

Restructuring & Insolvency

Priority to Proceeds of Sale of Bankrupt's Property – Contests between Judgment Creditor and Estate

Introduction

The questions of who has priority over a bankrupt's assets and precisely when the priority arises are important ones in bankruptcy. For judgment creditors who have already taken steps towards enforcement, the answer affects whether they will have prior rights to the bankrupt's property, ahead of the bankrupt's other creditors.

In *Abuthahir s/o Abdul Gafoor v Bangkok Bank Public Co Ltd* [2022] SGHC 274, a judgment creditor and the bankrupt's estate both laid claim to the surplus proceeds from a mortgagee's sale of the bankrupt's property. The High Court held that the judgment creditor, who had registered an attachment order against the bankrupt's interest in the property and had issued a writ of seizure and sale ("**WSS**") prior to bankruptcy, had priority over the surplus proceeds. This was even though the surplus proceeds did not arise from a sale of the property under the judgment creditor's WSS.

In reaching its decision, the High Court clarified when the execution of an order against property is deemed to be completed. The Court also highlighted certain seemingly inconsistent provisions in the Insolvency, Restructuring and Dissolution Act 2018 ("**IRDA**") on priorities.

The Court's decision provides greater clarity on the priority of rights over a bankrupt's property. This Update provides a summary of the key points of the Court's judgment.

Brief Facts

Having obtained judgment against a debtor, the Judgment Creditor obtained a separate order for the debtor's interest in her Property to be attached and taken in execution to satisfy its judgment. The attachment order was duly registered with the Singapore Land Authority. Following registration, the Judgment Creditor issued a WSS in respect of the debtor's interest in the Property. Ultimately, the Sheriff appointed by the Judgment Creditor did not sell the Property pursuant to the WSS, as that process was led by the debtor's mortgagee via a mortgagee sale.

The debtor was subsequently adjudged a bankrupt, and disputes arose between her Private Trustee and the Judgment Creditor on entitlements to the surplus proceeds of sale.

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High Court's Holding

The Court held that the Judgment Creditor was entitled to the surplus proceeds in priority over the bankrupt's estate. In reaching its decision, the Court considered:

- (a) When the Judgment Creditor's execution against the bankrupt's interest in the Property was deemed completed; and
- (b) Which provision in the IRDA applied in the circumstances (which would in turn determine who was entitled to the surplus proceeds).

Completion of execution

The Court held that, pursuant to section 367(2)(c) of the IRDA, the Defendant completed its execution against the bankrupt's interest in the Property when the attachment order was registered with the Singapore Land Authority. Section 367(2)(c) provides that:

"...an enforcement order against land or any interest in land is completed by registering under any written law relating to the registration of land an enforcement order for seizure and sale of property attaching the interest of the bankrupt in the land described in the enforcement order for seizure and sale of property."

The Court rejected the submission that execution under section 367(2)(c) is completed only upon sale by the Sheriff appointed by the Judgement Creditor.

Entitlement to proceeds

The Court then considered whether section 367(1) or section 368(4) of the IRDA applied in this case. The difficulty was that both sections appeared inconsistent with each other:

- Section 367(1) provides that the judgment creditor is entitled to the benefit of an enforcement or attachment if:
 - The creditor has issued execution against the goods or lands of the bankrupt; and
 - The creditor has completed the execution before the date of the bankruptcy order.
- Section 368(4) provides that the Official Assignee is entitled to the proceeds of sale if:
 - A WSS is filed;
 - The seized property is sold pursuant to the WSS;
 - The Sheriff receives the proceeds of the sale; and

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- The Sheriff is notified of the bankruptcy application, and the bankruptcy order is made, within 14 days from receipt of the proceeds.

