

## CLIENT UPDATE 2016 AUGUST



### DISPUTE RESOLUTION

# When Is the Right Time to Start an Action?

## Introduction

In a commercial dispute, timing can be a crucial issue. Claimants are often inclined to take prompt action in commencing proceedings, perhaps due to higher chances of recovery or the utility of an immediate remedy. However, parties may sometimes hold off on starting a claim in order to gather further evidence for assessment or to wait out business contingencies. In *Antariksa Logistics Pte Ltd and others v Nurdian Cuaca and others* [2016] SGHCR 10, the Singapore High Court was faced with related claims which had been brought about six years apart due to such timing issues, and had to determine the validity of the claimants' case management decision.

The Plaintiffs in this matter were faced with a strategic decision: whether to directly commence a large complex suit with multiple causes of action against multiple defendants, or to adopt an incremental approach by initially suing a single party in one cause of action, and then assessing whether to later commence proceedings against the other defendants in other causes of action.

Having opted for the latter approach, the Defendant in the second lawsuit sought to strike out the Plaintiff's claim under the doctrine of res judicata, or abuse of process. However, the High Court allowed the Plaintiff's claim to continue, finding that the Plaintiff's incremental approach was legitimate.

The Plaintiff was successfully represented in this matter by Avinash Pradhan, Max Lim and Muslim Albakri of Rajah & Tann Singapore LLP.

## Brief Facts

The Plaintiffs in this current application (the "**2015 Suit**") were freight forwarders, and had entered into an arrangement with the 1<sup>st</sup> Defendant to facilitate customs clearance when the Plaintiffs had cargo to ship to Indonesia.

In 2009, the transportation of a 30-container shipment by the Plaintiff went awry. The 1<sup>st</sup> Defendant had problems importing the shipment to Indonesia, but then failed to re-export the shipment to Singapore. Instead, the 1<sup>st</sup> Defendant sought to extort further transportation expenses from the Plaintiff, and named a company known as McTrans to be the consignees of the shipment.

The 1<sup>st</sup> Defendant then approached the Plaintiffs' customer to demand payment for the release of their goods. He successfully obtained payment from at least two cargo owners.

The Plaintiffs commenced the first suit in 2009 (the "**2009 Suit**") against McTrans for conversion of the cargo shipment, and successfully obtained judgment in the form of a declaration that McTrans was to identify the Plaintiffs for all liabilities and losses arising from the conversion. However, McTrans was subsequently wound up.

The Plaintiffs later commenced the 2015 Suit against the 1<sup>st</sup> Defendant and a number of other individuals and companies for conspiracy, deceit and unjust enrichment, essentially alleging that the 1<sup>st</sup> Defendant orchestrated a scheme to defraud the Plaintiffs.

In this application, the 1<sup>st</sup> Defendant sought to strike out the Plaintiffs' claim, submitting that the Plaintiffs should and could have brought their claims against the 1<sup>st</sup> Defendant in the 2009 Suit.

---

## CLIENT UPDATE

### 2016 AUGUST

---

#### DISPUTE RESOLUTION

### Factors in the Incremental Approach

The Plaintiffs provided a number of reasons as to why they chose an incremental approach in which it brought a claim against McTrans in the 2009 Suit and later against the other defendants in the 2015 Suit.

First, the most pressing matter to the Plaintiffs in 2009 was to have the cargo released, or at least to obtain an indemnity from McTrans. If the cargo was not released in a timely manner, the Plaintiffs could have been liable to their customers for resulting damages which would increase the longer the goods were wrongfully detained.

Second, the claims of fraud and conspiracy were far harder to prove, and the Plaintiffs had to take the time to weigh the evidence. Further, the Plaintiffs did not have documentary evidence against the 1<sup>st</sup> Defendant for conspiracy in 2009, but had since obtained fresh evidence.

Third, the issues in the two suits were legally and conceptually different. Although they large arose from the same events, the causes of action and the defendants were entirely distinct.

