
Dispute Resolution

Successful Appellant Fails to Get Reimbursement of Damages Paid on Behalf of All Co-defendants in Satisfaction of Trial Judgment

Introduction

In commercial disputes, it is not uncommon for there to be multiple plaintiffs or defendants, which may also be related entities represented by the same set of counsel. In *Crest Capital Asia Pte Ltd v OUE Lippo Healthcare Ltd* [2021] SGCA 57, the Singapore Court of Appeal highlighted the importance of distinguishing between the principals despite their common representation, discussing the potential consequences which may arise from a failure to do so.

Here, the plaintiff had succeeded in a claim against a number of related defendants before the High Court, with the defendants being found jointly and severally liable for damages. One of the defendants made payment of the judgment sum and costs to the plaintiff, but was subsequently successful on appeal (although three of the defendants remained liable to the plaintiff). The question was thus whether this defendant was entitled to seek repayment of the funds from the plaintiff.

The Court of Appeal found in favour of the plaintiff, finding that the payment had been made on behalf of all the defendants. The Court held that the defendant should thus look to the other defendants for reimbursement of the damages and costs it had paid to the plaintiff.

The plaintiff was successfully represented in this appeal by Lee Eng Beng S.C., Mark Cheng, Jansen Chow, Sasha Gonsalves and Dawn Seow of Rajah & Tann Singapore LLP.

Brief Facts

The plaintiff in the trial below (which was the Respondent in this appeal) was successful before the High Court in its claim against several defendants for losses it had sustained as a result of entering into a facility arrangement. Amongst these defendants, five of them were related entities ("**Crest Entities**") represented – at the time – by the same set of counsel ("**WP**").

The High Court had found the defendants to be jointly and severally liable to the Respondent for around S\$12.6 million. The Respondent commenced various enforcement proceedings against the Crest

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Entities. Following this, two of the defendants ("VMF3" and "VMIII") engaged new counsel to represent them ("TLJ").

WP then proposed, on behalf of all the Crest Entities, for payment of the judgment sum to be made over three instalments. VMIII thereafter paid a sum of about S\$10.3 million to the Respondent for the judgment debt and the interest accruing thereon.

Subsequently, VMF3's and VMIII's appeals were allowed before the Court of Appeal. The remaining three Crest Entities' appeals were dismissed, leaving them liable to the Respondent for the judgment sum. VMIII then sought repayment from the Respondent of the S\$10.3 million sum, as well as costs of the trial proceedings, that it had earlier paid to the Respondent.

Holding of the Court of Appeal

The Court of Appeal declined to order that the sums paid to the Respondent be restored to VMIII, holding that VMIII should instead look to the remaining Crest Entities for reimbursement of the judgment sum and costs it had paid.

The Court considered whether the rule for the restitution of benefits conferred pursuant to a judgment that is subsequently reversed is premised on judicial policy or on unjust enrichment, but ultimately found that the outcome would be the same in either case.

Judicial policy

The Court first considered the analysis if the restitutionary rule was a rule of policy designed to unravel the practical consequences of an order made by the lower court. In this case, the restoration of the \$10.3 million to VMIII would be eminently fair and just *if* the payment was meant to discharge *only* VMIII's liability. However, on the facts, the payment was intended to discharge the joint and several liability of all the five Crest Entities.

The Court held that, upon a successful appeal by some but not all the Crest Entities, VMIII – rather than the Respondent – should bear the risk of non-payment of the judgment debt. VMIII had made payment after the notice of appeal was lodged and after it had switched representation from WP to TLJ, meaning that the possibility that only VMIII would succeed in its appeal had already arisen. In the circumstances, the onus was on VMIII to protect itself from the risk of non-payment by requesting contributions from the remaining Crest Entities. If VMIII did not intend to discharge the liability of the remaining Crest Entities, it was incumbent upon VMIII to state its position.

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Unjust enrichment

The Court then considered the analysis if the restitutionary rule was based on preventing unjust enrichment. The unjust factors that may in principle apply would be (a) failure of basis; (b) mistaken payment; or (c) legal compulsion.

