SUPREME COURT OF SINGAPORE

20 June 2018

Case summary

Yuanta Asset Management International Limited and anor v Telemedia Pacific Group and anor and another appeal [2018] SGCA(I) 03
Civil Appeal Nos 189 of 2016 and 1 of 2017 and Summons No 58 of 2016

Decision of the Court of Appeal (delivered by International Judge Sir Bernard Rix):

The Court of Appeal re-analyses an SICC decision, finding Yuanta Asset Management International Limited and director Mr Yeh Mao-Yuan liable in breach of trust and as constructive trustee respectively for misapplying and misappropriating the proceeds of sale of shares beneficially owned by Telemedia Pacific Group Ltd.

Background to the appeal

1 Civil Appeal Nos 189 of 2016 and 1 of 2017 were cross-appeals against the decision of the Singapore International Commercial Court ("SICC") in *Telemedia Pacific Group Ltd and another v Yuanta Asset Management Ltd and another* [2016] 5 SLR 1 and *Telemedia Pacific Group Ltd and another v Yuanta Asset Management International Ltd and another* [2017] 3 SLR 47. Before the SICC, Telemedia Pacific Group Limited ("TPG") and Mr Hady Hartanto were the plaintiffs, while Yuanta Asset Management Limited ("Yuanta") and Mr Yeh Mao-Yuan were the defendants.

Material facts

2 In November 2010, TPG and Yuanta entered into a joint venture. The joint venture was governed by a Non-Recourse Loan Agreement between the plaintiffs and Yuanta, as well as a Supplementary Agreement between Mr Hartanto and Mr Yeh (collectively, "the Agreements"). The joint venture was structured to leverage on the plaintiffs' stock of shares in Next Generation Satellite Communications Limited ("NexGen") on the one hand, and the defendants' allegedly good credit rating and reputation on the other hand, to obtain loan facilities for the joint venture company, Asia Energy Management Ltd ("AEM"). TPG agreed to transfer its NexGen shares to Yuanta as collateral for loans to supply the funds for AEM's investments. These loans, which Yuanta was to arrange, could be advanced by Yuanta or a third party lender. The profits and losses of AEM's investments were to be shared equally between the plaintiffs and the defendants. The Supplementary Agreement also provided for S$6.75m of the loan monies to be used to exercise TPG's share warrants to acquire 225m more NexGen shares at the price of S$0.03 per share, for AEM's benefit.

3 Under this arrangement, TPG transferred 825m NexGen shares to a designated account in Yuanta's name. Of these 825m shares, Yuanta sold 101.5m shares in February to March 2011 and re-purchased the same number in June 2011. Yuanta sold a further 60m shares in August 2011. Yuanta distributed the profits of the 101.5m trade and the 60m sale to its associated companies and Mr Yeh's business associates and relatives. 765m shares (being all of the 825m shares except for the 60m sold in August 2011) were re-pledged to Equity First Holdings, LLC ("EFH") as security for a non-recourse loan. Yuanta did not inform

the plaintiffs about these sales and the lender to whom 765m shares had been re-pledged. Eventually, the loan was not repaid and so the shares were never redeemed from EFH.

4 Also without the plaintiffs' knowledge, Mr Yeh further procured the transfer of an additional 225m NexGen shares belonging to TPG to an account of Yuanta's subsidiary, Fullerton Enterprises Ltd ("Fullerton"). These 225m shares were sold in October 2011. The proceeds of sale were paid into Fullerton's account and thereafter transferred mostly to Mr Yeh and partially to one of his business associates.

5 The plaintiffs sued the defendants for selling the NexGen shares without authority and secretly profiting from the proceeds of sale. The defendants counterclaimed for the return of the following monies withdrawn from AEM's account. First, in February to March 2011, TPG withdrew S$6.75m purportedly to convert the share warrants into 225m fresh NexGen shares which were to be made available as collateral for more loans to AEM. However, TPG did not exercise the share warrants but instead deposited 225m of its existing shares into Yuanta's account. Second, in March 2011, TPG acquired 37m shares in Scorpio East Holdings Ltd ("Scorpio East") using S$3m withdrawn from AEM's account. Third, in June 2011, Mr Yeh transferred S$1.8m from AEM's account to Telemedia Pacific International ("TPI"), a company held by Mr Hartanto's business partner.

6 The SICC Judge ("the Judge") found the defendants liable in breach of contract, the tort of conversion and breach of fiduciary duties for the unauthorised sale of the 101.5m, 60m and 225m NexGen shares, all of which were not pledged against loans at the time of sale. She reasoned that under the Agreements, the defendants had no authority to sell, for its own profit, shares that Yuanta was not holding as security against a loan. Mr Yeh was found liable for inducing Yuanta's breach of contract. The Judge ordered the defendants to, among other things, pay the plaintiffs S$6,464,839.37 comprising the profits on, and proceeds of, the unauthorised share sales. However, the defendants were not liable for conspiring to injure the plaintiffs by unlawful means. They were also not liable to pay compensation for the value of the 765m shares which were not redeemed from EFH ("Re-Pledged Shares Loss") or for the collapse in value of TPG's wider portfolio of NexGen shares ("Portfolio Loss"). The defendants failed in all their counterclaims.

