

Dispute Resolution

## Scope of Duties in a Family Partnership – Court of Appeal Decides on Breach of Fiduciary Duties and Defence of Laches

### Introduction

There are certain fiduciary duties imposed on the partners of a partnership. In the context of a family partnership, there may be instances where corporate governance practices are conducted less formally, or where the distinction between personal and business assets are muddled. However, the courts have demonstrated that the same fiduciary duties continue to apply in a family partnership.

In *Ng Lim Lee (as administratrix and trustee of the estate of Lee Ker Min, deceased) v Lee Gin Hong (as executor and trustee of the estate of Ng Ang Chum, deceased) and another* [2022] SGCA 47, the Singapore Court of Appeal had to determine whether there had been breaches of fiduciary duties in a family partnership, and if so, whether the defence of laches applied due to an alleged delay in bringing the claim.

The partners in this case were mother and son. The son, who was the Appellant, brought a claim against the mother's estate relating to sums owed under the partnership's overdraft facility, and the Respondents brought a counterclaim for breach of fiduciary duties. The Court of Appeal found that the Appellant had breached his fiduciary duties by making use of the partnership's assets for his personal expenses, ordering him to account for the sums withdrawn.

The Court of Appeal rejected the Appellant's defence that there had been an inordinate delay in bringing the counterclaim on the part of the Respondents. In reaching its decision, the Court of Appeal set out the applicable principles in the doctrine of laches.

The Respondent was successfully represented in this appeal by Harish Kumar and Marissa Zhao of Rajah & Tann Singapore LLP.

### Brief Facts

The Appellant and his mother ("**Mother**") were partners of a family-owned partnership ("**Partnership**"). The Respondents were the Appellant's sisters and the executors of the Mother's estate. The Mother had passed away before the proceedings were initiated, and the Appellant passed away while the proceedings were in progress.

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The Appellant (through his litigation representative) sought to claim against the Mother's estate for half of the sum owed under an overdraft facility of the partnership. The claim was also made against the Respondents in their personal capacity.

The Respondents counterclaimed that the Appellant had made use of the partnership's monies and overdraft facility for his personal expenses in breach of his fiduciary duties, and that these sums far exceeded the overdraft facility amount. The Respondents submitted that the Mother's estate was entitled to a set-off and counterclaim for the sums taken out from the Partnership by the Appellant.

The High Court found in favour of the Respondents, dismissing the Appellant's claim and awarding interlocutory judgment on the Respondents' counterclaim, ordering an inquiry to be held to determine the amount for which the Appellant must account to the Mother's estate.

### Holding of the Court of Appeal

The Court of Appeal upheld the decision of the High Court, dismissing the Appellant's appeal.

#### Breach of fiduciary duties

It was not in dispute that:

- The Appellant and his Mother were equal partners and were hence entitled to an equal share of the assets and liabilities of the Partnership;
- The Appellant owed fiduciary duties to his Mother as a partner; and
- The Appellant had withdrawn sums from the Partnership for his personal use, such as for his own real estate purchases and for investments in businesses unrelated to the Partnership.

The Court of Appeal acknowledged that withdrawing partnership monies for personal use did not inexorably mean that the Appellant had breached his fiduciary duties. The critical issue was whether the Mother had knowledge of and consented to the withdrawals. On this, the Court of Appeal upheld the High Court's finding that the Mother was not aware of the withdrawals and thus could not have consented to them.

#### Doctrine of laches

The doctrine of laches provides a defence where a substantial lapse of time has occurred before the bringing of the claim, coupled with circumstances where it would be practically unjust to give a remedy. The Court of Appeal set out the following applicable principles:

- (a) A key element of the doctrine of laches is that there must be a substantial lapse of time.
- (b) That delay must render it inequitable or unconscionable to mount a belated claim. This would typically involve an examination of the prejudice suffered as a result of the inordinate delay.

