

Restructuring & Insolvency

Can a Joint Tenant's Interest be Subject to Seizure and Sale?

Introduction

A Writ of Seizure and Sale (“**WSS**”) assists in the enforcement of a judgment or order by allowing for the judgment debtor’s property to be seized and sold off. In *Peter Low LLC v Higgins, Danial Patrick* [2018] SGHC 59, the Singapore High Court considered whether a WSS is applicable where the property in question is an interest as joint tenant in an immovable property.

The Court had to struggle with conflicting local precedents, as well as conceptual difficulties regarding the nature of joint tenancies and the practical consequences of allowing a WSS over an interest in a joint tenancy. Nonetheless, the Court came to the conclusion that a joint tenant’s interest in land is in fact exigible to a WSS.

In the approach adopted by the Court, the joint tenancy would be severed when the WSS is registered, allowing the sheriff to sell the joint tenant’s interest. In the absence of evidence to the contrary, the presumption would be that both joint tenants would hold an equal share of the property upon severance.

Brief Facts

The Defendant and his wife were joint tenants of a residential unit (the “**Property**”). The Plaintiff had represented the Defendant in two other lawsuits (including one “**Suit 733**”). Subsequently, the Plaintiff successfully obtained judgment against the Defendant for unpaid legal fees.

The plaintiff in Suit 733, upon finding out that the Defendant and his wife were intending to sell the Property, applied for and obtained an order attaching the Defendant’s interest in the Property to satisfy the Suit 733 judgment. The order was registered with the Registry of Titles, and a WSS in respect of the Defendant’s interest in the Property was filed.

The Plaintiff then applied for an order attaching the Defendant’s interest in the Property to satisfy the judgment sum obtained.

Holding of the High Court

The High Court granted the Plaintiff’s application. The sole issue at hand was whether a judgment for the payment of money can be enforced by way of a WSS against the judgment debtor’s interest in immovable property which is held under a joint tenancy, and the Court here held in the affirmative.

Notably, the previous Singapore decisions on this issue had conflicting conclusions. In reaching its decision, the Court here looked at the history of enforcement against immovable property, as well as the positions in other Commonwealth jurisdictions.

Client Update: Singapore

2018 MARCH

Restructuring & Insolvency

Nature of joint tenancy: The nature of joint tenancy, in which both parties own the property as a whole, does not necessarily mean that a joint tenant's interest is incapable of seizure under a WSS. Joint tenancies are severable, and a joint tenant is able to alienate his aliquot share without the consent of other joint tenants, suggesting that such property interest should also be saleable by the sheriff on the debtor-joint tenant's behalf.

Timing of severance: The Court held that severance of a joint tenancy occurs when the debtor-joint tenant's interest is seized, and that this seizure occurs when the WSS is registered.

The Court also expressed approval of the doctrine of temporary severance, in which the joint tenancy would be restored upon the lapse or withdrawal of the WSS. However, the Court declined to find conclusively on this matter.

Sheriff's ability to sell: The Court addressed concerns over the utility of a WSS over a debtor-joint tenant's interest by confirming that the sheriff would be able to sell the aliquot share (although it declined to decide on whether the sheriff may apply for the sale of the whole property).

While it may be difficult to sell an undivided share in immovable property, it could potentially encourage the other joint tenant to settle the judgment debt, buy over the other share, or consent to sale of the property. If the property is mortgaged, the WSS would also give priority in the distribution of any proceeds from a mortgagee's sale.

Relative shares: In the absence of evidence to the contrary, it should be presumed that the joint tenants would hold the land in equal share upon severance. The other joint tenants may intervene to prove that their beneficial interests are not in fact held in equal share.

Therefore, the Court found no reason not to align itself with the other Commonwealth jurisdictions, where the uniform position is to allow a joint tenant's interest in land to be taken in execution of a money judgment.

Concluding Words

A WSS is an important tool in the execution of monetary judgments, as it allows for property held by an uncompliant judgment debtor to be taken for sale. Potentially the most valuable property held by a debtor is immovable property, and the ability to attach an interest in such property even when it is held in joint tenancy is of particular value.

Notably, the Court confined its decision to interests of joint tenants in land, and highlighted that it does not extend to other forms of jointly held assets, such as joint bank accounts. Such jointly held assets may thus still be safe from seizure in satisfaction of judgment debts.

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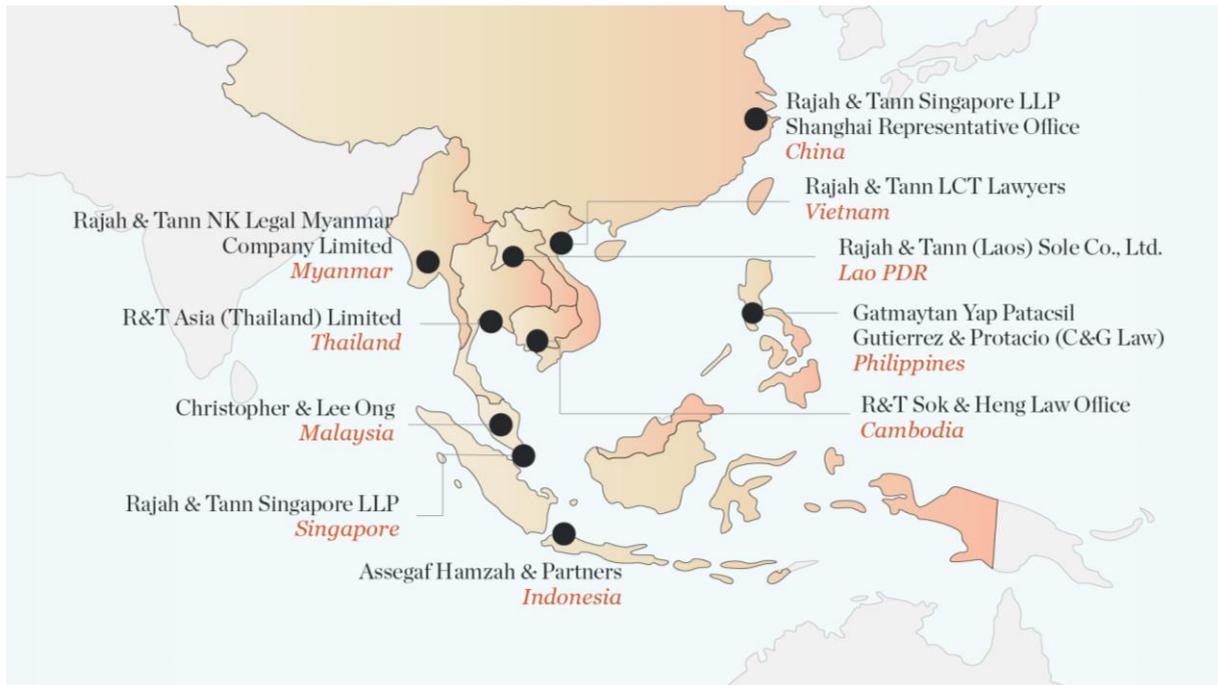
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Client Update: Singapore

2018 MARCH

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