7 In CA 189/2016, the defendants appealed against their liability to pay over the profits and proceeds of the share sales. They also appealed against the dismissal of their counterclaims. In CA 1/2017, the plaintiffs cross-appealed, seeking compensation for the Re-Pledged Shares Loss and the Portfolio Loss as a result of either the defendants' breach of fiduciary duties or the defendants' conspiracy to injure them by unlawful means.

Decision on appeal

The defendants' appeal

8 The defendants' appeal was allowed in part, with the Court of Appeal varying the orders made by the Judge and adopting a different analysis from the Judge.

9 The Court of Appeal found that TPG only transferred the shares to Yuanta as collateral, but retained beneficial title in the shares. While the Agreements granted Yuanta authority to sell or trade the shares so as to facilitate the capitalisation of AEM, the proceeds of any sales or trades were beneficially TPG's and were to be held by Yuanta on trust for TPG. Yuanta misapplied the proceeds of sale when it paid them out to its associated companies and Mr Yeh's business associates and relatives, all of whom were not entitled to any beneficial interest in the proceeds. Yuanta was liable in breach of trust to pay TPG S$3,999,913.75. The Judge had mischaracterised the wrong committed by the defendants; the share sales and trades in

themselves were not breaches of contract or fiduciary duties. (**[45], [55], [102], [109]–[110], [124]**)

10 The Court of Appeal also found that Mr Yeh dishonestly misappropriated TPG's property when he transferred 225m shares to Fullerton and retained the proceeds of their sale. The Agreements did not authorise the transfer of shares into Fullerton's account or grant Fullerton any authority to sell the shares. Since it would be unconscionable for Mr Yeh, having dishonestly taken and sold the property and pocketed its proceeds of sale, to assert any beneficial interest in the shares or their proceeds of sale, a constructive trust arose by operation of law. Mr Yeh was liable to pay TPG S$2,749,888.13, being the value of the 225m shares at the time they were removed from TPG's account, plus interest. (**[112]–[116], [124]**)

11 As for the defendants' counterclaims, the defendants' appeals were dismissed in respect of the S$3m used to purchase shares in Scorpio East and the S$1.8m transferred to TPI. In particular, the defendants had not satisfied the *Ladd v Marshall* criteria for adducing further evidence to support its appeal in respect of the Scorpio East counterclaim. (**[128], [138]**)

12 However, the Court of Appeal allowed the appeal in respect of the S$6.75m that TPG withdrew from AEM's account but did not apply towards the exercise of the share warrants. The Judge erred in finding that AEM suffered no loss. AEM was deprived of S$6.75m, to the sole benefit of TPG, when that money ought to have purchased fresh shares rather than TPG's existing shares. Accordingly, TPG was to pay S$6.75m into a joint trust account. (**[131]–[135]**)

The plaintiffs' cross-appeal

13 The plaintiffs' cross-appeal was dismissed in entirety.

14 First, in respect of the claim for conspiracy by unlawful means, the Court of Appeal agreed with the Judge below that the unlawful means which the plaintiffs sought to rely upon had not been pleaded. In any event, the Court of Appeal was not persuaded that the conspiracy would be sustained on the facts. (**[148], [150]**)

15 Second, the plaintiffs were not entitled to equitable compensation for the Re-Pledged Shares Loss. The EFH loan/pledge was an authorised transaction and was not done in breach of any of the defendants' obligations. Regardless of whether the plaintiffs had been fully informed about the lender's identity and loan arrangements and how they would have wanted to act if they had been fully informed, the plaintiffs had no right or power under the Agreements to consent to or reject a particular lender. The decision to obtain loans from and re-pledge the shares to EFH was not challenged as improper or disloyal in itself. There was no breach that could form a basis for unwinding the EFH loan/pledge. Rather, the shares were dissipated because the loan monies had not been repaid to EFH for the redemption of the security. (**[162]–[164], [171]–[172]**)

16 Finally, the plaintiffs were not entitled to equitable compensation for the Portfolio Loss. The plaintiffs had alleged that the Portfolio Loss was the result of the unauthorised share sales driving down the share price. Among other reasons, the Court of Appeal dismissed this claim because the defendants owed no fiduciary duties in relation to the shares that were retained by TPG and never brought into play in the parties' financing arrangement. (**[179]–[182]**)

17 The Court of Appeal's holdings and final orders are summarised at **[184]–[187]**.

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.