
Dispute Resolution

Disagreement Over Relocation of Club Facilities: Members Awarded Nominal Damages for Failure to Prove Loss

Introduction

In *Meow Moy Lan and Others v Exklusiv Resorts Pte Ltd and Another* [2021] SGHC 155, the Singapore High Court considered claims by a group of members of a social club against the club's owner and operator Exklusiv Resorts Pte Ltd ("**Exklusiv**") and Exklusiv's director and indirect shareholder, Mr Peter Kwee ("**Mr Kwee**") arising from the relocation of the club's facilities. The Court dismissed the majority of the 170 members' claims, which were brought via representative proceedings. Although the Court allowed the claim for breach of contract against Exklusiv, it awarded nominal damages to the members, as against their original claim for more than \$110,000 each.

The clubhouse in this case had been relocated from its original location, and its members were instead provided access to club facilities at a separate clubhouse. A group of members, dissatisfied with the relocation, sought to claim against the club's owners. Having considered the parties' cases, the Court dismissed the members' claims for deceit, negligent misrepresentation, and negligence against both Exklusiv and Mr Kwee.

The Court allowed the members' claim for breach of contract against Exklusiv. However, the Court found that the members had failed to prove that they had suffered loss as a result of the breach, and thus awarded nominal damages.

Both Exklusiv and Mr Kwee were represented by Vikram Nair and Foo Xian Fong of Rajah & Tann Singapore LLP.

Brief Facts

The Pines was a social club, and its clubhouse was situated at 30 Stevens Road ("**30SR**") in central Singapore. The Pines was owned by Exklusiv, and Mr Kwee was the director and indirect shareholder of Exklusiv (together, the "**Defendants**").

The Defendants sought to redevelop the clubhouse at 30SR. However, due to various reasons, the Pines had to be relocated. The Pines was eventually moved to the premises of an existing club at in the eastern part of Singapore, with members having shared access to its facilities. The Pines' members

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would also have access to the facilities of a satellite clubhouse at 30SR once opened. To facilitate the relocation, the Pines had to amend some of its Rules and Regulations ("**Rules**").

The Plaintiffs, comprising a number of members of the Pines, were dissatisfied with the relocation. They sought to claim against the Defendants for deceit, negligence, and negligent misrepresentation in relation to the redevelopment of the clubhouse at 30SR. The Plaintiffs also claimed against Exklusiv for breach of its contract with each of the Plaintiffs.

Holding of the High Court

The Court dismissed the claims for deceit, negligence and negligent misrepresentation, and awarded only nominal damages against Exklusiv for the claim for breach of contract.

Deceit and negligent misrepresentation

The Plaintiffs' claims for deceit and negligent misrepresentation were essentially based on statements initially made by the Defendants regarding the redevelopment of the Pines at 30SR.

The Court found that the alleged misrepresentations, being representations as to the future, were not actionable as the Plaintiffs had failed to show that the Defendants did not intend to provide the Pines' members with a new clubhouse at 30SR. In fact, the evidence suggested that the Defendants did intend to do so, but were ultimately unable to do so for various reasons.

Therefore, the Court dismissed the Plaintiffs' claims for deceit and negligent misrepresentation.

Negligence

The Court also dismissed the Plaintiffs' claim in that the Defendants had breached a duty of care to the Plaintiffs to provide timely, true and accurate information as regards the redevelopment of the clubhouse at 30SR.

The Court found that the Plaintiffs had failed to properly plead the facts upon which the alleged duty of care was founded. They had also failed to properly plead the precise breach of the alleged duty of care.

Breach of contract

The Court found that there were certain implied terms in the membership contract involving the location of the clubhouse in a central area of Singapore and restricting the amendment of the Rules to allow a change in such location. In declaring that the clubhouse would no longer be located at 30SR, Exklusiv was found to have breached the implied terms.

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However, the Court declined most of the reliefs sought by the Plaintiffs. The Court declined to make an order for specific performance to procure a clubhouse at 30SR, or for the Defendants to procure for each of the Plaintiffs membership in a club in the central area of Singapore. The Court also declined to make an order for compensation to the Plaintiffs for a value equivalent to the present market value of about 20 years' use of 30SR and its facilities.

