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Cryptocurrencies and code before the courts

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In the rapidly developing cyber sphere of e-commerce and Fintech, dominated by cryptocurrencies and code, it is perhaps not uncommon for firms to focus on cutting-edge technological developments, leaving the law behind as an afterthought. However, the case of B2C2 Ltd v Quoine Pte Ltd ("B2C2") may serve as a timely reminder of the importance of the legal principles supporting e-commerce and Fintech. In the first case of its kind, B2C2 raised several key questions before the Singapore International Commercial Court, seeking clarification on how the established legal concepts of breach of trust, mistake and unjust enrichment might apply in the context where an automated contract-forming software had produced unusual results. This decision represents the most comprehensive treatment by a Commonwealth court of the legal nature of cryptocurrencies and automated contract-forming software to date; a harbinger of further and more complex litigation to come, as disputes involving e-commerce and Fintech gradually start to reach the courts. In our recent case note, Cryptocurrencies and Code before the Courts (forthcoming in Kings Law Journal), we examine the decision in B2C2 and argue that while the case appeared novel, proper characterisation of the facts allowed existing legal doctrines to be applied.

In B2C2, the Defendant ("Quoine") operated a currency exchange platform where third parties could trade cryptocurrencies for fiat currencies or other cryptocurrencies. The defendant also traded as an electronic market maker using its own software program ("Quione's Quoter Program"). The Plaintiff ("B2C2") was an electronic market maker. It provided liquidity on the platform by trading at prices it quoted for Bitcoin ("BTC") and Ethereum (ETH).

Certain limitations in the Quoine's software and trading platform allowed B2C2's trading software to sell ETH for BTC at 250 times the going rate to other users ("Counterparties") on the platform. An oversight prevented changes from being made to the Quoine's software program, preventing it from accessing external market prices from other exchanges which Quoine used for market making purposes and also to create liquidity. Quoine's Quoter Program became ineffective and stopped creating ETH/BTC orders on the platform. However, no error message was generated. Quoine was thus unaware of the error. Trading on the platform dropped to abnormally thin levels. Margin calls on the counterparties' account were triggered, and market orders were placed to buy ETH at the best available market price. This happened to be offered by B2C2. Consequently, because the platform was not configured to ensure that a user's account had sufficient funds before placing an order, the platform could trade more BTC than the counterparties had in their account and at abnormally high prices. Quoine subsequently reversed these trades on grounds that they were a highly abnormal deviation from the market rate. B2C2 sued Quione for a breach of contract, alleging that they had no right to unilaterally reverse the trades.

Several points in the judgement are noteworthy. First, the court applied the House of Lords Decision in National Provincial Bank v Ainsworth, holding that cryptocurrencies were property. The court also applied the doctrine of mistake to the case. As we have sought to argue in our case note, the manner in which a contract is formed should not

affect the application of contractual principles. A difference should be noted between "passive" and "active" forms of software. Passive software merely executes commands without any form of independent decision making. Active software refers to programs that can make independent decisions given a set of pre-programmed parameters. The software used in this case was an example of passive software. In that regard, it was a mere tool, no different from using an email to conclude offer and acceptance. Characterised in this manner, it is easy to see how contractual principles could then be applied.

It remains to be seen whether the decision will be affirmed by the Singapore Court of Appeal. However, the case demonstrates that a proper characterisation of the facts can allow existing legal principles to be applied to what, at first glance, looks like a novel case.