

SUPREME COURT OF SINGAPORE

17 July 2017

Media Summary

Singapore International Commercial Court Suit No 5 of 2016
CPIT Investments Limited v Qilin World Capital Limited and another [2017]
SGHC(I) 05

1 This suit concerns a non-recourse loan entered into by the plaintiff, CPIT Investments Ltd (“CPIT”), a company incorporated in the British Virgin Islands (“BVI”). Under the loan, CPIT borrowed HK\$31.25m from Qilin World Capital Ltd. It was not clear whether the lending party was the first defendant, which was incorporated in Hong Kong, or the second defendant, a BVI company. Both had the same name, and the lending party will be referred to as “Qilin”. As collateral for the loan, CPIT provided Qilin with control over 25m shares in Millennium Pacific Group Holdings Limited (“Millennium”). These shares were publicly traded on the Growth Enterprise Market of the Hong Kong Stock Exchange. The loan was disbursed pursuant to two contracts: a Stock Secured Financing Agreement (“the Loan Agreement”) and a Control Agreement, which were both executed in November 2015.

2 In December 2015, Qilin transferred the Millennium shares into a new account, and executed a Sale Note by which it sold the shares to itself at HK\$2.50 per share, for a total of HK\$62.5m. It then transferred the shares to its account with another trading company and started selling the shares from 8 December 2015 onwards. The shares then sharply fell in value. Thus a dispute arose over whether Qilin had committed a breach of contract by selling the shares, or whether a price default clause in the Loan Agreement had been triggered, which required CPIT to provide additional collateral for the loan. Proceedings were commenced in the Singapore High Court in January 2016. On 18 January 2016, the High Court granted an injunction restraining Qilin from disposing of the Millennium shares in any way. This injunction was later

varied, by consent, so that the proceeds from the sale of the shares held by Qilin, amounting to approximately HK\$25.4m, together with a further sum of approximately HK\$2.1m was to be paid by Qilin into a designated account with its solicitors.

3 The case was transferred to the Singapore International Commercial Court on 28 June 2016 before Vivian Ramsey JJ.

4 In its judgment, the Court first held that the terms of the Loan Agreement indicated that the relevant lending party was the second defendant (*ie*, the BVI company) and not the first defendant. It also rejected CPIT's argument that the two defendants were *alter egos* of one another.

5 The Court went on to find that Qilin was not entitled to sell the Millennium shares under the terms of the Loan Agreement, and rejected Qilin's argument that it was permitted to sell the shares to "hedge" when their share price fell. Against Qilin, the Court also found that the price default clause in the Loan Agreement had not been triggered and that Qilin's breach of contract in selling the Millennium shares was one which entitled CPIT to validly terminate the Loan Agreement. This was done on 4 January 2016 through a solicitor's letter from CPIT to Qilin.

6 With regard to the proceeds from the sale of the Millennium shares which Qilin held, the Court held that these monies, after deducting the value of the loan, were held on trust for CPIT. In addition, the Court rejected Qilin's defence that CPIT was not entitled to enforce its legal rights because of certain communications in December 2015 between Qilin, CPIT and the people who introduced the two parties to each other. The Court found that there was insufficient evidence that such communications had taken place. The Court also did not accept Qilin's argument that CPIT should not be granted any relief because it was involved in artificially maintaining the price of the

Millennium shares before the fall in their share price. There was insufficient evidence of this.

7 The Court, however, found that CPIT had suffered no loss arising from Qilin's wrongful sale of the Millennium shares. It held that the cause of the substantial fall in the Millennium share price was their overinflated price at the beginning of December 2015, and not the sale of the Millennium shares by Qilin. It could not be said that, but for Qilin's sale of the shares, the market price would not have fallen.

8 Therefore, the Court ordered that CPIT was not entitled to any contractual damages, although it was entitled to: (a) payment from Qilin of HK\$31.25m, representing the proceeds from the wrongful sale of the Millennium shares, after deducting the value of the loan, and (b) an account from Qilin of any profit which it had made from using the sale proceeds.

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.
