

Court dismisses application to strike out SFC insider dealing and fraud case

28 Oct 2013

The Court of First Instance today dismissed an application by two solicitors who sought to strike out proceedings brought against them by the Securities and Futures Commission (SFC) under section 213 of the Securities and Futures Ordinance (SFO) in December 2010 alleging insider dealing and fraud (Note 1).

The SFC's allegations concern conduct in relation to two confidential deals which the two solicitors, Ms Young Bik Fung and Mr Lee Kwok Wa, became privy to as a result of their employment by two different law firms in Hong Kong (Note 2).

The first deal involved a proposed takeover of Hsinchu International Bank Company Limited (Hsinchu), a company listed on the Taiwan Stock Exchange, by Standard Chartered Bank (Standard Chartered). Shortly before the deal was announced, the defendants purchased shares in Hsinchu. The share buying was funded by Young, Lee and Lee's two sisters who are also defendants. The SFC alleges that at the time Young was working on secondment within Standard Chartered on the proposed takeover.

The second deal involved a proposed privatization of Asia Satellite Telecommunications Holdings Limited (Asia Satellite) by CITIC Group and General Electric Capital Corp. Lee was working for a different law firm which had been engaged to advise CITIC Group on the proposed transaction. The SFC alleges Lee worked within the department of the law firm that was working on the deal.

On the morning before trading in Asia Satellite shares was to be suspended for the proposed privatization, Young and Lee's two sisters began buying shares in Asia Satellite. The SFC alleges their trading accounted for 73% of the total trading on that day.

The SFC alleges the defendants, who made a total profit of \$2.9 million from the two transactions, contravened:

- section 300 of the SFO which prohibits the use of fraudulent or deceptive schemes in securities transactions in relation to the Hsinchu matter; and
- section 291 of the SFO which prohibits insider dealing in relation to the trading in shares of Asia Satellite (Note 3).

The SFC is seeking injunctions and remedial orders under section 213 of the SFO.

The defendants argued that the Court of First Instance had no jurisdiction under section 213 of the SFO to seek court orders against them and that the SFC had no reasonable cause of action or the action was unlikely to succeed.

The Court of First Instance found that the arguments to strike out the proceedings were misconceived and dismissed the application. The case will proceed (Note 4).

End

Notes:

1. SFC v Young Bik Fung, Lee Kwok Wa, Lee Siu Ying Patsy, Lee Siu Fan Stella (HCMP 2575/2010). The application to strike out the SFC's proceedings was decided by the Hon Mr Justice Anthony Chan. Please also see the SFC's press release dated [22 December 2010](#).
2. Both Young and Lee were employed, at the relevant time, as solicitors by Slaughter & May and Linklaters respectively. They are no longer employed by these firms.
3. The SFC is unable to allege that the Hsinchu trades constituted insider dealing as well because the prohibition on insider dealing in the SFO does not apply to shares traded on the Taiwan Stock Exchange.
4. This case had been delayed because of similar jurisdictional arguments which were dismissed by the Court of Final Appeal earlier this year in SFC v Tiger Asia Management LLC & Ors [2013] HKCFA 38; [2013] 3 HKC 600; FACV13/2012 (10 May 2013) (see <http://www.hkllii.hk/eng/hk/cases/hkcfa/2013/38.html>).

法庭駁回被告申請撤銷證監會就內幕交易及詐騙案提出的訴訟

2013年10月28日

證券及期貨事務監察委員會（證監會）於2010年12月根據《證券及期貨條例》第213條，向兩名事務律師展開法律程序，指其涉嫌進行內幕交易及詐騙。兩人其後向法院提出申請，尋求撤銷有關訴訟，該項申請今天遭原訟法庭駁回（註1）。

證監會指控分別任職香港兩間律師行的兩名事務律師楊碧鳳（女）及李國華（男）因工作關係獲悉兩項機密交易所作出的行為（註2）。

第一項交易關於渣打銀行對新竹國際商業銀行股份有限公司（新竹銀行，一間於台灣證券交易所上市的公司）提出的收購建議。各被告於交易公布前不久買入新竹銀行的股份。購買股份的資金來自楊、李及他兩位同為被告的姊姊。證監會指，楊當時由律師行借調至渣打銀行處理收購建議事宜。

第二項交易關於由中信集團及General Electric Capital Corp將亞洲衛星控股有限公司（亞洲衛星）私有化的建議。李當時任職於另一間律師行，而該律師行受聘為中信集團就有關建議交易提供意見。證監會指李於該律師行負責有關交易的部門內工作。

在亞洲衛星股份因私有化建議而暫停買賣之前，楊及李的兩位姊姊在當天早上開始買入亞洲衛星股份。證監會指，三人的交易額佔當天交易總額的73%。

證監會指四名被告從上述兩宗交易獲利合共290萬元：

- 在涉及新竹銀行的證券交易中，違反了《證券及期貨條例》第300條，該條文禁止使用欺詐或欺騙計劃；及
- 就亞洲衛星股份買賣，違反了《證券及期貨條例》第291條，該條文禁止進行內幕交易（註3）。

證監會正根據《證券及期貨條例》第213條尋求法庭頒發強制令及補救命令。

四名被告質疑，原訟法庭不具司法管轄權以根據《證券及期貨條例》第213條對他們頒布法院命令，而證監會亦沒有合理的訴訟因由或勝訴機會不大。

原訟法庭認為剔除法律程序的理據乃基於錯誤理解，駁回有關申請。案件審訊會繼續進行（註4）。

完

備註：

1. 證監會 訴 楊碧鳳、李國華、李少英及李少芬（高院雜項案件2010年第2575號）。此項撤銷訴訟的申請由陳健強法官作出裁決。同時請參閱證監會於2010年12月22日發出的新聞稿。
2. 在關鍵時間，楊及李分別獲司力達律師樓及年利達律師事務所聘為事務律師。他們已不再受聘於該兩間律師行。
3. 證監會未能亦指控新竹銀行的買賣構成內幕交易，原因是《證券及期貨條例》當中禁止內幕交易的條文並不適用於在台灣證券交易所買賣的股份。
4. 本案件曾因類似的司法管轄權區爭論點而被押後，有關爭論點已於本年初證監會對 Tiger Asia Management LLC及另三人[2013] HKCFA 39、[2013] 3 HKC 600、終院民事上訴2012年第11號（2013年5月10日）一案中遭終審法院駁回（請參閱<http://www.hklii.hk/eng/hk/cases/hkcfa/2013/38.html>）。

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