

Dispute Resolution

Singapore Court Sets Out When Contracts May Be Rectified for Unilateral Mistake

Introduction

The provisions of a written contract may not always reflect the actual contractual intention of the parties. In certain situations, the Court may order the rectification of contractual terms to reflect such intention. In the case of *Doo Wan Tsong Charles v Oxley Jasper Pte Ltd* [2021] SGHC 249, the Singapore High Court considered when it would be appropriate to order the rectification of a contract in the event of unilateral mistake by a contracting party. In particular, the Court considered the kind of mistake for which rectification is available and the scope of rectification that is allowed.

The Plaintiffs had entered into an agreement for the *en bloc* sale of property to the First Defendant ("**Oxley**") and made payment of the initial deposit totalling S\$4.75 million. Some months in, Oxley rescinded the agreement because a condition precedent regarding planning permission for a minimum number of units the development could be redeveloped into had not been met. The Plaintiffs, however, refused to return Oxley's initial deposit. By the time the matter came to Court, the Plaintiffs' position was that there was a mistake on their part, and as such the condition precedent in the agreement should be rectified such that, practically, they would be allowed to retain the deposit even as the sale was not seen through. Oxley counterclaimed for a return of the initial deposit

The High Court dismissed the Plaintiffs' claim on two fundamental levels: first, the Plaintiffs had failed to prove that they had made the alleged mistake as they had not supplied the requisite evidence, and had erroneously sought to attack the evidence of their own witness in closing submissions (without affording the witness an opportunity to respond); and second, rectification was in any event not available for the sort of mistake pleaded. The Court ordered the Plaintiffs to return the S\$4.75 million deposit, along with interest.

Oxley was successfully represented by Kelvin Poon, Devathas Satianathan, Cai Xiaohan, and Jodi Siah of Rajah & Tann Singapore LLP.

Brief Facts

The Plaintiffs were subsidiary proprietors of a Property which had been sold *en bloc* to Oxley. The Sale and Purchase Agreement ("**SPA**") contained a condition precedent that outline planning permission ("**OPP**") would be obtained from the Urban Redevelopment Authority ("**URA**") to develop "no less than 120 dwelling units" at the Property ("**120 units CP**").

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Oxley made two applications to the URA. Its first application for 112 units was granted, and its second and subsequent application, for 120 units, was rejected. Shortly after the application for 120 units was rejected, Oxley purported to rescind and cancel the SPA as the 120 units CP was not fulfilled, and demanded a refund of the initial deposit of S\$4.75 million. The Collective Sale Committee ("CSC") initially vacillated but eventually took the position it would be retaining (and forfeiting) the initial deposit.

The Plaintiffs (representing a majority of the subsidiary proprietors) then commenced proceedings before the High Court essentially defending their position to retain the deposit even though the sale did not go through. They claimed the CSC made a mistake in agreeing to the 120 units CP as they thought that the maximum permissible number of dwelling units under the prevailing guidelines was 120, when it was actually 112. Arising from this mistake, the Plaintiffs' claim went, the SPA should be rectified such that the 120 units CP would be satisfied if the URA approval was for only 112 units. Oxley counterclaimed for a return of the deposit and refuted the Plaintiffs' claim for rectification on the facts and the law.

The High Court, in considering the law on rectification for unilateral mistake, had to deal with the following key issues:

- (a) **Type of mistake** – The kind of mistake for which rectification is available; and
- (b) **Scope of rectification** – What the contract may be rectified to reflect.

Holding of the High Court

The Court declined to rectify the SPA, upholding the 120 units CP and ordering the return of the deposit to Oxley with interest. We highlight the Court's two key holdings on rectification, namely the type of mistake rectification is concerned with, and the scope of the doctrine.

Type of mistake

The Court considered UK and Singapore case law on rectification for unilateral mistake, in which rectification may be granted where a party to the transaction knows that the contract contains a mistake in his favour and seeks to take unconscionable advantage of the mistake.

The Court highlighted that, to invoke rectification in such an instance, the mistake should entail an erroneous belief as to the recording of a particular term or provision (typically typographical errors); mistakes as to the *nature or quality* of what the parties had agreed to cannot justify rectification.

On the facts, the CSC's alleged mistake would not justify rectification, as there was no mistake as to what the terms of the SPA were. The CSC knew that the SPA contained the 120 units CP, and agreed

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to its inclusion. The alleged mistake was as to the *nature or quality* of the 120 units CP – the CSC claimed to have thought that 120 was the maximum number of units under the applicable guidelines, when it was actually 112.

