

## Singapore High Court Issues Landmark Ruling on Garnishing Joint Bank Accounts

In a landmark decision, the High Court has recently held that a joint bank account may be garnished under Order 49 of the Rules of Court: *Timing Limited v Tay Toh Hin & Anor* [2020] SGHC 169 (“*Timing v Tay Toh Hin*”).

### Our Comments

*Timing v Tay Toh Hin* is significant because this is the first reported decision by the Singapore High Court which held that, as a question of law, where there is strong *prima facie* basis for concluding that all the moneys in a joint account belong to the judgment debtor, the joint account can be garnished, subject to certain requirements. In doing so, the High Court declined to follow its earlier decision in *One Investment and Consultancy Ltd and another v Cham Poh Meng (DBS Bank Ltd, garnishee)* [2016] 5 SLR 923 (“*One Investment*”) – previously the sole Singapore authority on the issue of whether joint accounts can be garnished – insofar as *One Investment* stood for the general proposition that all joint accounts cannot be garnished.

Our Koh Swee Yen, Lin Chunlong, Goh Mu Quan and Dana Chang acted for the successful appellant in the appeal to the High Court.

This update examines the High Court’s decision in *Timing v Tay Toh Hin*.

### Background

The plaintiff had successfully obtained an arbitral award to the tune of US\$34 million (with interest accruing thereon) and obtained leave to enforce the arbitral award in Singapore. The plaintiff subsequently obtained judgment in terms of the award and commenced enforcement proceedings to recover the judgment debt.

On 19 March 2020, the plaintiff took out a summons for a garnishee order for Standard Chartered Bank (“**Standard Chartered**”) to show cause why the first defendant’s joint accounts with Standard Chartered should not be garnished.

The plaintiff’s summons was dismissed at the first instance by the assistant registrar (“**AR**”), whose reasons can be briefly summarised as follows:

- (a) The AR took the view that he was bound by *One Investment* and he read *One Investment* as laying down a general proposition that a joint bank account cannot be garnished to satisfy a judgment debt owed by one of the joint account holders.
- (b) The ability to establish the respective contributions of the joint account holders was an irrelevant consideration under Singapore law, and in any event, the plaintiff’s evidence fell short of establishing on a balance of probabilities that all the moneys in the four joint accounts belonged to first defendant.

The plaintiff appealed against the AR’s decision.

## The High Court's Decision

After a comprehensive survey of authorities from other jurisdictions across the Commonwealth, Canada and United States, the High Court Judge allowed the plaintiff's appeal and concluded that joint bank accounts may be garnished where there is a strong *prima facie* case that the moneys in the accounts belong wholly to the judgment debtor.

The High Court Judge found that the Commonwealth authorities which were referred to in *One Investment* did not have the effect of categorically precluding garnishee orders from being made against joint bank accounts. The High Court Judge found that those authorities were distinguishable because in none of those cases was there any evidence placed before the Court as to the respective account holders' contributions to the joint account and none of the Commonwealth authorities involved any situations where there was a *prima facie* case that all of the moneys in the joint account in fact only belonged to the judgment debtor, and accordingly, "*the question of what would happen if the account holders' respective contributions were known remains open*". The High Court Judge also noted that, where broad language was used in the Commonwealth authorities to suggest that joint accounts could not be garnished, such statements were merely *obiter* and were not central to the findings in those cases.

The High Court Judge held that if the Commonwealth authorities *did* prohibit joint bank accounts from being garnished notwithstanding strong *prima facie* evidence that the money therein wholly belonged to the judgment debtor, he was not convinced that those authorities should not be followed as it would effectively allow debtors to "*insulate their assets by holding them in joint accounts*" and "*fortuitously or otherwise, frustrate the rulings of a Court*".

The High Court Judge took the view that the practical difficulties arising from garnishing a joint bank account as outlined in *One Investment* could be ameliorated by requiring an applicant to:

- (a) Establish a strong *prima facie* case that the whole of the moneys in the joint account belongs to the judgment debtor;
- (b) Give notice to the non-judgment-debtor joint account holder(s); and
- (c) Provide an undertaking to pay for any costs and reasonably foreseeable losses of the garnishee, or non-judgment-debtor joint account holder(s), should it be shown to the satisfaction of the court that the moneys subject to the show cause order are not in fact payable in whole or in part to the judgment debtor.

The cumulative effect of these three requirements is that any potential loss to either the garnishee bank or the joint account holder(s) would be minimised and this would address the practical difficulties raised by the High Court in *One Investment*.

The High Court Judge declined to follow the decision in *One Investment* insofar as it stood for a general proposition that all joint accounts cannot be garnished, for the following reasons:

- (a) The justifications for the decision in *One Investment* that joint accounts are not susceptible to garnishment have already been comprehensively dealt with (as elaborated above).
- (b) The High Court Judge did not find the reasons for precluding garnishment of joint accounts elucidated in a White Paper Issued by the English Lord Chancellor's Department titled "*Effective Enforcement: Improved methods of recovery for civil court debt and commercial rent and a single regulatory regime for warrant enforcement agents*" (which was considered by the High Court in *One*

*Investment*) convincing, as the practical difficulties raised therein would be largely addressed if the applicant for the garnishee order provides the relevant undertaking. This is all the more so in a case where the evidence suggests that the entire sum in the joint account belongs only to the judgment debtor.

- (c) The High Court Judge did not accept the contention that permitting garnishment of joint accounts would lead to uncertainty if a judgment debtor holds multiple joint accounts.

The High Court Judge also held that it was the applicant who bore the burden of proving that the moneys in the joint accounts belong to the judgment debtor. At the show cause stage, the applicant needs to establish a strong *prima facie* case and a fuller determination of whether or not the balance of probabilities is made out can be better done at the confirmatory stage for the garnishee order, especially with the benefit of the garnishee's arguments (if any).

On the facts, the High Court Judge accepted that a strong *prima facie* case had been made out because the first defendant himself testified during an examination of judgment debtor hearing that the "*moneys that were paid to [him] personally were put into joint account*" and therefore "*do not belong to [his] wife*". This was reinforced by his other testimony that he transferred money out of the Standard Chartered joint bank accounts to a separate account with another bank for his wife's use for family expenses, which suggested that the moneys in the four Standard Chartered joint accounts were "*for all intents and purposes, the first defendant's only*".

The decision in *Timing v Tay Toh Hin* is likely to have far-reaching implications as judgment creditors would now be able to rely on *Timing v Tay Toh Hin* to institute garnishee proceedings against a judgment debtor's joint bank account where there is *prima facie* evidence that the moneys therein belong wholly to the judgment debtor. Additionally, the decision in *Timing v Tay Toh Hin* has also left the door opened for judgment creditors to argue that garnishee orders should also be made in cases where the precise shares held by each joint account holder to the joint accounts in question can be ascertained.

If you would like information or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or the following:



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