

Court of Final Appeal discharges interim injunction

6 Dec 2010

The Court of Final Appeal has dismissed an interim injunction obtained by the Securities and Futures Commission (SFC) in relation to alleged insider dealing involving the shares of Asia TeleMedia Limited (ATL) (Note 1).

The case, which was commenced in April 2008, concerns proceedings by the SFC against four parties, "C", "D", "E" and "F" in which the SFC obtained interim injunctions freezing moneys alleged to be profits of illegal insider dealing in shares of ATL between April and June 2007 (Note 2).

The case before the Court of Final Appeal was only brought by "F" -- Kayden Limited (Kayden) (Note 3).

This case concerned whether the Court of Appeal was correct to allow the SFC leave to pursue proceedings against Kayden given that Kayden does not have any business in Hong Kong or any assets in Hong Kong.

Under the Court's rules, a party wanting to initiate legal proceedings against a person who is outside Hong Kong must obtain leave of the Court to do so. Not every claim against overseas defendants will necessarily fall within the Court's rules.

The Court of Appeal permitted the SFC to vary the basis on which the SFC was seeking to bring proceedings against Kayden. This followed a decision by the Court of First Instance dismissing the SFC's application for an interim injunction on the basis the SFC's claim was not one that the Court could permit to be served overseas under its rules.

In allowing Kayden's appeal, the Court of Final Appeal, in effect, has agreed with the Court of First Instance and overruled the Court of Appeal. The consequence is that the initial interim injunction against Kayden has now been discharged and there is now no interim order against Kayden.

Today's decision does not affect interim injunctions against the other defendants in this case. The SFC will continue to prosecute this proceeding.

End

Notes:

1. Please see SFC press releases dated [2 May 2008](#) and [5 November 2008](#) for details.
2. ATL is now in liquidation. The SFC alleges that ATL was served, in April 2007, with a statutory demand seeking repayment of a material debt. Afterwards, "C", the chairman and chief executive officer of ATL, began to sell ATL shares. The SFC alleges he sold about 51 million shares realising a profit of about HK\$37.8 million and that most of these proceeds ended up in a Singaporean bank account held by "F", Kayden .
3. The Court of Final Appeal's judgment identifies all the parties in this case. "C" is Mr Lu Ruifeng, a resident of Shenzhen. "D" is Madam Tin Yin Kwan , the wife of Mr Yao Wen Pei, the father of ATL's then finance director, Mr Charles Yiu Hoi Ying. "E" is Clear Excel Limited, a BVI company alleged to be controlled by Lu. The SFC also alleges this company received part of the proceeds of the sale of ATL shares. "F" is Kayden Limited, a BVI company owned by the ING Trust Company (Jersey) Limited. The SFC alleges about \$32.4 million, being proceeds from insider dealing by Lu and his nominee, was paid into a bank account in Kayden's name in Singapore.
4. For further information, please see the Court of Final Appeal's judgement on the Judiciary website at www.judiciary.gov.hk.