### Holding of the High Court

The Court held in favour of the Plaintiffs, finding that their incremental approach in the 2009 and 2015 Suits did not constitute an abuse of process.

#### *Public Interest*

With regard to public interest, the Court held that it would be in the public's interest to protect the Plaintiffs' ability to raise unlitigated issues in a court of law. The Plaintiff's choice was also supported by the principle of party autonomy to decide who to sue over what issues.

The Court found that public interest in economy and efficiency of litigation did not militate towards a finding of abuse. In 2009, it could not be objectively concluded that it would be more efficient to commence a single complex action than two leaner suits. Further, it was not a foregone conclusion in 2009 that a second suit would be needed.

#### *Private Interests*

With regard to private interests, the Court also held that the relevant factors weighed in favour of the Plaintiffs. Importantly, the 1<sup>st</sup> Defendant had not participated in the 2009 Suit, and thus had no legitimate private interest to be accorded weight.

On the other hand, the Plaintiffs had legitimate reasons for not taking out the conspiracy, deceit and unjust enrichment claims in 2009. There was greater urgency for the conversion claim to be resolved, and adding the other claims would complicate proceedings. It was also not unreasonable for the Plaintiffs to take time to assess their options and gather more evidence in light of the available evidence at the time.

On an assessment of both public and private factors, the Court held that there was no abuse of process. The Court thus dismissed the Defendant's striking out application.

### Concluding Words

This decision highlights the factors that may come into play when deciding when to begin a claim. It also demonstrates that a claimant may be justified in taking an incremental approach rather than launching all its claims in one single lawsuit. Strategy in the management of a claim is often just as important from a practical perspective as the evidence and arguments are from a legal perspective.

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

---

## CLIENT UPDATE

### 2016 AUGUST

---

## Contacts



**Avinash Pradhan**  
Partner

D (65) 6232 0234  
F (65) 6428 2059

[avinash.pradhan@rajahtann.com](mailto:avinash.pradhan@rajahtann.com)

**Max Lim**  
Senior Associate

D (65) 6232 0698  
F (65) 6428 2080

[max.lim@rajahtann.com](mailto:max.lim@rajahtann.com)

**Muslim Albakri**  
Associate

D (65) 6232 0171  
F (65) 6428 2157

[muslim.albakri@rajahtann.com](mailto:muslim.albakri@rajahtann.com)

Please feel free to also contact Knowledge and Risk Management at [eOASIS@rajahtann.com](mailto:eOASIS@rajahtann.com)

### ***ASEAN Economic Community Portal***

With the launch of the ASEAN Economic Community (“AEC”) in December this year, businesses looking to tap the opportunities presented by the integrated markets of the AEC can now get help a click away. Rajah & Tann Asia, United Overseas Bank and RSM Chio Lim Stone Forest, have teamed up to launch “Business in ASEAN”, a portal that provides companies with a single platform that helps businesses navigate the complexities of setting up operations in ASEAN.

By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN’s business landscape. Of particular interest to businesses is the “Ask a Question” feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at <http://www.businessinasean.com/>.

## Our regional presence



## Our regional contacts

### RAJAH & TANN | *Singapore*

**Rajah & Tann Singapore LLP**  
9 Battery Road #25-01  
Straits Trading Building  
Singapore 049910  
T +65 6535 3600 F +65 6225 9630  
sg.rajahtannasia.com

### R&T SOK & HENG | *Cambodia*

**R&T Sok & Heng Law Office**  
Vattanac Capital Office Tower, Level 17, No. 66  
Preah Monivong Boulevard, Sangkat Wat Phnom  
Khan Daun Penh, 12202 Phnom Penh, Cambodia  
T +855 23 963 112 / 113 F +855 963 116  
kh.rajahtannasia.com  
*\*in association with Rajah & Tann Singapore LLP*

