

Dispute Resolution

Singapore Court of Appeal Affirms Dismissal of Conspiracy and Misrepresentation Claims Surrounding Indonesian National Identity Card Project, and Clarifies When a Director May Be Liable for Conspiracy with Company

Introduction

In *PT Sandipala Arthaputra v STMicroelectronics Asia Pacific Pte Ltd* [2018] SGCA 17, the Singapore Court of Appeal issued its judgment on a dispute concerning the supply of 100 million microchips for use in a tender contract with the Indonesian government, for the production of electronic identification cards called electronic-KTP cards (“e-KTP cards”) for all Indonesian citizens.

Background

The dispute centred on a contract between the appellant (“**Sandipala**”) and the 2nd respondent (“**Oxel**”) for the supply of 100 million microchips produced by the 1st respondent (“**ST-AP**”), for use in an electronic identification card project in Indonesia.

It transpired that the microchips supplied could not be used in the project. Sandipala then commenced an action against Oxel and ST-AP claiming that they had breached obligations owed in contract and tort by selling chips to Sandipala that could not be used to produce the e-KTP cards. Sandipala further claimed that ST-AP and Oxel had fraudulently misrepresented that Oxel was the exclusive distributor of the ST-AP chips in Indonesia.

The trial judge dismissed all of Sandipala’s claims, finding that Sandipala knew all along that the chips would be incompatible with the existing e-KTP system, and that no representations had been made to Sandipala, and even if such representations had been made it was highly improbable that Sandipala had relied on it in entering into the contract with Oxel. Sandipala appealed the decision of the High Court.

In a 57-page long judgment, the Court of Appeal affirmed in full the decision of the trial judge to dismiss Sandipala’s claims against the respondents. In particular, the Court of Appeal agreed with the respondents’ arguments that Sandipala’s failure to challenge key factual findings made by the trial judge was fatal to its case on appeal. In any case, the Court of Appeal also found that Sandipala’s case on appeal was not sustainable on the evidence.

Dispute Resolution

This case is notable due to the complexity of the dispute, which spanned events dating back to early 2011 and involved Indonesia's first national e-identity card project which has attracted some controversy in Indonesia. It also involved not only a multitude of companies and personalities based in Singapore, Indonesia, Korea and Germany, but also parallel proceedings in Indonesia. ST-AP was successfully represented by Danny Ong, Yam Wern-Jhien, Jeremy Gan, and Danitza Hon of Rajah & Tann Singapore LLP, who had previously also successfully secured an anti-suit injunction restraining Sandipala from maintaining parallel proceedings in Indonesia.

Oxel's Counterclaim

This decision is also notable for the Court of Appeal's clarification of the law on when a director can be held personally liable for consequences arising from his company's breach of a contract.

On appeal, Sandipala had also challenged the trial judge's decision to allow Oxel's counterclaim against Sandipala and its directors for unlawful means conspiracy to cause damage to Oxel.

The question before the Court of Appeal was when a director should be held personally liable for the consequences arising from his company's breach of a contract, to which only the company, and not he himself, is a party. In particular, the Court of Appeal considered when a director could be found liable for conspiring with his own company to cause loss by unlawful means.

The Court of Appeal reviewed the legal authorities on this issue, and found that the scope of the principle should be more clearly demarcated and defined to provide certainty for directors in the performance of their duties. Thus, the Court of Appeal held that directors will only be made personally liable for their company's breach of contract if the director's conduct in directing or participating in the breach of contract was itself a breach of his own personal duties owed to his company.

On an application of this principle to the facts of the case, the Court of Appeal held that the directors could not be held to have conspired with Sandipala to cause loss to Oxel through unlawful means. In particular, the Court of Appeal pointed out that many of the acts alleged to have been in furtherance of the conspiracy occurred after the relevant breach of contract had occurred, and thus cannot have been said to have caused the breach and Oxel's loss. Of those acts that occurred prior to the breach, the Court of Appeal was satisfied that the directors had not acted in breach of their personal legal duties to Sandipala, and were hence immune from personal liability.