On the facts, the Court found that none of these factors applied in relation to the Respondent, and it could not be said that the payment of the S\$10.3 million was unjust. In any event, the Respondent would have been able to invoke the change of position defence in resisting VMIII's application, as it had ceased pursuing enforcement proceedings against the Crest Entities on the basis that the S\$10.3 million payment from VMIII was intended to discharge the liability of all the Crest Entities.

The Court further stated that the unjust factor of legal compulsion would support a claim by VMIII against the three unsuccessful Crest Entities in unjust enrichment.

Costs

VMIII had also made payment of S\$350,000 to the Respondent for the costs of the trial. For the same reasons set out above, the Court dismissed VMIII's application for the refund of this sum from the Respondent, holding that VMIII should again seek repayment from the remaining Crest Entities.

Concluding Words

The Court's decision demonstrates the risks of failing to distinguish between related entities in a legal dispute. Although the entities may initially be aligned in the proceedings, and may even have common representation, their rights and interests may very well diverge further down the line, as was the case in this matter. Parties would then be faced with the prospect of unravelling whatever payments and arrangements had been made, and ascertaining whether such acts had been performed on behalf of the individual entity or on behalf of all the related entities.

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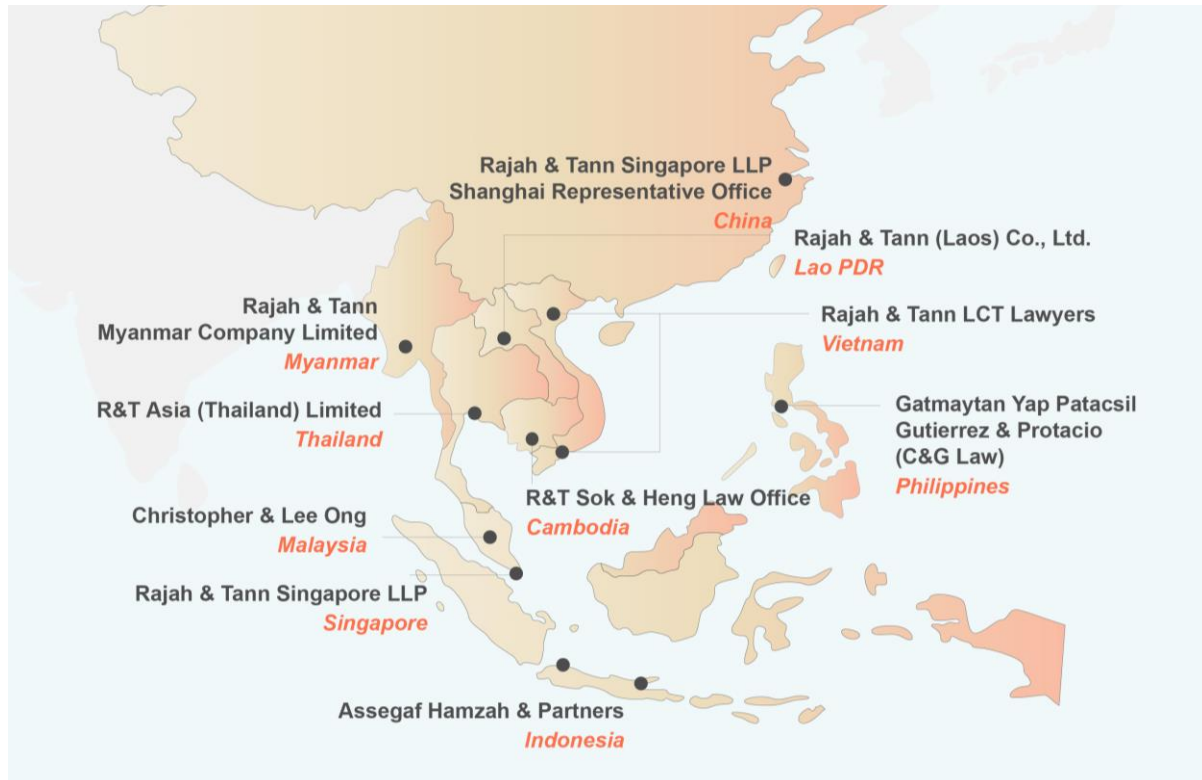
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