### RAJAH & TANN REPRESENTATIVE OFFICE | *China*

**Rajah & Tann Singapore LLP  
Shanghai Representative Office**  
Unit 1905-1906, Shui On Plaza, 333 Huai Hai Middle Road  
Shanghai 200021, People's Republic of China  
T +86 21 6120 8818 F +86 21 6120 8820  
cn.rajahtannasia.com

### RAJAH & TANN NK LEGAL | *Myanmar*

**Rajah & Tann NK Legal Myanmar Company Limited**  
Myanmar Centre Tower 1, Floor 07, Unit 08,  
192 Kaba Aye Pagoda Road, Bahan Township,  
Yangon, Myanmar  
T +95 9 73040763 / +95 1 657902 / +95 1 657903  
F +95 1 9665537  
mm.rajahtannasia.com

**ASSEGAF HAMZAH & PARTNERS** | *Indonesia***Assegaf Hamzah & Partners***Jakarta Office*

Menara Rajawali 16th Floor  
Jalan DR. Ide Anak Agung Gde Agung Lot #5.1  
Kawasan Mega Kuningan, Jakarta 12950, Indonesia  
T +62 21 2555 7800 F +62 21 2555 7899  
www.ahp.co.id

*Surabaya Office*

Pakuwon Center, Superblok Tunjungan City  
Lantai 11, Unit 08  
Jalan Embong Malang No. 1, 3, 5, Surabaya 60261, Indonesia  
T +62 31 5116 4550 F +62 31 5116 4560

*\*Assegaf Hamzah & Partners is an independent law firm in Indonesia and a member of the Rajah & Tann Asia network.*

**CHRISTOPHER & LEE ONG** | *Malaysia***Christopher & Lee Ong**

Level 22, Axiata Tower, No. 9 Jalan Stesen Sentral 5,  
Kuala Lumpur Sentral, 50470 Kuala Lumpur, Malaysia  
T +60 3 2273 1919 F +60 3 2273 8310  
www.christopherleeong.com

*\*in association with Rajah & Tann Singapore LLP*

**RAJAH & TANN** | *Thailand***Rajah & Tann (Thailand) Limited**

973 President Tower, 12th Floor, Units 12A-12F  
Ploenchit Road, Lumpini, Pathumwan  
Bangkok 10330, Thailand  
T +66 2 656 1991 F +66 2 656 0833  
th.rajahtannasia.com

**RAJAH & TANN** | *Lao PDR***Rajah & Tann (Laos) Sole Co., Ltd.**

Phonexay Village, 23 Singha Road, House Number 046/2  
Unit 4, Saysettha District, Vientiane Capital, Lao PDR  
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*

Saigon Centre, Level 13, Unit 2&3  
65 Le Loi Boulevard, District 1, HCMC, Vietnam  
T +84 8 3821 2382 / +84 8 3821 2673 F +84 8 3520 8206

*Hanoi Office*

Lotte Center Hanoi - East Tower, Level 30, Unit 3003,  
54 Lieu Giai St., Ba Dinh Dist., Hanoi, Vietnam  
T +84 4 3267 6127 F +84 4 3267 6128  
www.rajahtannlct.com

Rajah & Tann Singapore LLP is one of the largest full service law firms in Singapore, providing high quality advice to an impressive list of clients. We place strong emphasis on promptness, accessibility and reliability in dealing with clients. At the same time, the firm strives towards a practical yet creative approach in dealing with business and commercial problems. As the Singapore member firm of the Lex Mundi Network, we are able to offer access to excellent legal expertise in more than 100 countries.

Rajah & Tann Singapore LLP is part of Rajah & Tann Asia, a network of local law firms in Singapore, Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, Thailand and Vietnam. Our Asian network also includes Singapore-based regional desks focused on Japan and South Asia.

The contents of this Update are owned by Rajah & Tann Singapore LLP and subject to copyright protection under the laws of Singapore and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Rajah & Tann Singapore LLP.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Rajah & Tann Singapore LLP or e-mail Knowledge & Risk Management at [eOASIS@rajahtann.com](mailto:eOASIS@rajahtann.com).