

Dispute Resolution

Disagreement Over Relocation of Club Facilities: Court Upholds Decision to Restrict Award to Nominal Damages

Introduction

In a civil claim, it is important for claimants to be able to prove the losses they have suffered arising from any claims being made. Apart from general damages, claimants may seek exceptional damages such as *Wrotham Park* damages or punitive damages, for which there are further requirements of pleading and proof. In *Phua Seng Hua and others v Kwee Seng Chio Peter and another* [2022] SGHC(A) 11, the Appellate Division of the Singapore High Court considered the requirements for such a claim of exceptional damages.

The case involved claims in a representative action by the Appellants, a group of members of a social club, against the Respondents, who were the club's owner and operator Exklusiv Resorts Pte Ltd ("**Exklusiv**") and Exklusiv's director and indirect shareholder. The Appellants, dissatisfied with the relocation of the clubhouse, had sought to claim against the Respondents. The High Court Judge dismissed their claims in deceit, negligent misrepresentation, and negligence. Although the Judge allowed their claim for breach of contract against Exklusiv, he awarded only nominal damages to the members, as against their original claim for more than S\$110,000 each. For more information on the Judge's decision, please see our earlier Client Update [here](#).

On appeal, the Appellate Division of the High Court ("**Court**") upheld the decision, allowing only the claim for breach of contract against Exklusiv, and restricting the award to nominal damages. Notably, the Court considered the requirements of claims for exceptional damages such as *Wrotham Park* damages or punitive damages, and how such claims should be pleaded.

The Respondents were successfully represented by Vikram Nair, Foo Xian Fong and Mazie Tan of Rajah & Tann Singapore LLP.

Brief Facts

The case involved a social club, with its clubhouse situated at 30 Stevens Road ("**30SR**") in central Singapore. The Respondents sought to redevelop the clubhouse at 30SR, but due to various reasons, the clubhouse had to be relocated, and 30SR was sold. The clubhouse's premises were eventually



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moved to that of an existing club at in the eastern part of Singapore, with members having shared access to its facilities, as well as the facilities of a satellite clubhouse at 30SR once opened.

The Appellants, comprising a number of members of the club, were dissatisfied with the relocation. They brought a claim against the Respondents on various ground, including deceit, negligence, and negligent misrepresentation in relation to the redevelopment of the clubhouse at 30SR. The Appellants also claimed against Exklusiv for breach of its contract with each of the Appellants.

In *Meow Moy Lan and Others v Exklusiv Resorts Pte Ltd and Another* [2021] SGHC 155, the High Court Judge dismissed the claims for deceit, negligence and negligent misrepresentation. The Judge allowed the claim for breach of contract, finding that Exklusiv had breached certain implied terms in the membership contract involving the location of the clubhouse in a central area of Singapore.

However, on the issue of damages for Exklusiv's breach of contract, the Judge found that the Appellants had failed to prove that they had suffered any loss. This was because the evidence before the Court suggested that the relocation of the Club to newly redeveloped premises at Laguna was likely to have increased the market value of the membership. The Judge therefore found that there was no diminution in the value of the Appellants' memberships, and thus ordered only nominal damages of S\$1,500 to the each of the Appellants.

The Appellants appealed against the Judge's decision.

Holding of the High Court (Appellate Division)

The Court upheld the Judge's decision, maintaining that the Respondents were not liable for deceit, negligence and negligent misrepresentation, and awarding only nominal damages for breach of contract. The Court also declined to grant the Appellants' claims for *Wrotham Park* damages and punitive damages.

Deceit and negligence

The claim for deceit was based on the allegation that the Appellants had made certain representations to the members as to the provision of a new clubhouse at 30SR that they knew to be untrue. The Court found that the Appellants had failed to plead some of the alleged representations, and that in any event, the Appellants failed to prove that the Respondents had not intended to provide a new clubhouse at 30SR.

The negligence claim was based on the alleged duty of care of the Respondents to provide timely, true and accurate information as regards the redevelopment of the clubhouse at 30SR. The Court held that

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the Respondents were not obliged in law to provide the pleaded information in the manner alleged by the Appellants, and that in any event, the Respondents had not breached any such duty.

Damages for breach of contract

The Appellants submitted on appeal that the Judge should have awarded *Wrotham Park* damages (which are based on the decision in *Wrotham Park Estate Co Ltd v Parkside Homes Ltd and others* [1974] 1 WLR 798), as well as punitive damages.

Wrotham Park damages represent a hypothetical sum of money that might reasonably be demanded by the claimant as *quid pro quo* for releasing the defendant from the obligation breached. In this case, the Appellants relied on one of the club's rules that provided that the clubhouse would be situated at 30SR ("**Rule 4**"). They submitted that, had it not been for the alleged concealment of the sale of 30SR, the members would have applied for an injunction to stay the sale. The Respondent would hypothetically have negotiated with the Appellants to be released from Rule 4. The Respondents thus sought this hypothetical sum as *Wrotham Park* damages of S\$14,500 per member.

