

Dispute Resolution

Ratification – Not Always a Magic Bullet

Introduction

Modern day commercial transactions are typically executed by agents on behalf of their principals within the scope of authority conferred on them expressly or impliedly. In exceptional cases, the principal may still be bound because of an agent's apparent authority. Where an agent's act is unauthorised, the principal, when cognizant of such a transaction, could adopt it by retrospective validation. This is the doctrine of ratification. Generally, a valid ratification retrospectively authorises the agent's authority to enter into the transaction and therefore cloaks the entire transaction with legality.

Yet ratification is not always a magic bullet. There are parameters to a principal's power to ratify. Can a principal ratify a contract in which it is expressly named as a party, even though it did not even appear to be aware of the contract at the time a litigation on the contract started?

The team of Gregory Vijayendran SC, Lester Chua and Tomoyuki Lewis Ban from Rajah & Tann Singapore LLP's Commercial Litigation Practice Group ("**Team R&T**") successfully appealed to the Appellate Division ("**AD**") against the decision of the General Division of the High Court ("**GDHC**") in *Alternative Advisors Investments Pte Ltd anor v. Asidokona Mining Resources Pte Ltd anor* [2022] SGHC 41 (see [2023] 1 SLR 954 for the judgment of the AD dated 3 February 2023).

Subsequently however, in one of the rare cases where the Court of Appeal ("**CA**") has granted permission to appeal against a decision of the AD, Team R&T successfully acted for Asidokona Mining Resources Pte Ltd ("**AMR**") in resisting the final appeal made by Alternative Advisors Investments Pte Ltd ("**AAI**") at the apex court level against the AD's decision (the "**CA Appeal**"). In its judgment published on 7 February 2024 (*Alternative Advisors Investments Pte Ltd v. Asidokona Mining Resources Pte Ltd anor* [2024] SGCA 3), the CA upheld the AD's decision that the purported ratification of the Loan Documents and the Deeds of Assignment relied on by AAI was invalid.

Team R&T was instructed by M&A Law Corporation in both the AD and CA Appeals. This update elucidates the key considerations that the CA took into account in dismissing the CA Appeal. In this Update, references to "Appellant" and "Respondents" are references to the parties in the CA Appeal.

Background

The dispute at hand arose out of a purported loan agreement. The second Respondent, Mr Soh Sai Kiang ("**Mr Soh**"), had sought the assistance of Mr Wong Joo Wan ("**Mr Wong**"), who was AAI's principal director and shareholder, to arrange a loan of S\$2m ("**Loan**") to AMR. Mr Soh was AMR's sole director and shareholder. To raise the Loan, Mr Wong contacted Mr Ong Su Aun Jeffrey ("**Mr Ong**"), the then

Client Update: Singapore

2024 MARCH

Dispute Resolution

managing partner of JLC Advisors LLP ("**JLC Advisors**") as he was aware that Mr Ong had clients who might wish to participate in the Loan.

When Mr Wong contacted Mr Ong, he was told that Mr Ong's client, whom Mr Ong described as the "Hong Kong side" ("**HK Investor**"), was prepared to contribute only 50% of the loan amount, i.e. S\$1m. Hence, Mr Wong decided that he would personally raise the remaining 50% of the Loan. Crucially, when Mr Wong was provided with a draft loan agreement ("**Loan Agreement**"), he did not know that the HK Investor was Supreme Star Investments ("**SSI**"), the named lender identified in the Loan Agreement. Although Mr Wong testified that there was an "indication" that SSI was the named lender, his evidence was that he had assumed that the draft Loan Agreement was a boilerplate loan agreement used by JLC Advisors and did not pursue the identity of the named lender further.

The Loan was to be for a term of three months, personally guaranteed by Mr Soh and secured by a charge on Mr Soh's shares in AMR. These terms were recorded in the Loan Agreement, deed of charge and personal guarantee ("**Personal Guarantee**") issued by Mr Soh (collectively the "**Loan Documents**").

