

SUPREME COURT OF SINGAPORE

6 March 2018

Case summary

Qilin World Capital Ltd v CPIT Investments Ltd
CPIT Investments Ltd v Qilin World Capital Ltd
Civil Appeals Nos 126 and 145 of 2017

Decision of the Court of Appeal (delivered by International Judge Dyson Heydon):

Background to the appeal

1 Civil Appeal Nos 126 of 2017 and 145 of 2017 were cross-appeals by Qilin World Capital Ltd (“Qilin”) and CPIT Investments Ltd (“CPIT”) respectively against the decision of the International Judge (“the Judge”) in *CPIT Investments Ltd v Qilin World Capital Ltd and another* [2017] SGHC(I) 05.

Facts

2 Qilin loaned HK\$31.25 million to CPIT under a Stock Secured Financing Agreement (“the Loan Agreement”) dated 16 November 2015. The Loan was for a term of 36 months. It was secured by 25 million shares (“the Pledged Shares”) in Millennium Pacific Group Holdings Limited (“Millennium”) belonging to CPIT. The Pledged Shares were held in an account (“Prominence Account 03”) with Prominence Financials Ltd (“Prominence”). CPIT also owned 1.27 billion shares in Millennium besides the Pledged Shares.

3 The Loan was a non-recourse loan. This meant that if the sum was not repaid, Qilin could only enforce its rights against the Pledged Shares, and could not pursue personal claims against CPIT.

4 On 2 December 2015, Qilin executed a transaction (“the 2 December Transaction”) by which it transferred the Pledged Shares from Prominence Account 03 into another account with Prominence in the name of “Qilin sub acct CPIT Invs Ltd”, and thence to its own account with Haitong International Securities. Qilin also executed a Sold Note and Bought Note, dated 2 December 2015, which stated that 25 million shares in Millennium at HK\$2.50 each were transferred from “Qilin sub acct CPIT Invs Ltd” to Qilin for total consideration of HK\$62.5 million. Stamp duty was paid on the transaction.

5 From 8 December 2015 to 14 January 2016, Qilin sold 22.14 million of the Pledged Shares on the open market. During this period, the market price of Millennium shares fell from HK\$2.32 to HK\$0.68. The value of CPIT’s shareholding in Millennium (excluding the Pledged Shares) also fell. CPIT commenced proceedings against Qilin claiming, among other things, that Qilin had breached the Loan Agreement, and that Qilin held the proceeds of its sales of the Pledged Shares on trust for CPIT.

6 The Judge found that the 2 December Transaction was a breach of the Loan Agreement. He noted that cl 5(f) of the Loan Agreement provided: “The Lender shall have the right to transfer, re-hypothecate and assign the shares. In the event of a default, the Lender shall have the right to dispose of the shares.” As there had been no “event of default”, Qilin had no right to dispose of the Pledged Shares and was not entitled to sell them “even to itself”.

Qilin World Capital Ltd v CPIT Investments Ltd and another appeal

The Judge also concluded that the sales of the Pledged Shares on the open market from 8 December 2015 to 14 January 2016 were in breach of the Loan Agreement.

7 The Judge held that Qilin held on constructive trust for CPIT the sum of HK\$31.25 million, being the proceeds from the 2 December Transaction (HK\$62.5 million) less the loan amount (HK\$31.25 million). However, he found that Qilin's sale of the Pledged Shares on the open market did not cause the fall in Millennium's share price. He thus dismissed CPIT's claim for damages for the decrease in value of its shares in Millennium.

8 Qilin appealed against the holding that it held HK\$31.25 million on trust for CPIT. CPIT appealed against the holding that the fall in Millennium's share price was not caused by Qilin's sale of the Pledged Shares on the open market.

