
Restructuring & Insolvency

Bankruptcy and Family Proceedings: The Court's Ratification of Division of Assets Amidst Bankruptcy

Introduction

Under Singapore bankruptcy law, when a person is adjudged bankrupt, any disposition of property made by him from the date of the bankruptcy application is void unless the court consents to or ratifies the disposition. However, will the court ratify the disposition of assets made pursuant to an order for division of assets in divorce proceedings, and in what circumstances will it do so? These were the issues considered in the Singapore High Court case of *Ong Dan Tze Magdalene v Chee Yoh Chuang & Anor* [2021] SGHC 129.

The Court here declined to ratify the disposition of certain properties made pursuant to consent orders obtained in divorce proceedings between the bankrupt and his wife, who was the applicant in the ratification proceedings. While the Court acknowledged that it had the power to ratify the disposition of property pursuant to a court order, it declined to do so in the circumstances as the alleged disposition did not fall within the scope of the ratification provisions and further found that the applicant had not acted in good faith.

The Court's decision highlights the interaction between the bankruptcy regime and the family law regime and how the bankruptcy regime may accommodate certain orders in family proceedings.

This Update provides a summary of the case and highlights the key elements of the decision.

Brief Facts

On 8 August 2019, the Applicant commenced divorce proceedings against the Bankrupt, her husband. She claimed to be unaware of any bankruptcy proceedings against the Bankrupt.

On 25 September 2019, a creditor commenced a bankruptcy application against the Bankrupt. On 7 November 2019, the Applicant obtained the grant of an interim judgment for the dissolution of the marriage ("**Interim Judgment**"), which included the following consent orders:

- (a) A River Valley property was to be sold, with the balance proceeds paid to the Applicant; and

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- (b) The Bankrupt's title and interest in a West Coast property was to be transferred to the Applicant with no cash consideration.

It emerged that the River Valley property had actually already been sold during the period between the commencement of the bankruptcy application and the Interim Judgment. The balance sale proceeds had been paid to the Applicant.

On 23 January 2020, a bankruptcy order was made against the Bankrupt. On 10 February 2020, the Interim Judgment was made final. On 20 May 2020, the Applicant applied to court to seek ratification of the Interim Judgment.

Holding of the High Court

The Court declined to ratify the disposition of property pursuant to the Interim Judgment.

Ratification in bankruptcy

Under the previous sections 77(1) and 77(3) of the Bankruptcy Act ("**BA**"), where a person is adjudged bankrupt, any disposition of property made by him during the period from the making of the bankruptcy application to the making of the bankruptcy order shall be void unless the disposition is made with the consent of, or subsequently ratified by, the Court. This does not, however, give any remedy against a person in respect of property or payment which he received from the bankrupt before the commencement of the bankruptcy in good faith, for value and without notice of the bankruptcy application.

These provisions have since been repealed, but are essentially retained in sections 328(1) and 328(3) of the Insolvency, Restructuring and Dissolution Act 2018.

The Court acknowledged that section 77(1) of the BA applies to a disposition of property pursuant to a court order, including a consent order. The Court clarified that the onus was on the Applicant to persuade the Court that the dispositions of the River Valley property (or sale proceeds) and the West Coast property pursuant to the consent orders should be ratified.

River Valley property

On the evidence, the Court found that the Applicant had not established that the Interim Judgment gave rise to a "disposition" of the sale proceeds of the River Valley property within the meaning of section 77(1) of the BA. The Interim Judgment contemplated that the River Valley property was still a matrimonial asset, and did not contemplate that it had already been sold, or that the sale proceeds constituted a matrimonial asset available for distribution. The ratification request was thus a non-starter.

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In any event, the Court would not have ratified any disposition as the Applicant had not acted in good faith when she obtained the Interim Judgment. The Court found that she had concealed the truth about the sale of the River Valley property from the Family Court Judge, and that she did at the time have knowledge of the bankruptcy proceedings.

West Coast property

The Court also declined to ratify the disposition of the West Coast property from the Bankrupt to the Applicant pursuant to the consent orders recorded in the Interim Judgment. The Court chose to follow a previous decision of the Court of Appeal on similar facts (*Cheo Sharon Andriesz v Official Assignee of the estate of Andriesz Paul Matthew, a bankrupt* [2013] 2 SLR 297), rejecting the Applicant's attempts to distinguish the present case.