The Loan Documents were signed by Mr Soh on 22 July 2016 and dated the same date. On the same day, S\$1.69m was disbursed by JLC Advisors to AMR. The sum of S\$1.69m was based on the loan amount of S\$2m less the sums of \$300,000 and \$10,000 that were deducted at disbursement for interest for the first three months of the Loan and transaction expenses respectively. The Respondents did not dispute receipt of the Loan. The Loan Documents were not executed by SSI, nor by Mr Wong for and on SSI's behalf, on 22 July 2016. By May 2017, AMR had defaulted on the Loan. After AMR's default, four significant events occurred:

1. First, in 2018, SSI purported to assign its interests in, *inter alia*, the Loan to AAI so that AAI could proceed to recover the debt by commencing the action. The Loan Agreement and Personal Guarantee were assigned pursuant to a deed of assignment dated 30 March 2018, ("**First Deed of Assignment**"), while the Deed of Charge was assigned pursuant to a deed of assignment dated 15 November 2018 ("**Second Deed of Assignment**") (collectively the "**Deeds of Assignment**"). The Deeds of Assignment were, however, signed, not by the sole director and shareholder of SSI, Ms Lou Swee Lan ("**Ms Lou**"), but by Mr Wong, purportedly for and on behalf of SSI, and one Mr Yong Chor Ken on behalf of AAI.
2. Secondly, in or around the first quarter of 2018, Mr Wong discovered that SSI had not executed the Loan Documents. It was only then that he queried Mr Ong and was informed of the identity of the HK Investor i.e. SSI. He was also informed that he (i.e. Mr Wong) was authorised to act as SSI's "principal and agent". After confirming this with Ms Lou's husband (Mr William Wong), Mr Wong signed the Loan Documents in July 2018.
3. Thirdly, AAI commenced the action below ("**Suit**") on 20 July 2018 as assignee of rights under the Loan Documents pursuant to the Deeds of Assignment.

Client Update: Singapore

2024 MARCH

LAWYERS
WHO
KNOW
ASIA

Dispute Resolution

4. Fourthly, on 26 July 2021, SSI passed a director's resolution purporting to ratify, *inter alia*, (a) Mr Wong's execution of the Loan Documents and the Deeds of Assignments; and (b) commencement by AAI of the action below ("**Ratification**").

In the first instance before the GDHC, the Respondents raised various defences. In particular, the Respondents contended that the Ratification was invalid because: (a) SSI did not have full knowledge of the material facts when ratifying; (b) it was not made within a reasonable time; and (c) it was an abuse of process ("**Invalid Ratification Defence**"). However, the GDHC found that the Appellant had proven the validity of the Ratification and expressly rejected all the defences raised by the Respondents, save for the defence that SSI did not authorise the Loan Agreement and the Deeds of Assignments or JLC Advisors to act as SSI's solicitors ("**Lack of Authority Defence**"), on which it made no finding.

In the AD Appeal, the AD (coram the Honourable Woo Bih Li JAD, the Honourable Kannan Ramesh JAD and the Honourable Quentin Loh SJ) found that the "crux of the [AD Appeal]" turned on the Invalid Ratification Defence and allowed the appeal on two bases:

1. The AD disagreed with the GDHC with respect to the Invalid Ratification Defence. In its analysis, the AD examined two questions: (a) whether Mr Wong purported to act on behalf of SSI in relation to the Loan; and (b) whether SSI provided the funds for the Loan. The AD held that SSI could not validly ratify because: (a) it could not be shown that Mr Wong had purported to act for SSI between 2016 to 2018; and (b) it had not been shown that the funds came from SSI; thus, validating the Ratification would permit it to adopt as its own moneys which did not belong to it.
2. The AD found that, even if the Ratification was valid, the Suit was commenced without a valid cause of action, and that the Ratification could not retrospectively validate any non-existent cause of action.

In its decision granting permission to appeal, the CA had directed the parties to address the following two specific issues in addition to other issues which the Appellant had liberty to raise in the CA Appeal:

1. When a borrower is sued for repayment of a loan disbursed under a loan contract with a named lender, does the named lender have to prove that it provided the funds for the loan in order to maintain the action?
2. Can a named lender ratify a loan contract even if it cannot be established that it had provided the funds for the loan?

Dispute Resolution

Appellant's Position

In the CA Appeal, the Appellant's case was that:

1. The AD went beyond the ambit of permissible appellate intervention in raising additional legal and factual issues, and the determination of these issues led the AD to incorrectly allow the appeal; and
2. The AD erred in making several findings of fact, namely: (a) the assumption that Mr Wong had acted without authority; (b) that Mr Wong did not purport to act on behalf of SSI; (c) that SSI did not perform the Loan; and (d) that AAI did not have a valid cause of action at the commencement of the Suit.

