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Singapore: Trends & Developments

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Trends and Developments

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Trends and Developments in Singapore Law Relating to Enforcement of Judgments

The enforcement space in Singapore saw several key developments in the past few years, including changes brought about by the introduction of the Rules of Court 2021 ("ROC 2021") coming into effect on 1 April 2022. This note highlights some of these developments.

ROC 2021

Change in terminology

ROC 2021 brought about key changes to nomenclature. Inaccessible terms such as "garnishee order" and "writ of seizure and sale" have now been replaced by language that is more self-explanatory to the layperson:

- A party seeking to enforce a judgment is now known as the "enforcement applicant".
- A party against whom an enforcement order is sought or made is now known as the "enforcement respondent".
- A garnishee order is now known as an enforcement order for attachment of a debt.
- A writ of execution is now known as an enforcement order.
- A writ of possession is now known as an enforcement order for possession of property.
- A writ of seizure and sale is now known as an enforcement order for seizure and sale of property.

To standardise the terminology used, the term "execution" has also been replaced by the term "enforcement", not just in the ROC 2021, but in legislation generally where the terms are used for the same meaning, pursuant to the Courts (Civil and Criminal Justice) Reform Act 2021.

Streamlining of the enforcement process

ROC 2021 also streamlined the procedure for obtaining enforcement of a judgment debt. Under the previous Rules of Court 2014 ("ROC 2014"), a judgment creditor (now "enforcement applicant") was required to take out separate applications in order to commence various modes of enforcement (eg, garnishee, writ of seizure and sale, writ of possession). Now, an enforcement applicant can file a single application under Order 22 Rule 2 of ROC 2021 to seek several different enforcement orders at once, potentially saving significant time and costs.

Order 22 Rules 6(1)-(2) of ROC 2021 further provide that the Sheriff "must carry out the terms of the enforcement order in the sequence indicated (if any) in the enforcement order", and it is only where no sequence of enforcement is indicated in the enforcement order that the Sheriff may "carry out its terms in any order and sequentially or concurrently, in the Sheriff's discretion". This returns control to the enforcement applicant, who may request for a sequence it desires at the application stage, and allows the enforcement applicant to make important strategic calls over how the fruits of its successful litigation are to be realised. For example, where there are significant cash assets in bank accounts, the enforcement applicant may wish to have the Sheriff proceed first with an order for attachment of a debt, before other enforcement orders for the seizure and sale of property which may call for more

costly steps such as obtaining a valuation of the property in question.

Examination of enforcement respondent now deemed "enforcement of a Court order"

An enforcement applicant can apply for an order for the Examination of Enforcement Respondent ("EER") under Order 22 Rule 11 of ROC 2021 (formerly known as Examination of Judgment Debtor, "EJD"), in order to examine the enforcement respondent and find out what assets are available for enforcement. Armed with information on the enforcement respondent's assets, an enforcement applicant can then take steps to apply for the appropriate enforcement order(s) to seek recovery against those assets.

In PT Bakrie Investindo v Global Distressed Alpha Fund 1 Ltd Partnership [2013] 4 SLR 1116, the Court of Appeal held that EJD proceedings were not a form of "execution", reasoning that that an EJD order is simply intended to aid the judgment creditor in garnering additional information which might or might not result in the implementation of actual execution of the judgment concerned, and was not in and of itself a mode of execution. The result was that EJD proceedings could still continue in earnest notwithstanding the making of an order staying execution under Order 67 Rule 10(2) of ROC 2014.

The position has now been legislatively reversed, with the new Order 22 Rule 11(4) now providing that "[a]n application under this Rule is deemed to be enforcement of a Court order and is within the terms of any written law or any order staying enforcement of that Court order". With this change, enforcement applicants can no longer proceed with information gathering vis-à-vis the enforcement respondent's assets while there remains in place a stay order.

Enforcement Against Monies in Joint Accounts

When a judgment debtor fails to pay a judgment debt, the judgment creditor may apply for an enforcement order to attach a debt against a third party (formerly known as a garnishee order) under Order 22 Rule 2(2)(c) of ROC 2021. Such a court order directs the third party (also known as a garnishee) to pay to the judgment creditor the money that the third party owes to the judgment debtor.

For instance, the judgment creditor may apply for an enforcement order against the judgment debtor's bank to release the money held by the bank in the judgment debtor's bank account to the judgment creditor directly, instead of releasing it to the judgment debtor. In the typical case where a judgment debtor holds an individual bank account, the judgment creditor can apply for an enforcement order over the monies in the bank account, up to the amount owed by the judgment debtor under the judgment debt.

However, complications arise where the relevant bank account is held in the joint names of the judgment debtor and another. Where that happens, can the judgment creditor enforce the judgment debt against monies in the joint bank account?

