

# SUPREME COURT OF SINGAPORE

15 September 2016

## Media Summary

**Singapore International Commercial Court Suit No 5 of 2016  
(HC/Summons No 2398 of 2016 and HC/Summons No 3128 of 2016)  
*CPIT Investments Ltd v Qilin World Capital Ltd and another* [2016]  
SGHC(I) 04**

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1 These two applications arose out of a dispute between CPIT Investments Limited (“CPIT”), a company incorporated in the British Virgin Islands, and two companies, both known as Qilin World Capital Limited (“Qilin”), incorporated in Hong Kong and the British Virgin Islands respectively. Under a loan agreement, CPIT provided 25,000,000 shares in Millennium Pacific Group Holdings Limited (“Millennium”), a publicly listed company in Hong Kong, as collateral for a loan of HK\$31,250,000 from Qilin. CPIT contended that Qilin had unlawfully sold the Millennium shares. In contrast, Qilin contended that it was entitled to deal with the shares as it did, and that in any event, due to certain failures of CPIT, it became the legal and beneficial owners of the shares.

2 CPIT thus brought proceedings against Qilin in the High Court. At the same time, CPIT made two applications to the High Court: (a) for an injunction prohibiting Qilin from disposing of the unsold shares (“Order 1 of the Injunction”) and the proceeds of sale of any shares which had been sold (“Order 2 of the Injunction”); and (b) for a worldwide Mareva injunction against Qilin up to the value of HK\$31,250,000. The High Court granted the Injunction application. With regard to the Mareva injunction application, the parties decided to enter into an agreement, which was eventually recorded as a Consent

Order before the High Court. Under the Consent Order, Order 1 of the Injunction was to remain in effect, while Order 2 of the Injunction was varied such that Qilin was to pay the proceeds of sale to the client account of 2

Qilin's solicitors as security for CPIT's claim. CPIT also provided an undertaking to compensate Qilin for any loss arising from Qilin's provision of security.

3 Subsequently, Qilin filed the present two applications. These applications were placed before Vivian Ramsey J sitting in the Singapore International Commercial Court ("SICC") after CPIT's action was transferred from the High Court to the SICC. The first is an application to vary Order 1 of the Injunction such that Qilin is at liberty to sell the unsold shares ("the Variation Application"), while the second is an application for CPIT to provide fortification of its undertaking to compensate Qilin for any loss ("the Fortification Application"). Qilin's basis for the applications was that the price of the shares had fallen drastically, and CPIT's financial circumstances might be affected as a result.

4 In his written judgment, Ramsey J held with respect to the Variation Application that the Consent Order arose from a real agreement between the parties and was therefore binding and could not be varied save on grounds that would justify the variation of a contract. Ramsey J further found that the parties had made the Consent Order on the basis of Order 1 of the Injunction, each accepting that the value of the shares could ordinarily rise or fall. His Honour also held that shares do have a non-monetary value to a particular party and the Injunction was granted to preserve the Millennium shares as an asset. In any case, the value of the shares also appeared to have stabilized and might increase in value. Ramsey J therefore ruled that Qilin had failed to establish

any good reason for the shares to be converted into cash at the current stage.

5 With respect to the Fortification Application, Ramsey IJ found that adding a term for CPIT to fortify its undertaking would amount to a variation of the Consent Order. However, Qilin had not put forward any valid ground to justify such a variation. A change in CPIT's financial circumstances, if there 3

had been one, was insufficient. If Qilin wanted CPIT to fortify its undertaking, Qilin should have pursued that either at the original Injunction application or when the parties agreed to the Consent Order. In any event, Ramsey IJ found that Qilin had not shown it faced a sufficient risk of loss caused by the Consent Order. An order for fortification would therefore not be appropriate in the circumstances.

6 The Court thus dismissed both of Qilin's applications.

*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.*

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