Respondents' Position

The Respondent opposed the CA Appeal on two principal grounds:

1. That the AD correctly found that AAI did not have a valid cause of action at the commencement of the Suit, because it was not proven that Mr Wong had been authorised to act on SSI's behalf in relation to the Loan Agreement. Further, the AD was correct in holding that the purported Ratification cannot, as a matter of law, retrospectively validate a non-existent cause of action; and
2. In any event, the AD was correct to find that the Ratification was invalid.

Decision of the Court of Appeal

The appeal against the AD's decision was heard by a three-Judge Bench comprising Chief Justice Sundaresh Menon and Judges of the Court of Appeal Steven Chong and Belinda Ang.

In the words of the CA, the present dispute was an "unusual" and "unique case" that had "several layers of complexity in relation to ratification". It is therefore unsurprising that the crux of the CA Appeal also turned on the validity of the Ratification. However, the CA astutely pointed out that it was necessary to first examine the anterior question of whether Mr Wong was validly authorised by SSI to enter into the Loan Agreement in 2016 ("**Preliminary Issue**"). If Mr Wong was indeed authorised, then the question of the validity of the Ratification falls away, as SSI (as Mr Wong's principal) would have been a party to the Loan Agreement in 2016 when it was formed.

Client Update: Singapore

2024 MARCH

Dispute Resolution

Whether Mr Wong was authorised by SSI

On the law, AAI argued that the AD erred as the Respondents had admitted in its pleadings that SSI was a party to the Loan Agreement and further, the Respondents' submission of "no case to answer" meant that AAI had proved its case on a balance of probabilities. AAI also argued that the burden was on the Respondents to establish that Mr Wong was not authorised to act for SSI given that they had raised the Lack of Authority Defence before the GDHC. The CA disagreed and found merit in the Respondents' submissions that: (a) it was for AAI to discharge its burden to prove Mr Wong's authority as this was an essential ingredient of its cause of action against the Respondents; and (b) where a submission of "no case to answer" is made, AAI would only be regarded as having proven its case on a balance of probabilities, if it had satisfied the Court that it had established a *prima facie* case.

On the facts, AAI argued that the AD had erred as the Respondents had admitted that SSI was a party to the Loan Agreement and pointed to two distinct purported admissions. On the first purported admission, the CA found the submission that the mere naming of SSI as the lender of the Loan Agreement constitutes an admission to be plainly wrong and held that AAI cannot claim to prove that SSI was a party to the Loan Agreement by relying on the very same document in contention. On the second purported admission, the CA likewise disagreed that the Respondents had admitted in their pleadings that SSI was a party to the Loan Agreement, noting instead that the Respondents had clearly denied that SSI was a party to the Loan Agreement.

Having jettisoned AAI's legal and factual bases for arguing that Mr Wong was in fact authorised by SSI, the CA proceeded to affirm the AD's assessment that there was no such authorisation. Significantly, the CA agreed with the Respondents' submission that Ms Lou was the only key person who could speak to the question of authorisation from SSI's voice, and that her consistent evidence was that SSI did not authorise Mr Wong to enter into the Loan Agreement in 2016.

Source of funds disbursed as the Loan

In the AD Appeal, the AD had opined that "*if it cannot be shown that the Loan was in fact funded by SSI, it would also not be correct to conclude that SSI could ratify*". To the extent that the AD purported to lay down a legal requirement that a lender must first establish that it provided the funds in order to be able to ratify a loan contract, the CA disagreed and clarified that there is no such requirement in law. Lead Counsel, Gregory Vijayendran SC, had "candidly acknowledged" at the appeal hearing that there was no authority to support this requirement. However, in the present case where the funds were not provided by the named lender, it would be for the named lender (i.e. SSI) to prove that it was nonetheless intended to be a party to the loan such that it could validly ratify the Loan Agreement.

Instructively, the CA also emphasised the importance of not confusing the performance of a contract, with the separate issue of a contracting party's capacity to ratify a contract. This is because ratification is focused on the adoption of rights and liabilities under a contract as opposed to whether those rights and liabilities have been discharged.

