

Fraud, Asset Recovery & Investigation

Court of Appeal Examines Test for Grant of Mareva Injunction

In *Milaha Explorer Pte. Ltd v Pengrui Leasing (Tianjin) Co. Ltd.* [2023] SGCA 6, the Singapore Court of Appeal considered the test for the grant of a Mareva injunction, setting out that the key inquiry is whether there is "solid evidence" of an objective and real risk that a judgment may not be satisfied because of a risk of unjustified dealings with assets.

The Applicant had obtained a Mareva injunction prohibiting the Defendant from dealing with its assets, including a Vessel. The High Court found that there was a real risk that the Defendant would dissipate its assets given its express intention to sell the Vessel to other buyers.

On appeal, the Court of Appeal considered whether there was a real risk of dissipation of assets. The Court of Appeal provided guidance in this regard, highlighting that dealing with assets in and of itself would be insufficient to show a real risk of dissipation; the dealing must be unjustified. Further, the foreign origin or foreign connection of a company/person is a relevant factor, but cannot conclusively lead to a finding of a real risk of dissipation of assets. Ultimately, the inquiry turns on whether there are circumstances suggesting that the defendant not only can but likely will frustrate the judgment.

On the facts, the Court of Appeal found that the Defendant's corporate structure (one-ship company and special purpose vehicle with foreign ownership) did not, in itself, support the finding of a real risk of dissipation of assets. The Court of Appeal also found that there was no unjustified dealing with assets by the Defendant as the Vessel had not been sold and, in any event, there could be various legitimate commercial reasons for the sale. Ultimately, the Applicant had not discharged its burden of showing "solid evidence" of a real risk of dissipation.

The Court of Appeal highlighted that, in deciding whether to grant a Mareva injunction, it should balance the effects of the Mareva injunction on the defendant against the potential prejudice or loss that would be caused to the applicant. The purpose of a Mareva injunction is not to provide security to a litigant or to guard against potential insolvency of the counterparty.

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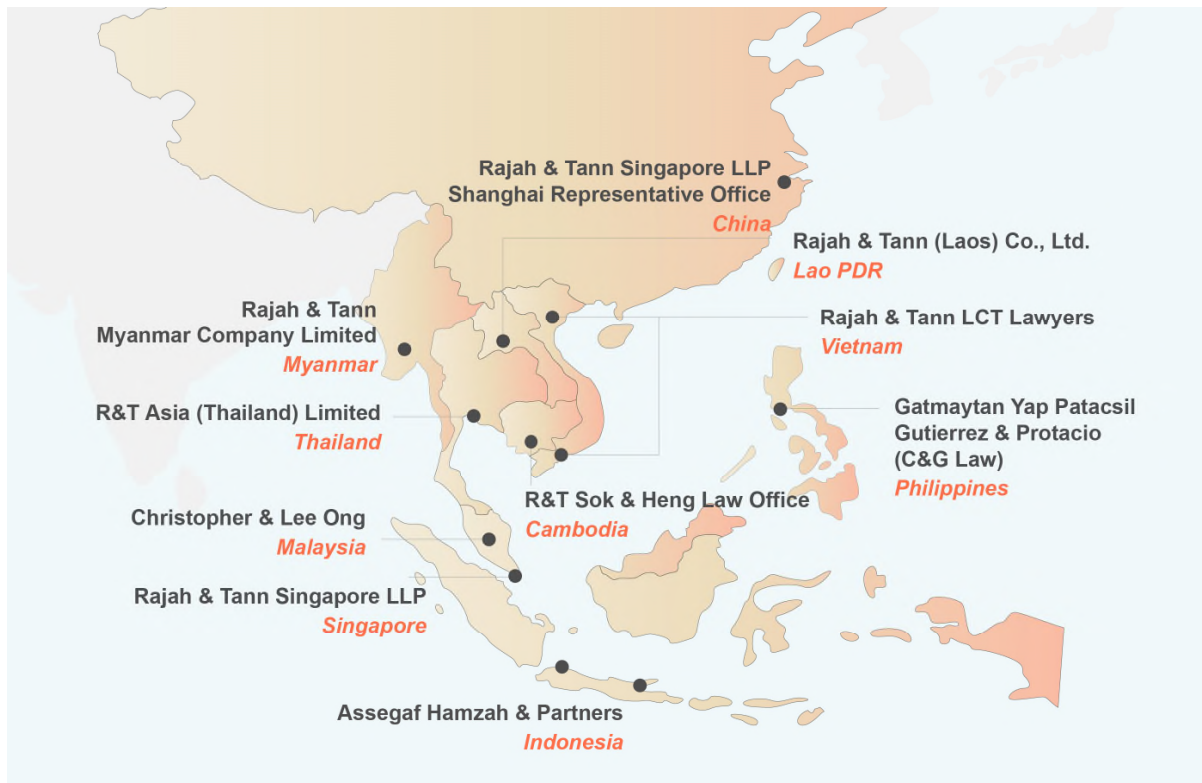
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