Decision on appeal

9 The Court of Appeal allowed Qilin's appeal and dismissed CPIT's cross-appeal.

Qilin's appeal

10 With respect to Qilin's appeal, the Court of Appeal held that the lawfulness of the 2 December Transaction depended on whether it was a disposal or a transfer of the Pledged Shares within the meaning of cl 5(f) of the Loan Agreement (at [40]). The Court agreed with the Judge's view that the terms "transfer, re-hypothecate and assign" in the first sentence of cl 5(f) were to be distinguished from the term "disposal" in the second sentence. A transfer, re-hypothecation or assignment would be subject to the beneficial rights and interest of CPIT, whereas a disposal was a conveyance of full unrestricted ownership which would destroy CPIT's interest (at [40]).

11 It was thus necessary to determine whether Qilin's intention was to acquire full legal and beneficial interest in the Pledged Shares through the 2 December Transaction, thereby destroying CPIT's rights and interest. If this was Qilin's intention, the 2 December Transaction would be a "disposal" and not a mere transfer (at [41]).

12 The Court of Appeal held that Qilin's intention in the 2 December Transaction could not have been to acquire the whole legal and equitable interest in the Pledged Shares. Qilin had specifically sought to have a buffer against the vagaries affecting the share price by ensuring that the Loan was secured by shares worth twice as much as the HK\$31.25 million it loaned to CPIT. Yet if the 2 December Transaction was a "sale" of the Pledged Shares by Qilin to itself, Qilin would have increased its exposure by acquiring the Pledged Shares for the price of HK\$62.5 million. It would have taken on the equity risk in respect of the Pledged Shares to the tune of HK\$62.5 million, in addition to having already paid CPIT the Loan amount of HK\$31.25 million. If the Pledged Shares proved worthless, CPIT would lose the HK\$62.5 million it "paid" for them, and would also have to pay CPIT HK\$31.25 million (being the sale proceeds of HK\$62.5 million less the amount of the Loan) because CPIT's position would have been crystallised by the sale. It made no sense to conclude that Qilin intended to increase its exposure in this way (at [47(a)–47(c)] and [47(e)]).

13 The Court of Appeal also noted that there was no evidence that consideration of HK\$62.5 million was actually paid. As Qilin received no proceeds from the transaction, there was nothing to which a constructive trust could attach (at [48]).

14 Qilin's appeal was therefore allowed.

CPIT's cross-appeal

15 As for CPIT's cross-appeal on causation, the Court of Appeal held that CPIT had not proven that Millennium's share price would not have fallen but for Qilin's wrongful sales of the Pledged Shares from 8 December 2015 to 14 January 2016.

16 The Court gave the following reasons: First, the expert evidence was that Millennium was a "bubble stock". Second, only a tiny percentage of the total number of shares in Millennium was being sold each day. Third, other sellers had also sold large volumes of Millennium shares during the relevant period, and it was impossible to say that Qilin's sales, and not others, caused the drop in share price. Fourth, the movements in Millennium's share price did not correspond with Qilin's decisions to sell or not to sell. The price sometimes remained static or even rose despite Qilin's sales. On other days, the price fell despite the fact that Qilin had not made any sales. Fifth, the price at which shares are sold on a particular day depended on many circumstances peculiar to that day. Sixth, the price of Millennium shares had been on a downward trend for some time before Qilin's first sale. Seventh, while the experts had used language which suggested that Qilin's sales led to the drop in Millennium's share price, their evidence was insufficient to prove that CPIT would not have suffered the loss but for Qilin's sales. Eighth, the expert evidence was that there were a "myriad of factors" which caused the drop in share price. Ninth, the evidence did not bear out the suggestion that Qilin's initial selling was a "trigger" which was the effective or dominant cause of the later falls in Millennium's share price (at **[72]**).

17 CPIT's cross-appeal was therefore dismissed.

This summary is provided to assist in the understanding of the Court's grounds of decision. It is not intended to be a substitute for the reasons of the Court. All numbers in bold font and square brackets refer to the corresponding paragraph numbers in the Court's grounds of decision.