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Ratification after Litigation?

Introduction

In *Asidokona Mining Resources Pte Ltd & Anor v Alternative Advisors Investments Pte Ltd* [2023] SGHC(A) 6, the Appellate Division of the High Court allowed an appeal in a landmark case that raised "several difficult questions" (in the words of the Court). The intermediate appeal court ultimately dismissed a claim for loan repayment totalling more than S\$9.7 million (inclusive of interest) brought by the purported assignee of the financier's rights. Ultimately, the Court upheld the appellants' plea of no case to answer.

The Appellate Division considered the law on when a principal may ratify a contract purportedly entered into on its behalf. To that end, the Court considered three important issues:

- Can a principal ratify a contract (in this case, a loan agreement) when the alleged agent did not even purport to act on behalf of the principal?
- Can the principal ratify when it cannot show that it has performed the contract (in this case, a loan disbursement)?
- Where legal action has been commenced on a contract that has not yet been ratified, can ratification hereafter retrospectively remedy the cause of action and so provide legal basis for the action (the "**Post-Action Ratification Issue**")?

The last was an especially difficult question of law analysed by the Court. The Appellate Division answered all these questions in the negative.

Gregory Vijayendran SC, assisted by Lester Chua, Tomoyuki Ban, and Kevin Wong from Rajah & Tann Singapore LLP, was instructed Counsel for the successful co-appellant in the appeal.

Brief Facts

The purported contracts at issue in this case were Loan Documents between two companies, Asidokona Mining Resources Pte Ltd ("**Asidokona**", the 1st Appellant) (the borrower), and Supreme Star Investments, a BVI-incorporated company ("**SSI**") (the purported financier). Mr Soh, the sole shareholder and director of Asidokona, sought the assistance of Mr Wong, the principal director and shareholder of Alternative Advisors Investments Pte Ltd ("**AAI**") (the assignee and Respondent), to arrange a loan of S\$2m to Asidokona. Mr Wong had in turn contacted one Mr Ong, then managing partner of JLC Advisors LLP, who informed Mr Wong that he had a client willing to contribute S\$1m towards the required loan amount. Mr Soh signed the Loan Documents on 22 July 2016 and a sum of \$1.69m was disbursed by JLC Advisors LLP from their client account to Asidokona on the same day in accordance with the terms of the Loan Documents. Mr Wong raised an additional S\$1m himself.



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However, the Loan Documents were not executed by SSI at the material time (they were only signed by Mr Wong purportedly for and on behalf of SSI much later on in 2018). Asidokona defaulted on repaying the loan in 2017.

In 2018, when Mr Wong discovered that the Loan Documents had not been executed by SSI, he was informed by Mr Ong that he (Mr Wong) had been authorised to act as SSI's "*principal and agent*". Mr Wong thereafter proceeded to sign the Loan Documents (for and on behalf of SSI) and purported to assign SSI's rights under the Loan Documents to AAI, both pursuant to Deeds of Assignment. AAI then commenced proceedings against Asidokona and Mr Soh to recover the loan amount.

Sometime after the commencement of proceedings, one Ms Lou, SSI's sole shareholder and director, gave answers to AAI's interrogatories that she only knew about the Loan Documents, the Deeds of Assignment and AAI's commencement of proceedings on or about March 2020 i.e. after litigation started. Thereafter, in 2021, while the litigation was afoot, Ms Lou procured SSI to pass a director's resolution to ratify (i) Mr Wong's execution of the Loan Documents and Deeds of Assignment; and (ii) AAI's commencement of the action below and the joinder of SSI to the action (the "**Ratification**").

The Appellate Division's Decision

The Appellate Division held that AAI failed to show that the Ratification was valid and dismissed AAI's claim. In particular, AAI failed to discharge its burden of proof in showing that SSI could ratify the Loan and the Loan Documents as:-

- AAI failed to show that Mr Wong had acted or purported to act on SSI's behalf in relation to the Loan; and
- AAI failed to show that the monies purportedly disbursed pursuant to the Loan came from SSI. When a principal ratifies a contract with a third party, the principal is obliged to perform the contract. Here, prior to Ratification, performance of the contract had already taken place and was spent. AAI had not shown evidentially that such performance was by the principal i.e. SSI.

On the Post-Action Ratification Issue, to summarise, the Court found that the Ratification, even if valid, could not retrospectively furnish a basis for AAI's action because it occurred *after the commencement of the action*. In particular, it accepted the appellant's case on the Post-Action Ratification Issue and atypically endorsed a proposition of law derived from an American case. There was no valid cause of action at the time of the suit's start. Neither the Loan Documents nor the Deeds of Assignment had been ratified yet at that juncture. AAI should have either sued afresh after the Ratification, or sued after the Ratification.