One Investment and Consultancy Ltd and another v Cham Poh Meng (DBS Bank Ltd, garnishee) [2016] 5 SLR 923

This question was first addressed in One Investment and Consultancy Ltd and another v Cham Poh Meng (DBS Bank Ltd, garnishee) [2016] 5 SLR 923 ("One Investment"). While the High Court acknowledged that if joint accounts were not subject to garnishee orders, a debtor could easily ring-fence his or her assets from creditors by transferring funds into a joint account with

a third party, it concluded based on the policy considerations that joint accounts should not be subject to garnishee orders:

- First, allowing joint accounts to be subject to garnishee orders would cause much prejudice to the bank. A bank is not fully equipped to conduct the necessary assessment as to the respective contributions of the joint account holders, which would be better resolved by a full factual investigation at trial.
- Second, the Court was concerned by the potential prejudice that would be caused to the other joint account holders. The garnishee order need not be served on other parties, and a joint account holder would not be notified. This meant that the garnishee order could be made final and the monies be released to the judgment creditor without the knowledge of the other joint account holders. Such release of monies could be potentially irreversible, and in any case would require substantial time and costs in recovery.
- Further, even if the other joint account holders were notified, he or she would also have to incur additional time and costs by participating in the formal garnishee process before the courts.

Timing Limited v Tay Toh Hin & Anor [2020] 5 SLR 974

The above One Investment remained the position in Singapore until Timing Limited v Tay Toh Hin & Anor [2020] 5 SLR 974 ("Timing Limited"). The High Court in Timing Limited declined to follow One Investment, holding that joint bank accounts can be garnished where there is strong prima facie basis for concluding that all the monies in a joint account belong to the judgment debtor.

The facts in Timing Limited were simple – the plaintiff obtained judgment that was entered in terms of an arbitral award granted in his favour. The judgment required the defendants to pay the plaintiff judgment sums. As the defendants failed to make full payment of the judgment sums, the plaintiff applied for a garnishee order against the bank over the monies in one of the defendant's joint bank accounts.

The High Court found that where there is strong prima facie evidence that all the monies in the joint account belong to the judgment debtor, the joint account can be garnished. The Commonwealth authorities which were referred to in One Investment were readily distinguishable as none of the Commonwealth authorities dealt with the situation where there was a prima facie case that all of the monies in the joint bank account in fact only belonged to the judgment debtor, and neither was any evidence placed before the Courts as to the respective joint account holders' contributions to the joint accounts. The High Court found that if judgment creditors were not permitted to garnish joint bank accounts, this would permit debtors to insulate their assets by holding them in joint accounts. Further, the recoverability of a judgment debt would also depend on the manner in which the judgment debtor organised his or her personal finances.

Acknowledging the difficulties that could be caused to the banks and to the other joint account holders, the High Court in Timing Limited sought to resolve the practical difficulties by imposing the following requirements on judgment creditors who seek to garnish a joint bank account.

- First, the applicant must establish a strong prima facie case that the whole of the monies

in the joint account belongs to the judgment debtor.
- Secondly, the applicant must serve notice on any joint account holders.
- Thirdly, the applicant must provide an undertaking (promise to the Court) to pay for any costs and reasonably foreseeable losses of the garnishee, or non-judgment-debtor joint account holder(s), if the monies subject to the garnishee order are not in fact payable to the judgment debtor.

Ultimately, judgment creditors are still presented with a heavy burden of proof to show that all the monies in the joint account belong to the judgment debtor. However, the decision in Timing Limited provides some respite to judgment creditors, who are now able to commence attachment proceedings against a judgment debtor's joint bank account. The additional requirements imposed by the Court in Timing Limited strike a balance between protecting the interests of garnishee banks and non-judgment-debtor joint account holders, while preventing judgment debtors from insulating their assets through joint bank accounts.

Enforcement Against a Joint Tenant's Interest in Immovable Property

A judgment creditor may also apply for an enforcement order against a joint tenant's interest in immovable property.

In Peter Low LLC v Higgins, Danial Patrick [2018] 4 SLR 1003 ("Peter Low"), the Court found that a joint tenant's interest in immovable property could be subject to enforcement. This was because there are two aspects to a joint tenancy. While one aspect is that all joint tenants together own the whole property but a joint tenant owns nothing by himself or herself, there is another equally valid aspect that joint tenants have a notional share in the property, and the joint tenancy may be severed without the prior consent of other joint tenants. Hence, enforcement against a joint tenant's interest in an immovable property is not inconsistent with the nature of a joint tenancy.

At first glance, one might think that there are inconsistencies between a judgment creditor's ability to enforce against monies in a joint bank account and against a joint tenancy in an immovable property. This was addressed in Peter Low. First, the weight of Commonwealth authorities is in favour of allowing execution against the interest of a joint tenant in an immovable property. Second, monies in joint bank accounts are more liquid than immovable property, and the concerns surrounding the potential prejudice to other joint bank account holders do not arise in the context of jointly owned immovable properties. Third, the prejudice that may be caused to banks where enforcement is sought against a joint bank account does not arise in the case of immovable properties held jointly.

