
Restructuring & Insolvency

Court Intervention in a Judicial Manager's Decision – The Test for Unfair Prejudice

Introduction

Under Singapore's restructuring and insolvency regime, a judicial manager has a degree of discretion in managing the affairs of the company in judicial management. However, the Court may intervene in a decision of a judicial manager if it is unfairly prejudicial to the interests of the company's creditors or members.

The test for when the Court will intervene in the manner in which a judicial manager manages the company's affairs, business, and property, and the relevant standard of unfair prejudice, had yet to be considered in Singapore case law. In the novel decision of *Re HTL International Holdings Pte Ltd* [2021] SGHC 86, the Singapore High Court set out the applicable principles in determining unfair prejudice, clarifying that it would not interfere with the decisions of a judicial manager unless there is plainly wrongful conduct, conspicuous unfairness, or perversity.

In this case, the shareholders of a company sought to invoke the Court's intervention in the judicial managers' decision to sell assets of the company to one party (the Purchasers) rather than another. The Court held, on the facts, that it could not be said that the judicial managers' decision was unfairly prejudicial to the shareholders. The application to declare the sale null and void was therefore refused.

The Purchasers were successfully represented by Mark Cheng, Chew Xiang, Ho Zi Wei, and Tan Tian Hui of Rajah & Tann Singapore LLP (with Audent Chambers LLC as instructed counsel).

Brief Facts

The Company had been put under judicial management, and the judicial managers ("**JMs**") had been appointed.

The Company sought to sell its interests in its subsidiaries (the "**Asset**") to one Golden Hill Capital Pte Ltd ("**Golden Hill**"). Subsequently, another potential purchaser ("**Man Wah**") made a competing offer to purchase the Asset.

Both Golden Hill and Man Wah were allowed to make final, revised offers. The JMs eventually sold the Asset to Golden Hill.

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However, the shareholders of the Company ("**Shareholders**") preferred Man Wah to be the buyer of the Assets. The Shareholders thus brought an application to set aside the sale of the Asset to Golden Hill and to direct the JMs to accept Man Wah's offer.

Holding of the High Court

The Court dismissed the Shareholders' application, finding that they had not made out that the JMs had been conducting the affairs of the Company in a manner that was unfairly prejudicial to the interests of its creditors or members.

The test for unfair prejudice

The Shareholders' application was made under section 227R of the Companies Act (Cap. 50) (version in force prior to 30 July 2020) ("**section 227R**"), which provided that the Court may intervene if (a) a judicial manager has, *inter alia*, managed the company's affairs, business, and property in a manner which is unfairly prejudicial to the interests of its creditors or members generally or of some part of its creditors or members, or (b) some actual or proposed act or omission of the judicial manager is or would be prejudicial.

As the application to place the Company under judicial management was made prior to the commencement of the Insolvency, Restructuring and Dissolution Act (Act 40 of 2018) ("**IRDA**"), the Shareholders relied on section 277R of the Companies Act, the relevant statutory provision prior to the commencement of the IRDA. For judicial management applications commenced under the IRDA, section 227R has been replaced by section 115 of the IRDA, which is not materially different from section 227R.

The Court noted that there was no reported decision in Singapore on the scope of section 227R, and thus considered the relevant English case law and the purpose of the provision in determining the applicable principles. The Court held that:

- (a) It would not intervene in an exercise of commercial judgment by judicial managers unless it can be shown that the judicial managers had committed plainly wrongful conduct, had been conspicuously unfair or had been perverse.
- (b) There must be something more than bare prejudice, as most, if not all, commercial decisions of a company in judicial management will probably cause detriment or prejudice to one or other of the members and creditors, given that the company is insolvent.
- (c) The process of weighing the costs and benefits of a particular course of action will inevitably call for loss to be borne more by some than by others. The resulting decision, even if it has

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caused unequal or differential treatment, will not be second-guessed by the Court unless the action was wholly unrequired, or if the decision is one that is not commercially justifiable at all. It may also include unfair conduct which has affected everyone within a class, such as a sale at an undervalue, provided the decision to sell that asset is not logical.

- (d) In the process of weighing costs and benefits, the judicial manager is justified in weighing the interests of creditors more than that of the members or shareholders, and also taking into account exigencies such as the risks that any further delays in the sale may cause, even if the competing offer may be better financially.
- (e) The court's powers under section 227R are not limited to only granting relief for forward-looking actions, and are wide enough to cover past, present and proposed acts (or omissions).