Scope of rectification

The Court went on to consider the scope of rectification permissible, or what the contract should be rectified to reflect. The Court found that the UK and Singapore authorities were aligned in this regard:

- (a) A contract may be rectified to reflect the *true agreement/intention* of the parties.
- (b) A contract may also be rectified to reflect what the mistaken party *believed* the agreement/intention to be.
- (c) However, a contract may not be rectified to reflect what the mistaken party *would like to have agreed to*, if such position were not the true agreement/intention of both parties, or what the mistaken party believed that to be.

On the facts, while the CSC might have liked to agree to 112 units as the figure for the 120 units CP, the Court found that this did not reflect the *true agreement/intention* of the parties, nor did it reflect what the CSC *believed* the agreement/intention to be. The common intention between the parties was in relation to 120 units, not 112 units, nor whatever the maximum allowable number of units under the applicable guidelines was. In fact, Oxley had made it plain that it would not agree to a number less than 120.

The Court thus denied the scope of rectification sought by the Plaintiffs.

Concluding Words

The Court's judgment provides helpful clarification on the law of rectification in the context of unilateral mistake. It highlights the limits of rectification, in that not all types of mistake can invoke rectification – the mistake should go to the existence of the provision rather than the nature or quality of what has been agreed to. Further, parties cannot seek to rectify a provision to what they would have liked to agree to – the rectification should reflect the true agreement/intention of the parties, or what the mistaken party believed it to be.

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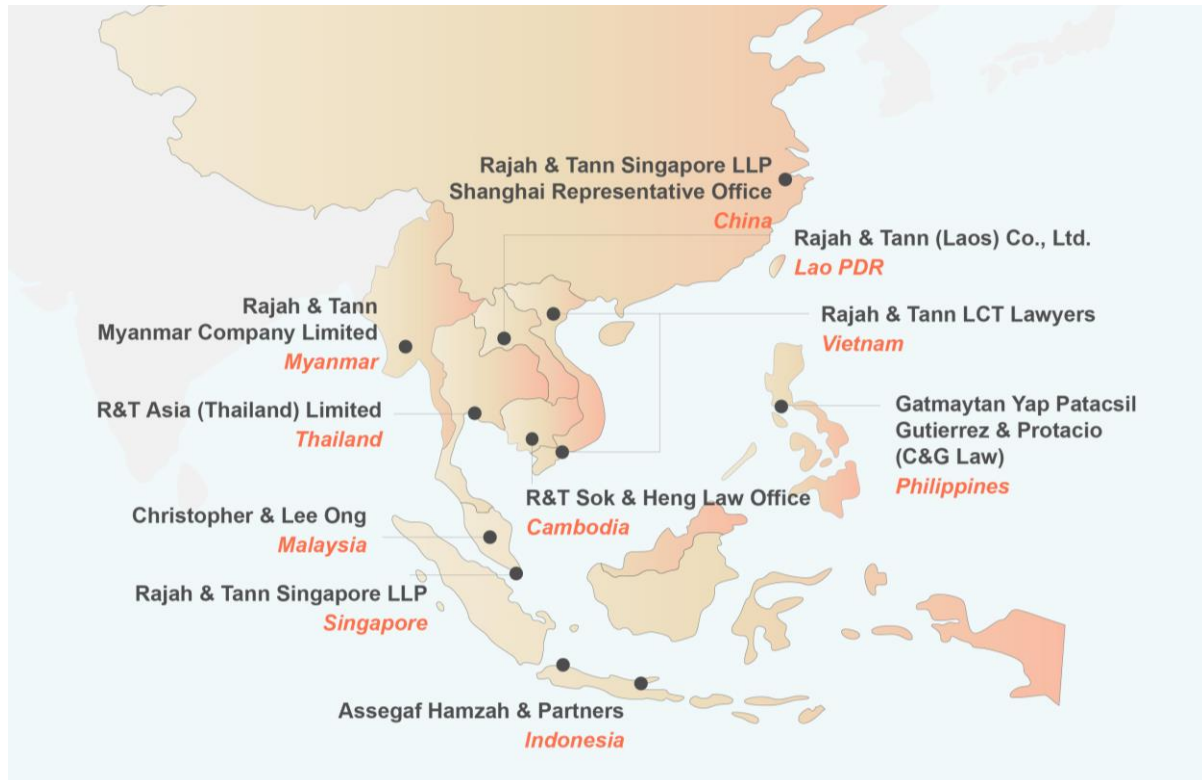
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