Clarification of the Law on the Riddick Principle in the Context of Enforcement Proceedings

Parties in contentious litigation are obliged to disclose relevant documents in a process called "document production" (previously "discovery"). Pursuant to the Riddick principle, a party who disclosed a document in discovery in an action under compulsion was entitled to the protection of the court against any use of the document otherwise than in that action.

During EER (which were previously known as "Examination of Judgment Debtor") proceedings, the court may order an enforcement respondent to produce documents concerning its assets. In the recent case of Ong Jane

Rebecca v Lim Lie Hoa [2021] 2 SLR 584 ("Ong Jane Rebecca"), the Court of Appeal confirmed that the Riddick principle similarly extends to cover documents obtained in EER.

The appellant in Ong Jane Rebecca had been successful in an earlier action against the late Mdm Lim Lie Hoa and was awarded costs. After Mdm Lim passed away, the appellant sought to enforce the cost award against Mdm Lim's estate. Mr Ong Siauw Ping ("OSP") was the sole executor of the estate.

The appellant commenced EJD proceedings where OSP was the respondent in his capacity as the sole executor of the Estate. Using the information obtained from the EJD, the respondent commenced a suit against OSP for breach of his duties as the sole executor of the Estate. The Appellant was unsuccessful in the court below, and appealed to the Court of Appeal.

The Court of Appeal laid down the following framework to determine when a situation may engage the Riddick principle, and to what extent:

- First category: Documents which are not protected by the Riddick principle as they were not disclosed under compulsion. Such documents may be used without leave of court. In general, documents disclosed in EJD proceedings would not have been disclosed voluntarily, and therefore do not fall under the first category.
- Second category: Documents which are protected by the Riddick principle due to the element of compulsion, but may be used without leave of court due to the nature of the related enforcement proceedings. In determining whether the document falls under the second category, the court looks at:
  - (a) Whether the defendant in the related proceeding was also the defendant in the original proceeding or if it was an entity legally empowered or obliged to make payment on behalf of the said defendant.
  - (b) Whether the sum being pursued in the related proceedings was the same debt that formed the subject matter of the original proceedings in which documents were disclosed.
  - (c) Whether the related proceedings could be considered "enforcement" proceedings, with reference to the case of PT Bakrie discussed above.
- Third category: Documents which do not fall within any of the above categories and leave of court is required for the Riddick principle to be lifted.

Although the decision of Ong Jane Rebecca was decided under ROC 2014, the principles cited therein likely remain relevant under ROC 2021.

Anti-enforcement Injunctions

The case of Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd [2019] 1 SLR 732 was the first reported decision involving an anti-enforcement injunction in Singapore. Injunctions are court orders with the effect of restraining a party from taking an action, and an anti-enforcement injunction is an injunction which restrains a party from enforcing a foreign judgment which the party has obtained.

The case involved a management agreement between Sun Travels & Tours Pvt Ltd ("Sun Travels") and Hilton International Manage (Maldives) Pvt Ltd ("Hilton"). Sun Travels took the position that it entered into the agreement with Hilton due to fraudulent misrepresentations made by Hilton and terminated the agreement, whereas Hilton took the position that Sun Travels had wrongfully

repudiated the agreement. Hilton commenced arbitration proceedings against Sun Travels in May 2013 and obtained awards in its favour ("Awards"). Hilton sought to enforce the Awards in the Maldivian Civil Court, but its application was dismissed.

Subsequently, Sun Travels filed a claim against Hilton in the Maldivian Civil Court claiming damages for misrepresentation. Judgment was delivered in the favour of Sun Travels ("Judgment"), which Hilton is currently appealing. While this claim was afoot, Hilton made further attempts to enforce the Awards in the Maldivian Civil Court which were unsuccessful. Hilton then filed an application in the Singapore High Court to seek a permanent anti-suit injunction to restrain Sun Travels from taking any steps in reliance on the Judgment or any decision upholding the Judgment.

The High Court decided in Hilton's favour and granted Hilton a permanent injunction on the ground that the Judgment was obtained in breach of the parties' arbitration agreement. Sun Travels appealed to the Court of Appeal against the High Court's decision.

The Court of Appeal allowed the appeal and dismissed the injunction. In doing so, the Court of Appeal addressed how the court should exercise its discretion in respect of an application for an anti-enforcement injunction. The Court of Appeal held that anti-enforcement relief calls for special consideration and any application to enjoin a party from relying on or enforcing that foreign judgment should generally be refused.

This is because an anti-enforcement injunction would amount to an indirect interference with the execution of the judgment in the country of the court which pronounced the judgment and where one can expect the judgment to be obeyed. It would have the effect of nullifying the foreign judgment when, ordinarily, only the foreign court can set aside or vary its own judgments. Hence, anti-enforcement injunctions should generally be refused unless there are exceptional circumstances that warrant it.

The Court of Appeal observed that such circumstances must be demonstrated over and above the usual requirements for granting an anti-suit injunction, and it would be insufficient to merely show a breach of a legal right or vexatious or oppressive conduct. Examples of this include where a judgment has been procured by fraud, or where a party did not have knowledge of the foreign judgment.

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