

# LEGAL UPDATE

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## CASE UPDATE

### NO STRANGER TO PRIVILEGE

*Tentat Singapore Pte Ltd v Multiple Granite Pte Ltd & Ors* [2008] SGHC 136

#### Executive Summary

It is well known that communications between clients and their solicitors about legal matters are usually protected by legal advice privilege. But what if the client is a company and the original recipient of the solicitors' advice disseminates it to other employees within the company, or even those of its related corporations? Is the privilege in the advice waived?

The Singapore High Court's answer is "no", provided that the privileged advice had been disseminated to the other employees under circumstances where they knew, or *must have known*, that the information was received under a duty of confidentiality.

#### Facts

Tentat Holdings Pte Ltd ("**Tentat Holdings**") applied for summary judgment against Multiple Granite Pte Ltd ("**Multiple Granite**"). The former Chief Investment Officer of Tentat Holdings, Mr Tan Hong Huat ("**THH**"), who was also a shareholder and director of Multiple Granite, filed an affidavit in support of Multiple Granite's defence in the summary judgment proceedings.

In his affidavit, THH attached a privileged email (the "**Email**") sent to Tentat Singapore Pte Ltd ("**Tentat Singapore**") (a related corporation of Tentat Holdings) by Tentat Singapore's solicitors. The Email had been addressed only to the secretary of a shareholder and director of Tentat Singapore, who then instructed the secretary to forward the Email to THH "*for [his] perusal and comments*". THH was the Chief Investment Officer of Tentat Holdings at the material time.

Tentat Singapore applied to court to restrain THH from using the Email in his affidavit in support of Multiple Granite's defence, and to have all copies of the Email surrendered or destroyed.

#### Decision

The court granted Tentat Singapore's application.

#### *The Email was privileged*

The court found that the Email was protected by legal advice privilege. It contained advice rendered by Tentat Singapore's solicitors concerning the preparation of a loan agreement for Tentat Singapore's use. Tentat Singapore's solicitors also regarded the Email as privileged and confidential, as was evident from their notice in the Email which stated that: "*This message is intended for the recipient(s) addressed above. It **contains privileged and confidential information**. If you are not the intended recipient, kindly notify the sender ...*

*You must not read, copy, use or disseminate this communication in any form ...".*

*The privilege was not waived as THH had received the Email under a duty of confidentiality*

The court noted the general principle that when a privileged document is disclosed to a third party with no express or implied requirement that he must treat it confidentially, there is generally nothing to prevent him from disclosing the document to other persons.

However, the legal position is different in the case where privileged information is disclosed in the course of a relationship or venture which a reasonable person would regard as involving a duty of confidentiality *and* where a reasonable person in the recipient's position would regard the information as confidential. The court took the view that disclosure under such circumstances would not give rise to any waiver of the privilege in the information.

On the facts of the case, the court found that the Email had been sent to THH not for his own use but for his comments, in his capacity as the then-Chief Investment Officer of Tentat Holdings. As such, he "*must have known*" that he received the Email under a duty of confidentiality.

The court accordingly held that the dissemination of the Email to THH did not result in the waiver of legal advice privilege in respect of the Email. The court gave orders restraining THH and Multiple Granite from making any further use of the Email. All references to the Email in THH's affidavit were to be struck out and all copies of the Email delivered up and destroyed.

### Comment

This decision will be welcomed by modern organisations as it reinforces the importance of legal professional privilege and applies it within the context of increasingly complex business structures. However, while the Singapore High Court has affirmed the strength of legal professional privilege, it will continue to be necessary to give very deliberate thought to how legal advice is handled and disseminated within a company and within a group of companies. The ease with which information can be shared *via* email, company intranet and shared worksites tempt employees to despatch the notorious "cc" email that disperses confidential and privileged information far and wide. While it is necessary in today's business structures for advice to be understood by and disseminated to a larger group of decision makers, the obvious perils of losing the confidentiality between lawyer and client must be consciously avoided. Prudent employers will take steps to ensure that their officers, employees and agents understand the need to share information that contains or discusses legal advice cautiously and judiciously.

If you would like more information about this case or wish to discuss how it may potentially affect you or your business, please feel free to contact the dispute resolution lawyers in Drew & Napier LLC (please refer to the Directors' Profiles on our [website](#)), or:

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*The content of this article does not constitute legal advice and should not be relied on as such. Specific advice should be sought about your specific circumstances.*

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