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Applying these principles, the Court of Appeal held that there was no substantial delay in the bringing of the counterclaim by the Respondents. As the Mother never had knowledge of the Appellant's withdrawals for personal use, there was no operative delay up till the time she passed away. While the Respondents knew of the Appellant's withdrawals for personal use, only four years had elapsed between the Mother's passing and the bringing of the counterclaim; the Court of Appeal found that this was not a substantial delay.

The Court of Appeal further held that it would not be inequitable or unconscionable to allow the counterclaim. There was no prejudice suffered by the Appellant as it was the Appellant who initiated the claim against his Mother's estate, to which it was essential for the Respondents to raise the counterclaim. The Appellant thus could not complain about the bringing of the counterclaim, even after the alleged delay.

### Concluding Words

This decision demonstrates the importance of complying with the fiduciary duties of a partnership, even in the context of family partnerships where there may be informal arrangements regarding the running of the business. Importantly, personal and business monies should be clearly distinguished and should not be commingled.

Further, if there is to be any use of partnership monies for personal purposes, or any other such arrangement, the partners should ensure that the arrangement is duly recorded and that all necessary agreements and consents are obtained.

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

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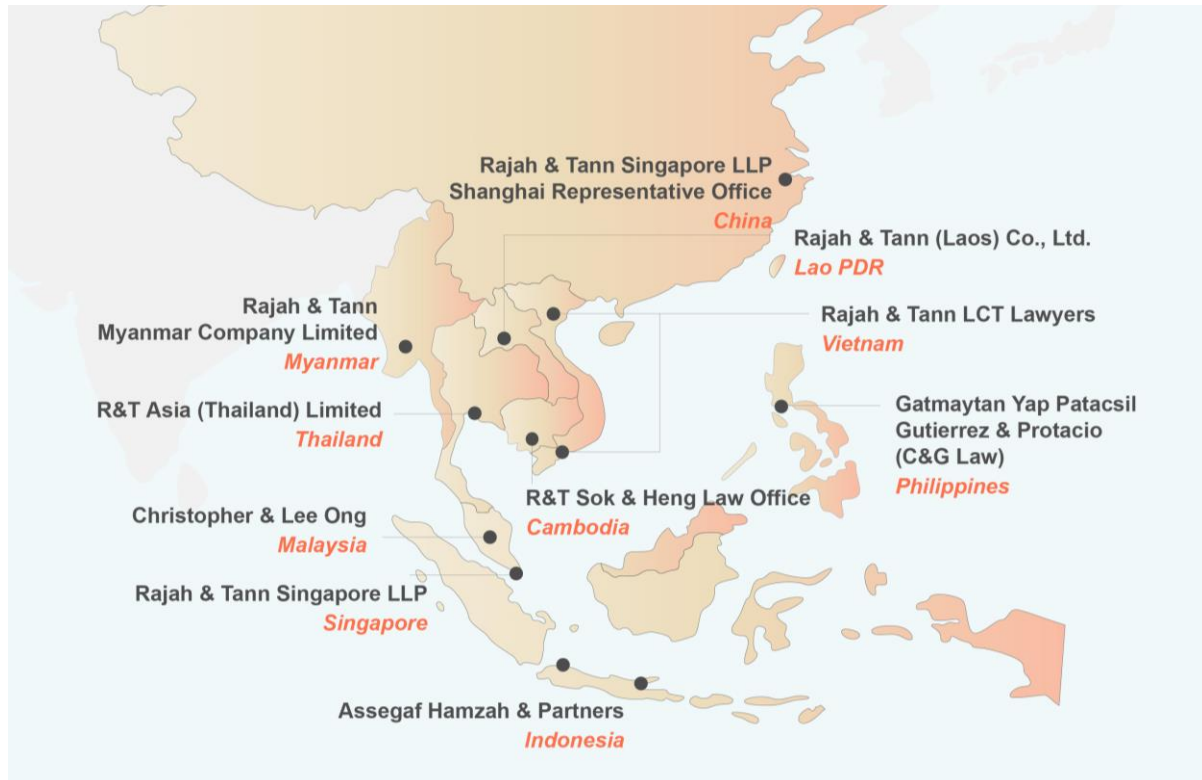
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