

SINGAPORE COURT DISMISSES SUMMARY JUDGMENT APPLICATION IN FIRST BITCOIN DECISION

The first decision in Singapore relating to Bitcoin was released on 27 December 2017. The decision, although only interlocutory, is the first relating to cryptocurrencies in Singapore and highlights the legal implications of trades entered into through smart contracts, and the reversibility of such trades where a computer error is alleged.

BACKGROUND

The action was commenced by a UK-based market maker B2C2 against the Singapore cryptocurrency exchange Quoine. On 27 December 2017, Simon Thorley IJ of the Singapore International Commercial Court dismissed the plaintiff's summary judgment application. The case will now go to trial.

The dispute arises out of the plaintiff's transaction to buy and sell Ethereum in exchange for Bitcoin in April 2017. Due to a "technical glitch" on the defendant's platform, the defendant's software programme was unable to connect to a database necessary to perform the market price updates. The judgment mentioned that the plaintiff placed seven orders to sell Ethereum for Bitcoin at a rate approximately 250 times the rate previously quoted by the defendant and traded by the plaintiff in respect of other orders placed earlier on the same day.

As the defendant's software programme could not access all 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 were the data arising out of the plaintiff's seven orders. This data also caused the defendant's platform to incorrectly reassess some other market traders' leveraged positions and close out their positions to prevent further loss, automatically placing orders to sell their assets to the plaintiff at the plaintiff's offer price. As a result, the plaintiff received 3,092 Bitcoin, worth at the time around US\$3.8 million but as of 27 December 2017 valued in the region of US\$47.5million.

The defendant noticed the error on the following day and unilaterally reversed the trades. The plaintiff contended that the reversal was in breach of contract and breach of trust, and sought relief for those breaches.

WHAT CONSTITUTES "IRREVERSIBLE"

The plaintiff had relied on a provision in the defendant's Terms and Conditions which provides that "*once an order is filled, you are notified via the Platform and **such an action is irreversible***" (emphasis added).

Simon Thorley IJ found that as the word "irreversible" was not qualified in any way, and read in the context, the proper inference was that the provision must have been included to ensure certainty. It therefore could not be interpreted to allow the correction of "errors".

On that basis, it was found that the plaintiff had established the necessary *prima facie* case. Simon Thorley IJ went on to find that the defendant had raised arguable defences based on another contractual provision, and based on the common law doctrine of unilateral mistake.

Key issues

- Risks of a "*technical glitch*" may be addressed by contractual provisions.
- The common law doctrine of "*unilateral mistake*" may also enable a party to reverse a transaction caused by a "*technical glitch*".
- Parties should be careful about the use of terms such as "*irreversible*" in contracts. Such terms could be taken to mean that a party is unable to reverse any transaction, no matter the circumstances.

CONTRACTUAL RIGHT TO UNILATERALLY AMEND TERMS

The defendant had inserted a provision which provides that it may change *"any of the terms, rights, obligations, privileges... with or without providing notice of such change"*. The defendant relied on this provision to enable itself to rely on a new term introduced by way of a risk disclosure statement which clearly permitted the defendant to cancel a transaction if it had taken place based on an aberrant value.

The court heard debate as to whether the defendant was able to introduce the term in the risk disclosure statement into the parties' contract unilaterally without notice to the plaintiff; whether the particular terms sought to be incorporated were capable of having contractual effect when the risk disclosure statement itself may not have contractual force; and how the contractual provision which provided that "an action is irreversible" could be reconciled with the term which permitted the defendant to cancel a transaction. Simon Thorley IJ did not seek to determine these questions at the summary judgment application, but found that the defendant's contention on this issue merited full argument at trial.

UNILATERAL MISTAKE

Simon Thorley IJ noted that in order to succeed in rendering a contract void under the common law doctrine of unilateral mistake, the defendant had to establish that a plaintiff who is seeking to enforce a contract must have actual knowledge of the mistake and that there was a sufficiently important or fundamental mistake as to a term of the contract.

The defendant argued the plaintiff's offer could not have represented a genuine offer to sell in a realistic market; the plaintiff had knowledge that the price was wholly out of line with all the other prices it had been seeking to trade at during the day. Simon Thorley IJ accepted that *"a more thorough investigation of the facts behind the setting of the abnormally high offer price is justified"*.

The defendant contended that even though the acts were the acts of a computer, the mistake arose from a human error by an employee of the defendant which in the final event caused the computer to process the orders that sold the assets at the price offered by the plaintiff. The mistake caused the holdings to be sold when they should not have been sold and at a price lower than the true market price. The market traders who transacted with the defendant were therefore mistaken as to both the need for the contract and the sale price, which was a fundamental term of the contract. However, the plaintiff argued that these market traders "knew" that the plaintiff was offering to sell at the stated rate and elected to accept that offer; there was thus no relevant mistake.

It was observed that while the doctrine of unilateral mistake is well-developed where human error is concerned, it is less developed where computer errors are concerned. The Judge concluded that *"after the full facts are established, it will be possible to examine the law on unilateral mistake where computers are involved in greater detail than was possible on an application for summary judgment"*.

ANALYSIS

This case illustrates the difficulties in applying traditional contractual principles to resolve issues and disputes arising out of technology and its applications.

Given the advent of technology and increases in trades and contracts driven by technology, the scope for computer error will increase. It will therefore be interesting to see how the doctrine of unilateral mistake (whether in this case or otherwise) will be developed under Singapore law to address computer errors and how it may impact on the enforceability of smart contract.

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