As for the damages, the Court considered the expert evidence adduced by the parties and found that the Plaintiffs had failed to prove that they had suffered any loss. The key test the Court applied was whether there was a diminution in market value of the memberships as a result of the relocation. The Court found that there was no diminution in the value of the Plaintiffs' memberships, and thus ordered only nominal damages of S\$1,500 to the each of the Plaintiffs.

Concluding Words

The decision demonstrates that an actionable claim does not necessarily result in the relief sought by the claimant. If the relief sought is in damages, then the claimant must be able to show that he has suffered a loss. If alternative relief is sought, such as for specific performance, then the claimant must be able to demonstrate why such relief is warranted.

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

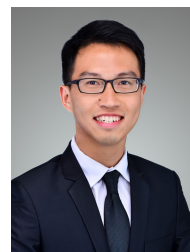
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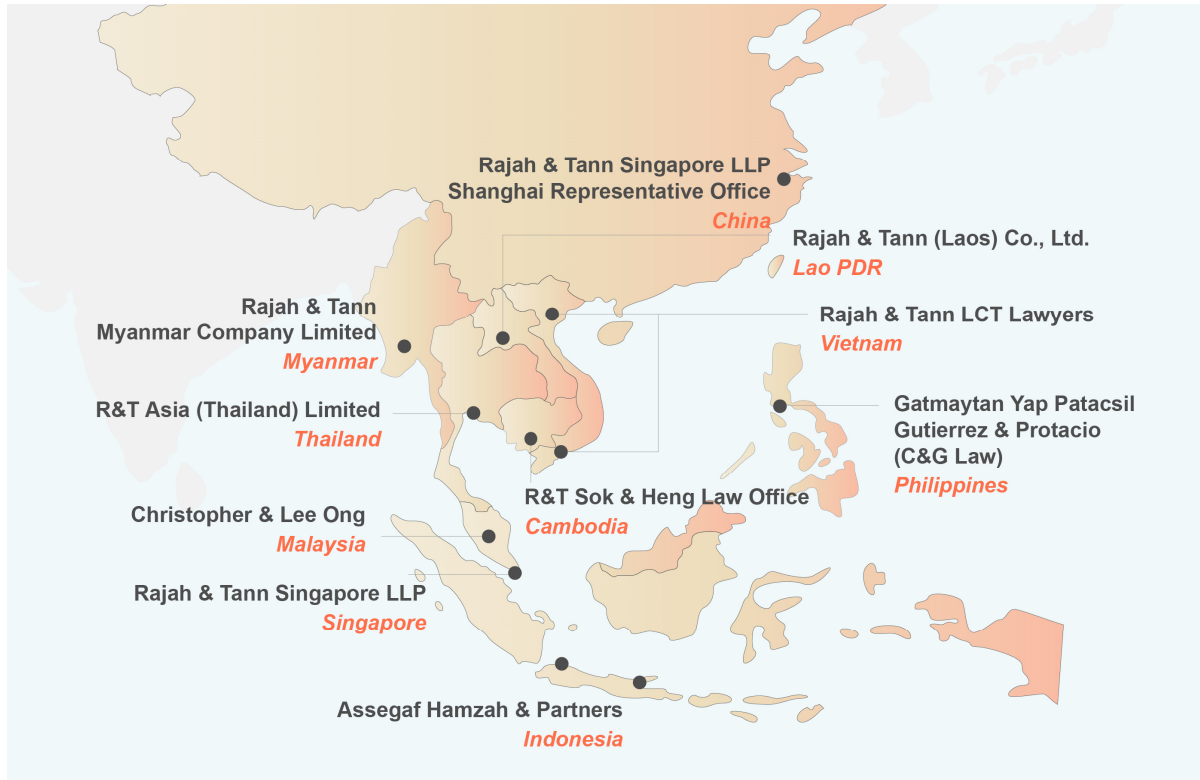
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