The Court observed that there appeared to be an inconsistency between section 367(1) and section 368(4). This was because any case that fell within section 368(4) would also fall within section 367(1) – a judgment creditor would have had to complete execution against the property before filing a WSS. The Court opined that the only way to reconcile the two provisions would be to restrict section 367(1) to cases which do not fall within section 368(4). However, there appeared to be no apparent reason justifying such a distinction. Accordingly, the Court noted that section 367(1) and section 368(4) may need to be reviewed.

In any event, the Court did not have to resolve the apparent inconsistency in the present case. This was because the Property was sold by the mortgagee and not by the Sheriff under the WSS. As the proceeds did not go to the Sheriff, the commencement of the 14-day period under section 368(4) was not triggered. As such, section 367(1) applied in favour of the Judgment Creditor.

Concluding Words

This case demonstrates the complications that may arise regarding priorities over a bankrupt's assets, and underscores the importance of taking swift action – whether on the part of the Estate to notify the Sheriff of a bankruptcy order, or on the part of a judgment creditor to effect swift execution after judgment.

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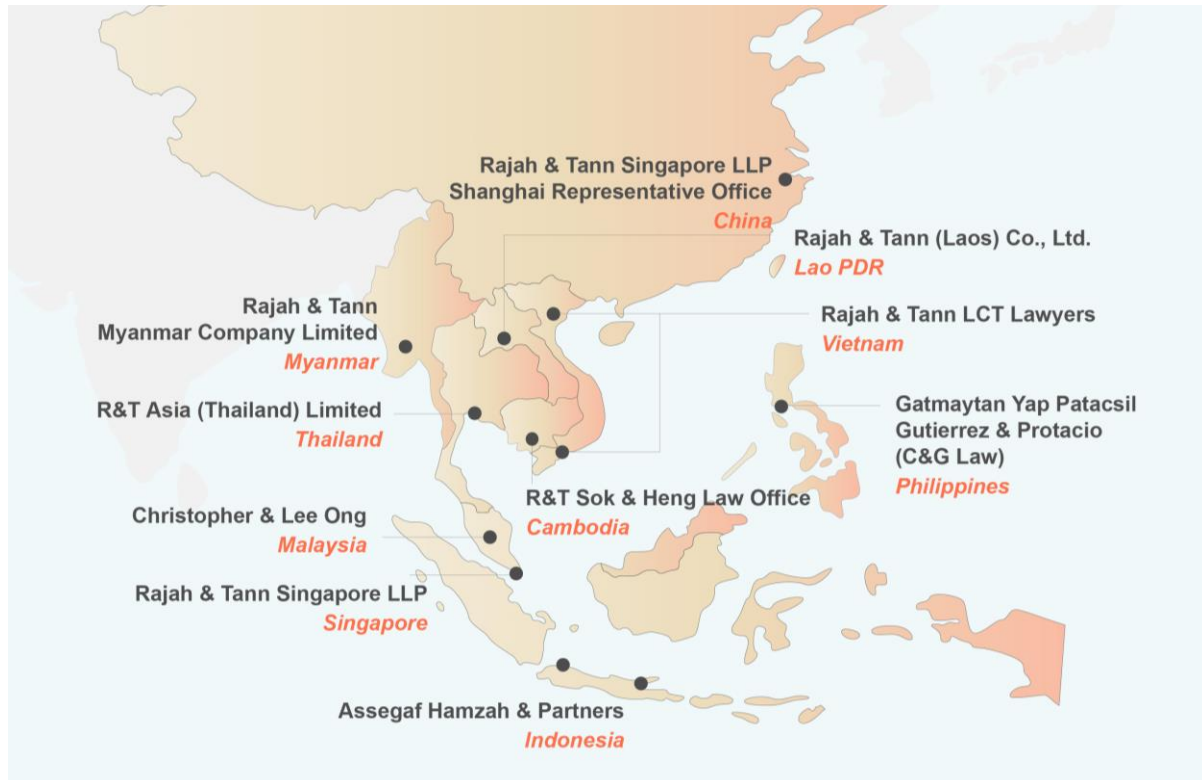
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