The Court rejected the claim for *Wrotham Park* damages as the Appellants had failed to specifically plead their case for *Wrotham Park* damages for breach of contract. The Court highlighted that *Wrotham Park* damages are "special damages" which are not presumed and are exceptional in nature; therefore, if not specifically pleaded by the claimant, the defendant would be irremediably prejudiced by being deprived of the opportunity to lead evidence on relevant matters.

In any event, there were other factors militating against a claim for *Wrotham Park* damages, such as a different date of breach being pleaded, the fact that the Appellants had not shown any evidence that they would have sought an injunction, and that the Appellants' proposed quantification of *Wrotham Park* damages blurred the distinction between personal contract rights and proprietary rights.

The Court also rejected the Appellants' claim for punitive damages in tort of another S\$14,500 per member, similarly holding that such damages must be specifically pleaded. In addition, the tort of deceit was not made out and, even if there was some negligence as alleged, it did not come close to constituting such reprehensible conduct as would warrant the imposition of punitive damages.

Concluding Words

In a civil claim, an award of damages is often the end goal of the claimant. A finding of liability may not have any practical benefit if the claimant has not suffered any loss. Likewise, for potential defendants, taking steps to mitigate losses are important even if there has been a breach of some sort. This is likely to minimise the risk of a large claim against them.

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This decision demonstrates the importance of taking contemporaneous steps to enforce contractual rights where there has been a breach, as well as to mitigate damages on the part of the defendants. It also highlights the need to include sufficient and specific pleadings and to adduce evidence of the contemporaneous steps taken when advancing a claim for special or exceptional damages. Otherwise, claimants run the risk of being denied any substantial award of damages.

For further queries, please feel free to contact our team below.

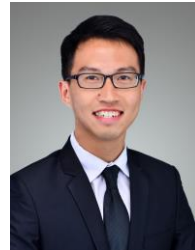
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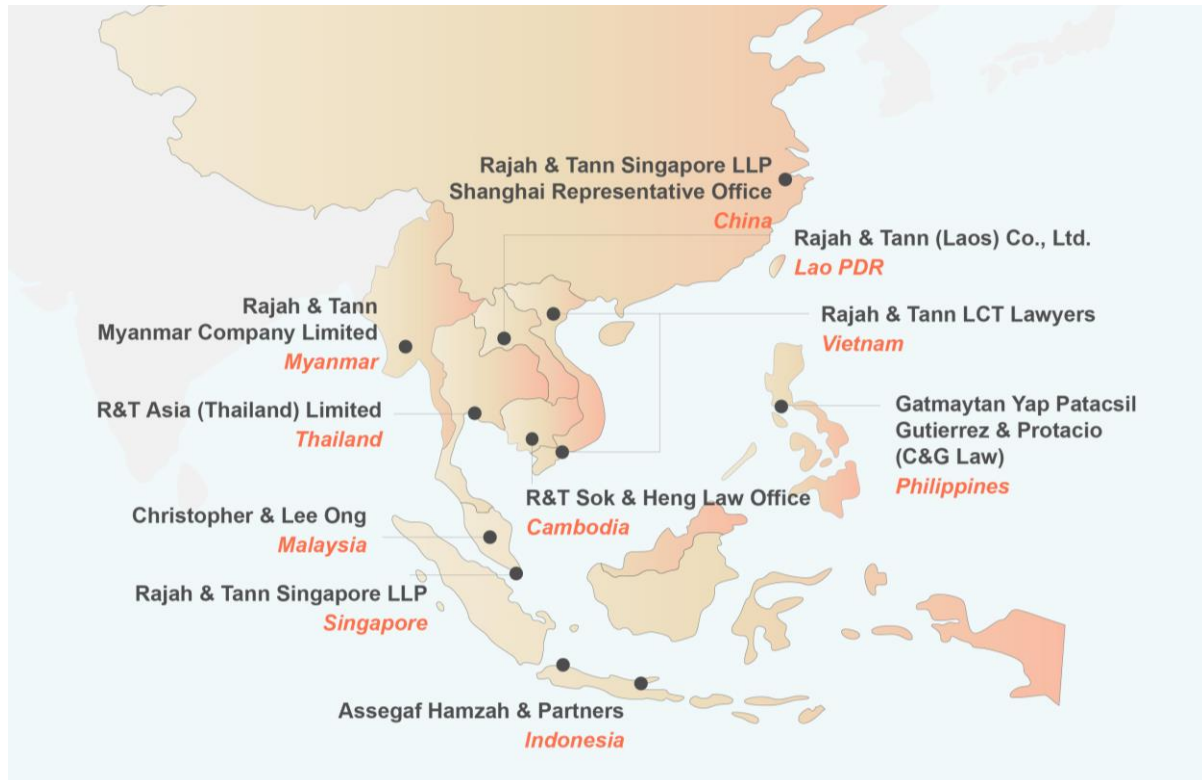
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