

Dispute Resolution

Local Communities Failed to Compel Company to Use its Assets to Promote Sustainable Development and Advance Their Welfare Due to Lack of Nexus Needed to Impose Fiduciary Duties on the Company

In *Ok Tedi Fly River Development Foundation Ltd & Ors v PNG Sustainable Development Program Limited* [2022] SGCA 76, a company was incorporated in Singapore ("**Company**") with the object of, among other things, applying the income from a mine ("**Mine**") in the Western Province of Papua New Guinea ("**PNG**") to promote sustainable development within, and advance the general welfare of the people of PNG, particularly those of the Western Province of PNG. When the Company allegedly failed to do so, representative members of certain communities in the Western Province of PNG ("**Appellants**") sued the Company. The Appellants alleged that the Company had breached the fiduciary duties owed to them as they had been adversely affected by the environmental damage caused by the operations of the Mine. The Singapore Courts, at first instance as well as on appeal, rejected the Appellants' claim. It was found that the Company gave no undertaking, contractual or otherwise, to the Appellants in respect of its assets. Therefore, no fiduciary duties were owed by the Company to the Appellants to apply its assets in accordance with its objects.

Brief facts

In 1976, Ok Tedi Mining Limited ("**OTML**") was established by PNG and BHP Group Limited ("**BHP Group**") to own and operate the Mine. Subsequently, BHP Group exited from OTML by divesting its shareholding in OTML to the Company. The Company's constitutional documents required the Company to apply the income from the Mine for the benefit of the people of PNG and the Western Province of PNG. Pursuant to a suite of written contracts ("**Contracts**"), the Company provided contractual undertaking to four entities including BHP Group, OTML and PNG, but not the Appellants, to give effect to the objects stated in its constitutional documents. The Appellants were not members of the Company and were not parties to the Contracts.

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Issues before the Singapore Courts

At the first instance, the Appellants submitted before the Singapore High Court that considering all the circumstances giving rise to the Company's incorporation and the statement of its objects, it could be inferred that the Company had voluntarily undertaken to act in the interest of the Appellants. Therefore, the Company became a fiduciary and was subject to fiduciary duties to the Appellants. The Singapore High Court found that the Company gave no undertaking in respect of any of its assets to the members of the Appellants' communities in the Western Province of PNG. It followed that there could be no fiduciary duties owed by the Company to the Appellants. The Appellants appealed and the Singapore Court of Appeal affirmed the High Court's finding based on, among other things, the following grounds:

- (a) **No evidence that the Company had undertaken any duty to the Appellants.** The Contracts were a string of carefully negotiated contracts by the parties of the Contracts. The Courts were of the view that it was untenable in those circumstances that a separate and effectively equivalent set of obligations were undertaken as fiduciary obligations in favour of the Appellants with whom the Company was never in a contractual relationship. In an attempt to circumvent the lack of privity, the Appellants described themselves as beneficiaries of a fiduciary duty so that they could, in effect, take on all of the rights of the contractual counterparties and enforce them against the Company. The Court did not agree with that as it was nowhere spelt out how the Appellants (or the affected communities) acquired such a right or became a beneficiary of a fiduciary obligation owed by the Company. The Appellants also could not show how or where the Company supposedly took on those obligations to the Appellants. The Court found that the provisions in the Contracts and the Company's corporate constitution weighed against any such duty or obligation being owed by the Company to the Appellants.
- (b) **The Company was not obliged to promote sustainable development for the benefit of the Appellants' communities.** Further, the Courts observed that the constitutional documents relating to the Company gave the Company the unqualified contractual discretion to undertake sustainable development projects for the exclusive benefit of persons other than members of the Appellants' communities. This is because the Company's constitutional documents did not refer to the Appellants' communities or their members specifically, much less exclusively.
- (c) **No relationship of mutual trust and confidence that could give rise to legitimate expectation on the Appellants' part.** The Appellants failed in its attempt to argue that there was a relationship of mutual trust and confidence between them and the Company that had given rise to a legitimate expectation on the Appellants' part that the Company would act in the interest of the members of the Appellants' communities by applying the Company's assets to advance their welfare. The Court of Appeal commented that it was clear that the Company and the members of the Appellants' communities were not in any formal relationship, much less a relation of mutual trust and confidence which the Appellants had alleged.

