

Court of Appeal rules on interpretation of court decisions

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On 28 March 2018 the Court of Appeal ruled on the interpretation of court decisions in a case concerning the enforcement of a pledge on shares given to a bank as part of a financing. The plaintiff (ie, the company that had granted the pledge to the bank) argued that the bank's enforcement of the pledge had been abusive because its enforcement conditions had been fulfilled before it had been granted. As the beneficiary of the pledge (ie, the bank) had been aware of this fact, the plaintiff requested the cancellation of the pledge's enforcement and the restitution of the shares.

Although the court annulled the pledge, the plaintiff believed that the decision was unclear and consequently asked the court to clarify its position. It sought clarification as to whether the decision ordering the return of the shares entailed that the plaintiff should be considered a shareholder from the date on which the bank had:

- unlawfully acquired the shares; or
- effectively returned them to the plaintiff.

This question addressed case law interpretation, which is usually limited to clerical errors or ambiguous wording in decisions: a party may petition the Court of Appeal for interpretation purposes only if the interpretation is absolutely necessary and does not amount to an appeal on the merits.

In the case at hand, the court noted that it had stated in its initial decision that "the parties should be restored to the situation as if the loan had not been concluded" and inferred that the plaintiff should be repositioned to where it would have been if the harm had not occurred (ie, the plaintiff should be declared the owner of the shares as of the date on which the bank had unlawfully acquired them). Thus, the court implicitly argued that the language of its initial decision had already provided for the retroactive return of the shares and merely restated its previous decision without expanding on it.

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