Client Update: Singapore

2024 MARCH

Dispute Resolution

AAI failed to show that the Ratification was valid

Turning to the crux of the CA Appeal, the CA noted that for ratification to be valid, SSI must be capable of ratifying the act or contract. This required some form of nexus between the principal and the act or contract which the principal seeks to ratify. Such nexus is made out by an act of an agent *who purported to act on its principal's behalf*. The relevant time for assessing whether the agent had purported to act for the principal was when the contract was negotiated, drafted and concluded. The key act to be ratified, for SSI to have a valid cause of action to assign to AAI, would be the acts of Mr Wong in 2016. On the facts, the CA agreed with the AD that Mr Wong did not and could not have purported to act on SSI's behalf. AAI did not discharge its burden of proving that Mr Wong was indeed so authorised by SSI. Importantly, Mr Wong himself had unequivocally testified that he was not the representative of SSI when the Loan was being entered into in 2016, and only considered himself to be a representative some two years later in 2018.

Ratification could not retrospectively furnish a basis for an action

At the AD Appeal stage, the AD had endorsed the proposition stated in *Wittenbrock v Bellmer* (1880) 57 Cal 12 that if a party has no cause of action at the time of the institution of his action, he cannot maintain the action upon a cause of action subsequently acquired against the defendant. Although the issue of whether AAI had a valid cause of action at the commencement of the Suit was raised again in the CA Appeal, the CA found it strictly unnecessary to comment on the above issue, especially since the question of whether AAI had a valid cause of action at the commencement of the Suit was considered by the AD on its own accord without the benefit of full arguments. Likewise, it was equally unnecessary for the Court of Appeal to decide whether the Ratification could retrospectively validate a cause of action that was void *ab initio* which was, in any case, an unpleaded defence.

Comments

We conclude with three observations on the CA's judgment.

1. This instructive decision serves as a reminder on procedural justice that parties must be mindful that a "no case to answer submission" does not absolve a plaintiff of its burden to establish the essential ingredients of its pleaded cause(s) of action (in this case, the putative agent's authority to act in relation to the loan).
2. Ratification is not a magic bullet to cure unauthorised transactions in every case. The crux of the AD and CA Appeals analyse the parameters of the doctrine of ratification. In particular, any attempt by a party to ratify acts/contracts in which it has no nexus between the principal and the acts/contracts involved will fail. Likewise, where the principal has no requisite level of knowledge of the acts/contracts involved for ratification purposes, no ratification will be made out. As an

Dispute Resolution

anterior question, a party seeking to have an agent facilitate a transaction for him must ensure that the agent is *purporting to act* as agent for and on that party's behalf.

3. The novel question of whether ratification after starting litigation could retrospectively validate a cause of action that was a nullity remains undecided by the apex court. That said, the AD's decision on "no ratification after starting litigation" remains good law for now especially since the substance of the AD's legal reasoning was not critiqued by the CA. There is therefore wisdom in taking precautionary steps to ensure that a valid cause of action exists at the time an action is commenced. Practically, ensure that valid ratification is in place to cure lack of authority issues prior to initiating litigation over the contract/act.

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

Contacts



Gregory Vijayendran SC
Partner, Commercial Litigation

T +65 6232 0438

gregory.vijayendran@rajahtann.com



Lester Chua
Partner, Commercial
Litigation

T +65 6232 0561

lester.chua@rajahtann.com



Tomoyuki Lewis Ban
Associate, Commercial Litigation

T +65 6232 0588

tomoyuki.ban@rajahtann.com

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

Our Regional Contacts

RAJAH & TANN SOK & HENG | *Cambodia*

Rajah & Tann Sok & Heng Law Office

T +855 23 963 112 / 113

F +855 23 963 116

kh.rajahtannasia.com

RAJAH & TANN | *Myanmar*

Rajah & Tann Myanmar Company Limited

T +95 1 9345 343 / +95 1 9345 346

F +95 1 9345 348

mm.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

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

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

T +632 8894 0377 to 79 / +632 8894 4931 to 32

F +632 8552 1977 to 78

www.cagatlaw.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 | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600