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- (d) **No trust relationship or fiduciary power.** The circumstances leading up to the Company's incorporation, the Company's constitutional documents, and the alleged statements in various documents did not provide any support at all for the allegation that parties intended to create a trust, much less one in favour of the Appellant's communities. There was also no basis for the Appellant's claim that the Company was accountable to the members of the affected communities for the improper exercise of its fiduciary power.

The full judgment can be accessed [here](#) (available on the Singapore Courts Website at www.judiciary.gov.sg).

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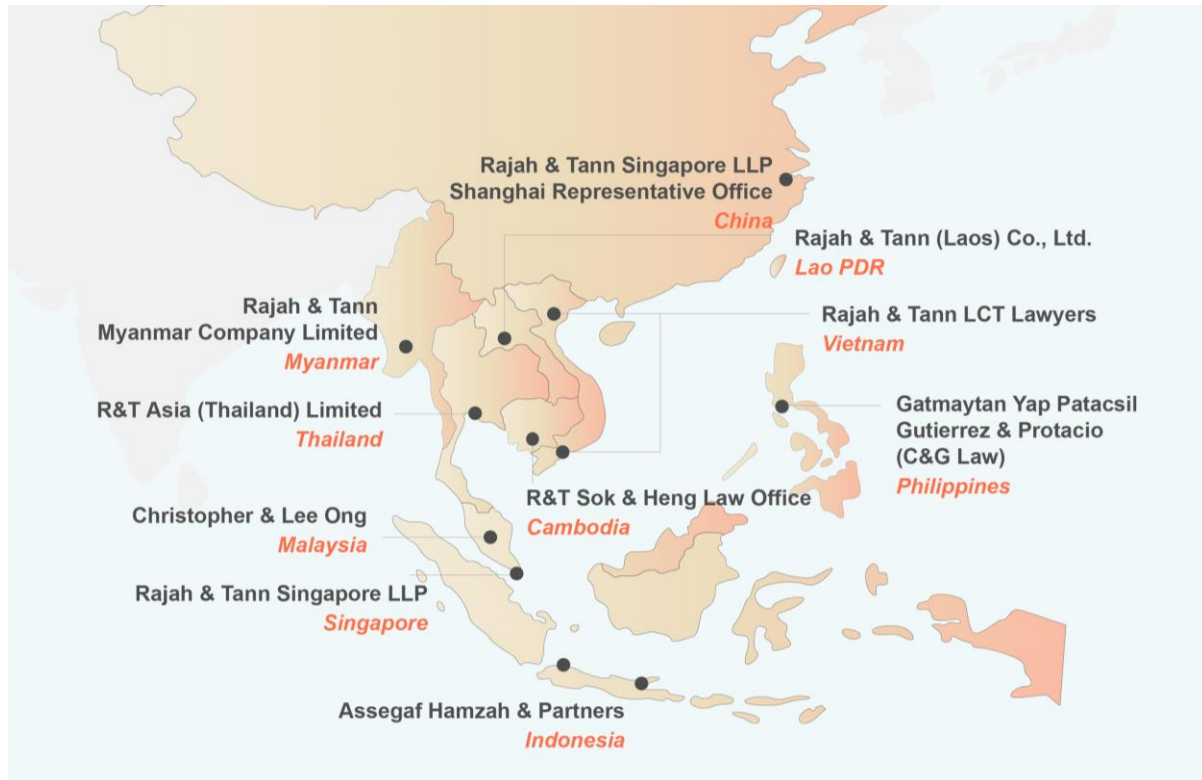
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