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

Contacts



Danny Ong
Partner

D (65) 6232 0260
F (65) 6428 2114

danny.ong@rajahtann.com



Yam Wern-Jhien
Partner

D (65) 6232 0396
F (65) 6428 2170

wern.jhien.yam@rajahtann.com



Jeremy Gan
Partner

D (65) 6232 0739
F (65) 6428 2150

jeremy.gan@rajahtann.com



Danitza Hon
Associate

D (65) 6232 0795
F (65) 6428 3466

danitza.hon@rajahtann.com

Please feel free to also contact Knowledge and Risk Management at eOASIS@rajahtann.com

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
F +65 6225 9630
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN 立杰上海 SHANGHAI REPRESENTATIVE OFFICE | *China*

Rajah & Tann Singapore LLP Shanghai Representative Office

T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia* Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Sole Co., Ltd.

T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

RAJAH & TANN NK LEGAL | *Myanmar*

Rajah & Tann NK Legal Myanmar Company Limited

T +95 9 7304 0763 / +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 894 0377 to 79 / +632 894 4931 to 32 / +632 552 1977
F +632 552 1978
www.cagatlaw.com

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

Hanoi Office

T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

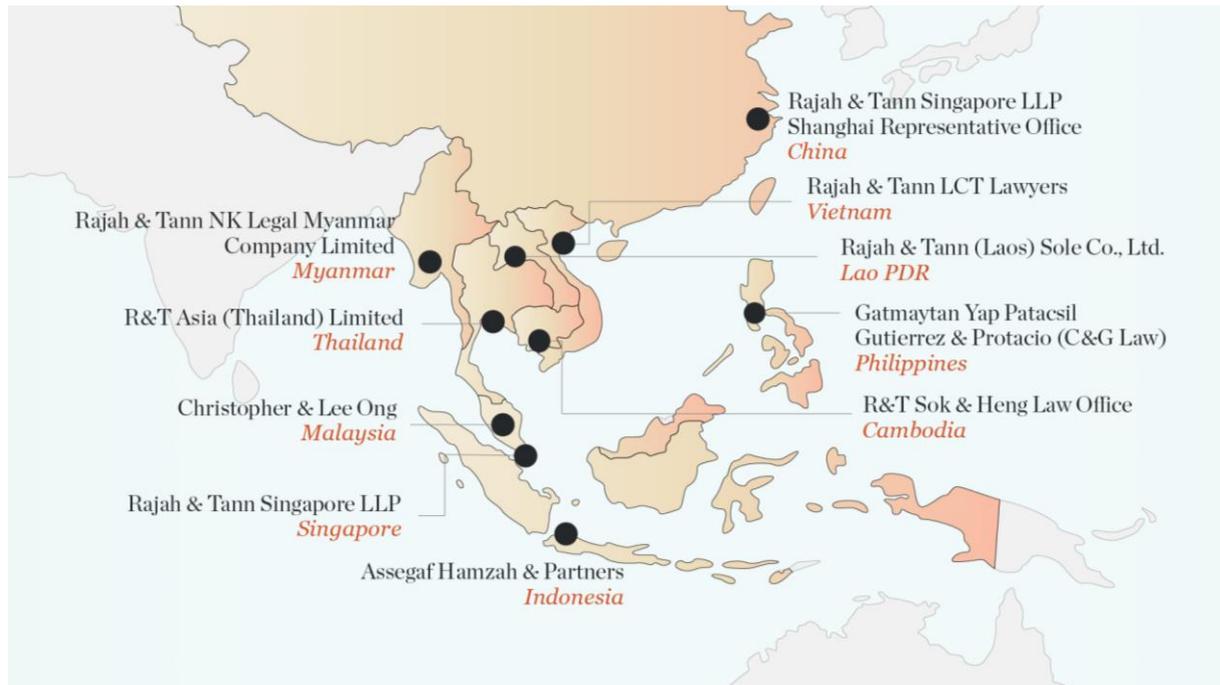
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