sg.rajahtannasia.com

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991

F +66 2 656 0833

th.rajahtannasia.com

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239

F +856 21 285 261

la.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

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919

F +60 3 2273 8310

www.christopherleeong.com

Hanoi Office

T +84 24 3267 6127

F +84 24 3267 6128

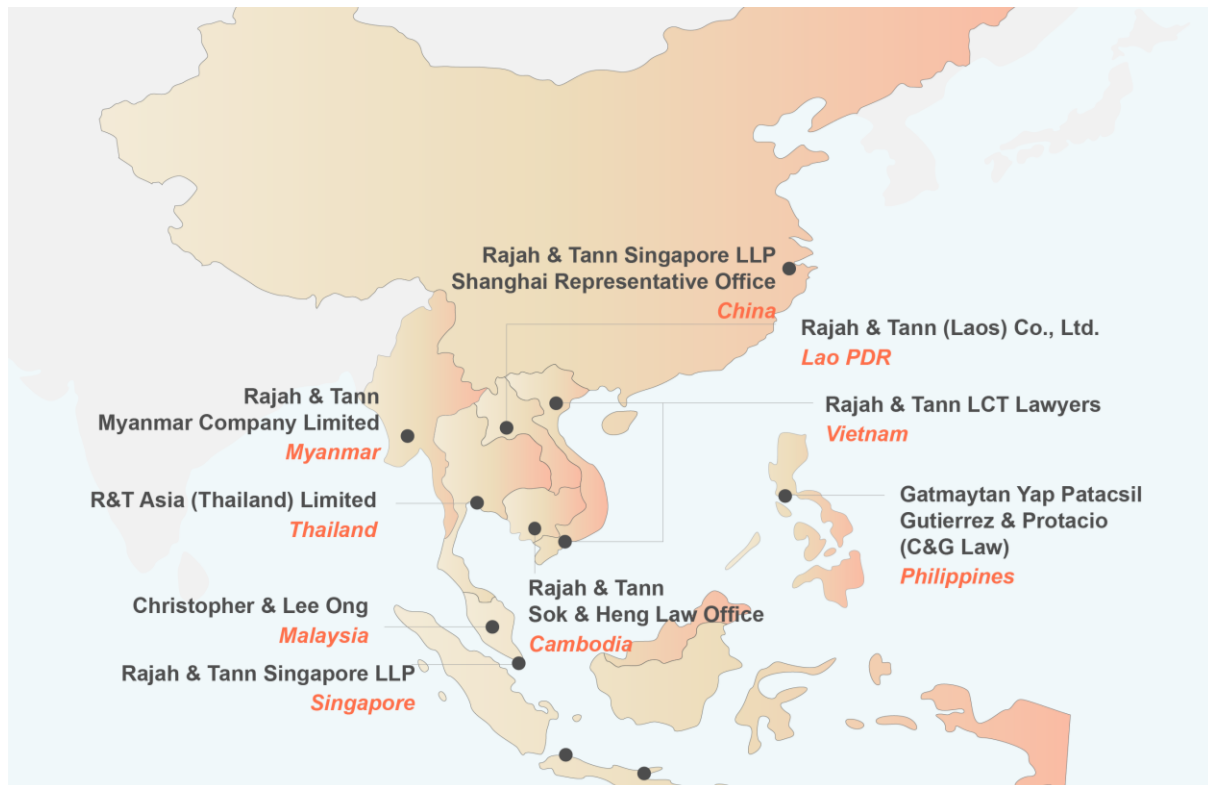
www.rajahtannlct.com

Rajah & Tann Asia is a network of legal practices based in Asia.

Member firms are independently constituted and regulated in accordance with relevant local legal requirements. Services provided by a member firm are governed by the terms of engagement between the member firm and the client.

This update is solely intended to provide general information and does not provide any advice or create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on this update.

Our Regional Presence



Rajah & Tann Singapore LLP is one of the largest full-service law firms in Singapore, providing high quality advice to an impressive list of clients. We place strong emphasis on promptness, accessibility and reliability in dealing with clients. At the same time, the firm strives towards a practical yet creative approach in dealing with business and commercial problems. As the Singapore member firm of the Lex Mundi Network, we are able to offer access to excellent legal expertise in more than 100 countries.

Rajah & Tann Singapore LLP is part of Rajah & Tann Asia, a network of local law firms in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. Our Asian network also includes regional desks focused on Brunei, Japan and South Asia.

The contents of this Update are owned by Rajah & Tann Singapore LLP and subject to copyright protection under the laws of Singapore and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Rajah & Tann Singapore LLP.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Rajah & Tann Singapore LLP or email Knowledge Management at eOASIS@rajahtann.com.