The Court highlighted that the foremost consideration in an application for ratification under section 77 of the BA (now section 328 of the Insolvency, Restructuring and Dissolution Act 2018) is whether the ratification promotes the interests of the general pool of creditors. In contrast, the Applicant had failed to put forward any evidence to show that the disposition of the West Coast property or the River Valley property sale proceeds would benefit the general pool of creditors. If anything, the evidence strongly suggested that the Interim Judgment was really an attempt to put the Bankrupt's assets out of the reach of his creditors.

The Court further noted that, while a transaction may be ratified even though the applicant for ratification had notice of the bankruptcy proceedings, it would depend the facts of the case, and the absence of good faith would almost certainly rule out a successful application for ratification.

Concluding Words

The Court's decision demonstrates the importance of good faith when seeking the ratification of any disposition of property by a bankrupt. After all, a bankrupt may pursue various routes when attempting to hide their property from creditors, including family or divorce proceedings. While the Court is cognisant of the need to allow genuine dispositions of property pursuant to orders for the division of matrimonial assets, it will not allow this mechanism to be used as a backdoor to unlawfully divert assets.

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

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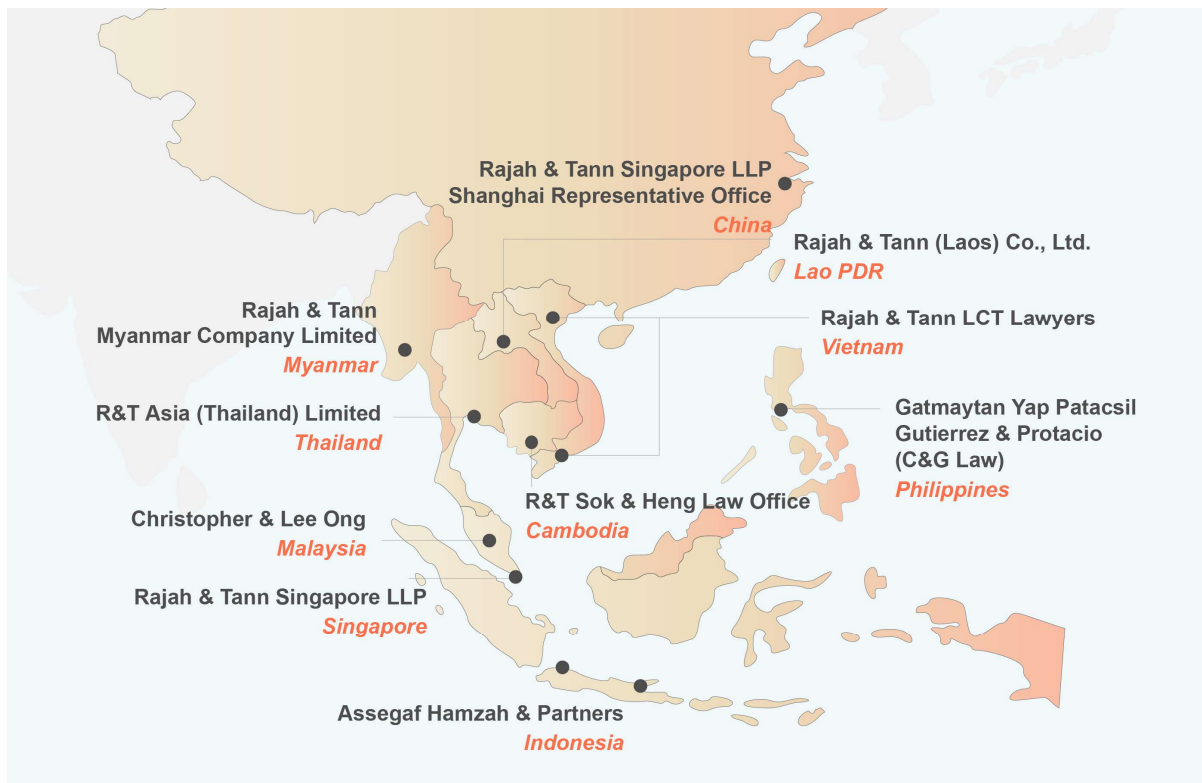
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