Application

On the facts, the Court held that the JMs' decision to sell the Asset to Golden Hill was not unfairly prejudicial.

The Court found that the JMs were justified in assessing that Golden Hill's offer promised greater shareholder returns. Even if the price obtained was not the best, given the circumstances, particularly the need for a swift injection of funds, the JMs made a decision in the exercise of their commercial judgment which did not show any perverse, conspicuously unfair, or plainly wrongful conduct.

The Court also found that the JMs had fairly evaluated both offers, and that there was no other misconduct by the JMs that would justify an order being made under section 227R CA.

The Shareholders' application was thus dismissed.

Concluding Words

This decision provides a helpful guide as to when the Court will exercise its power to intervene with the decisions and discretion of a judicial manager. As the issue had yet to be determined before the Singapore courts, the decision provides important insight as to what constitutes unfair prejudice in the context of a judicial manager's conduct.

The approach taken by the Court highlights the broad discretion afforded to judicial managers in the management of the company's affairs. It confirms that the Court will grant "great leeway" to judicial managers to exercise their commercial judgment, which should only be impugned upon evidence of exceptional circumstances.

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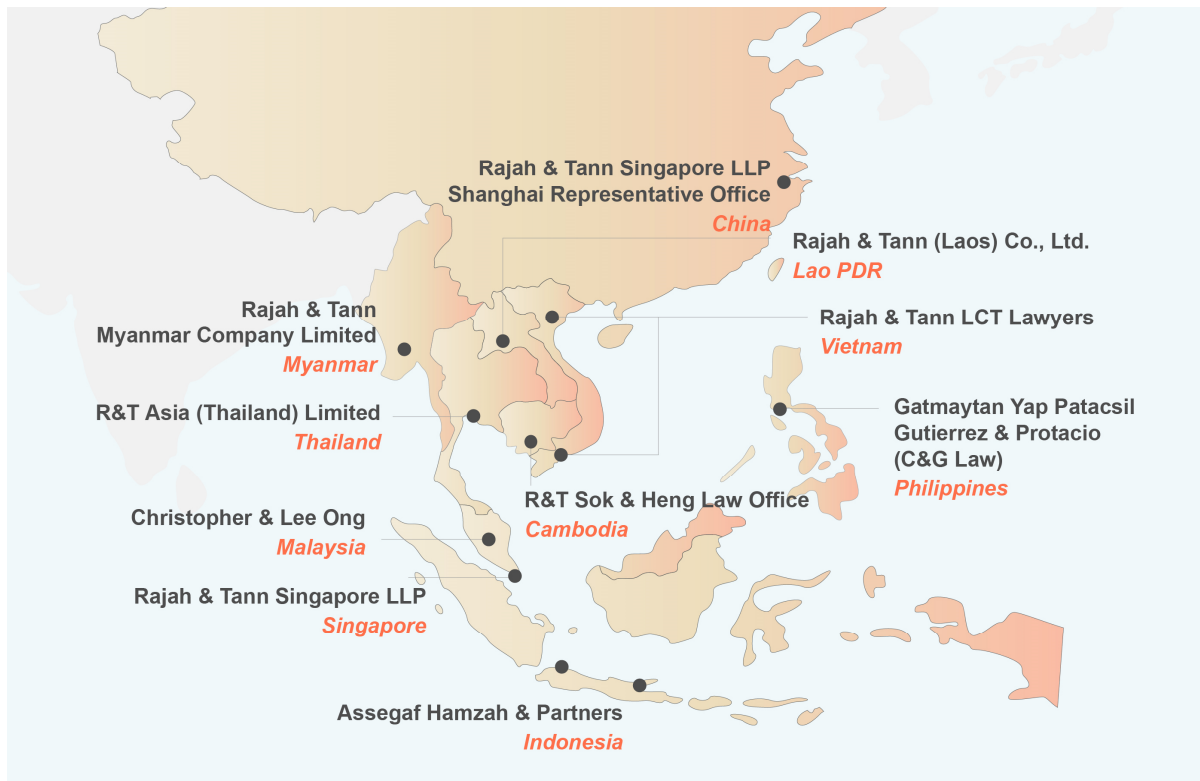
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