

14 The Judge ordered that the Plaintiff's expert should prepare a report and that a copy with redactions that obscured information which the Plaintiff contended to be confidential should also be prepared. In the meantime, the Defendants' solicitors instructed in the action would undertake that the unredacted parts of the report and any documents said to be confidential will at all times remain within their custody and would not be inspected otherwise than by them, that they would not part company with such material or allow it to be photocopied, scanned or otherwise reproduced in any other way and that they

would not disclose the contents of the material or discuss them with the Defendant or any third party, without the Plaintiff's consent or leave of the court. They must also undertake that the material would not be used for any purpose other than the conduct of this action. ([49] and [51])

15 The redacted version shall be filed at court and served on the Defendant and shall be free for inspection in the normal way. In addition, one copy of the unredacted report and supporting documents shall be filed at court (and be subject to a protective order) and one copy supplied to the Defendant's solicitors once the undertakings had been given. These copies may, if the Plaintiff wishes, be numbered copies. ([50])

16 While the report is being prepared, the Defendant should identify the independent expert it would propose to consult and name one officer in the company capable of understanding the report when explained to him or her but whose future career would not be undermined by being possessed of any confidential information which (s)he receives subject, in both cases, to an appropriate personal confidentiality undertaking. This should be done at an early stage so that any challenges by the Plaintiff to the suitability or integrity of either person could be reduced to writing and ruled upon, if necessary. A further case management conference would be held to decide whether the Defendant needs to instruct an expert, what material (if any) that expert should have access to and on what terms and to consider whether, at that stage, any officer of the Defendant should have access to any and, if so, what material or information and on what terms. ([52] and [54])

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.