Concluding Observations

This decision provides valuable practical legal and procedural guidance on the issue of ratification. In particular, it highlights the importance of the timeframe at which ratification is purportedly undertaken

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and that a delayed ratification (especially post-litigation) could imperil, and even be fatal to, the third party's legal rights. For example, the decision clearly demonstrates that ratification of a contract on which a legal action is based must take place before the action is commenced; otherwise, a new action should be commenced post-ratification. Further, if ratification takes place after the contract has already been performed, the party seeking to ratify the contract must show that it had performed the contract.

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

Contacts



Gregory Vijayendran SC
Partner, Commercial Litigation

T +65 6232 0438

gregory.vijayendran@rajahtann.com



Lester Chua
Partner, Commercial
Litigation

T +65 6232 0561

lester.chua@rajahtann.com

Please feel free to also contact Knowledge Management at eOASIS@rajahtann.com

Regional Contacts

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113

F +855 23 963 116

kh.rajahtannasia.com

RAJAH & TANN | *Myanmar*

Rajah & Tann Myanmar Company Limited

T +95 1 9345 343 / +95 1 9345 346

F +95 1 9345 348

mm.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

Rajah & Tann Singapore LLP

Shanghai Representative Office

T +86 21 6120 8818

F +86 21 6120 8820

cn.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 8894 0377 to 79 / +632 8894 4931 to 32

F +632 8552 1977 to 78

www.cagatlaw.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800

F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550

F +62 31 5116 4560

www.ahp.co.id

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600

sg.rajahtannasia.com

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991

F +66 2 656 0833

th.rajahtannasia.com

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239

F +856 21 285 261

la.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673

F +84 28 3520 8206

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919

F +60 3 2273 8310

www.christopherleeong.com

Hanoi Office

T +84 24 3267 6127

F +84 24 3267 6128

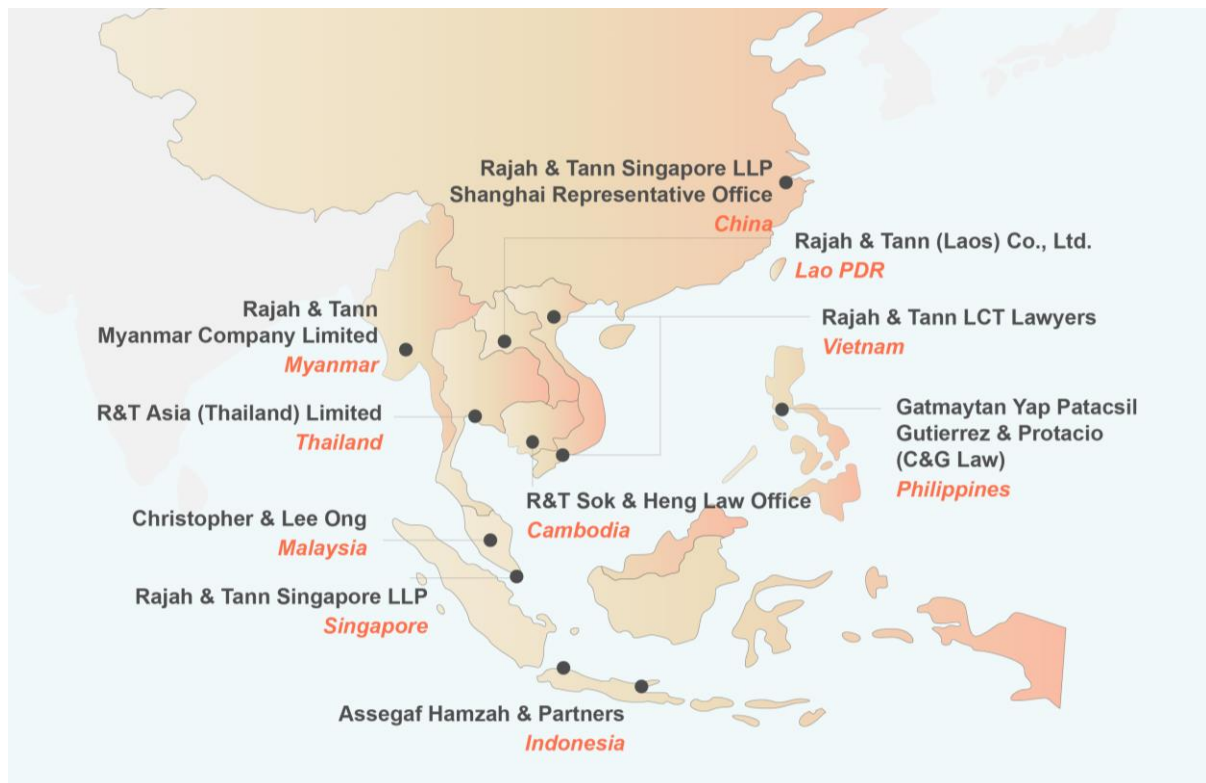
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