LEGAL UPDATE

CASE UPDATE

9 April 2018

HIGH COURT ALLOWS ENFORCEMENT AGAINST INTEREST IN PROPERTY HELD UNDER JOINT TENANCY

***Peter Low LLC v Higgins, Danial Patrick* [2018] SGHC 59**

SUMMARY

The High Court ("**HC**") has held that a joint tenant's interest in immovable property may be attached and taken under a writ of seizure of sale ("**WSS**") in execution of a judgment debt.

BACKGROUND

The plaintiff law firm is the former solicitors of the defendant in two HC suits. The plaintiff sued the defendant for unpaid legal fees and obtained default judgment for the same. The plaintiff then applied to attach the defendant's interest in a condominium ("**Property**") to satisfy the judgment debt. The Property was held by the defendant and his wife as joint tenants. The plaintiff's application was dismissed, at the first instance, by the learned assistant registrar. The plaintiff appealed.

THE HIGH COURT'S DECISION

The plaintiff's appeal was allowed.

After a comprehensive survey of the history of the enforcement of judgment debts against immovable property, the HC found that prior to a 1998 decision to the contrary, "all relevant authorities" supported the view that under Singapore law, the interest of a joint tenant in land may be seized in execution of judgment debts. This was similarly the position in the major Commonwealth jurisdictions today.

What is being seized, and thereafter sold, under a WSS in respect of land is not the immovable property *per se*, but the "interest of the judgment debtor in the immovable property". In this regard, a joint tenant has a "real ownership interest which is capable of immediate alienation without the consent of other joint tenants". Consequently, the nature of a joint tenancy is not incompatible with the view that a joint tenant's interest in land may be seized in a WSS.

The HC addressed a number of the opposing arguments raised by the defendant.

First, because registration by a creditor of a WSS under the Land Titles Act (Cap 157) immediately severs the joint tenancy, the rights of the joint tenants may be complicated, particularly if the WSS is withdrawn. However, the "fine mess" that may ensue is "not insurmountable" and may be overcome by the doctrine of "temporary severance", *ie* the registration of a WSS does not permanently sever the joint tenancy. In any case, the potential complications do not in themselves preclude a debtor joint tenant's interest from being seized in execution of the judgment debt.

Second, it may be true that an undivided share in immovable property is difficult to market to third parties and is not likely to fetch a good price. However, this does not mean that the ability to sell the undivided share is without value or utility to the judgment creditor. Among other things, to get the WSS lifted, the non-debtor joint tenant may settle the judgment debt on behalf of the debtor joint tenant. In any case, the limited marketability of the joint tenant's interest is not a ground for disallowing execution against that interest.

Third, any uncertainty in ascertaining the interest of each joint tenant is also not insurmountable. In the absence of evidence to the contrary, the joint tenants will be presumed to hold the land in equal shares both at law and in equity upon severance of the joint tenancy. A non-debtor joint tenant who asserts that his interest in the land is larger than an equal share is entitled to seek the appropriate relief in court.

COMMENT

With this decision, there are now four HC decisions on this issue: two in favour of allowing execution of a debtor joint tenant's interest in land by means of a WSS, and two against. This latest decision therefore does not settle the position, although given its comprehensive analysis, this decision is likely to be highly persuasive in future cases.

Going forward, whilst judgment creditors may rely on this decision to institute WSS proceedings against judgment debtors who own properties in joint names, judgment creditors should take note of two further practical considerations.

First, the registration of a WSS does not guarantee the judgment creditor an equal share of the immovable property. The judgment creditor must be prepared to meet (and possibly contest) a non-debtor joint tenant's claim that his share of the property is larger than equal. This invariably translates to higher costs and delay in realising the value of the interest in land to satisfy the judgment debt. The "spectre of such satellite litigation" (as noted by the HC at paragraph 119 of the judgment) is likely to be higher when the joint tenants of the property are family members.

Second, the mortgagee's consent may be needed to execute a sale of the property after it is seized under a WSS (as noted by the HC at paragraph 114(b) of the judgment). In this regard, the mortgagee may not consent to a sale (even if there is a willing buyer for the joint tenant's interest) if the purchase price for the share is less than the outstanding value of the mortgage.

Finally, it remains to be seen how the HC's decision will influence, if at all, the position under Singapore law relating to the execution of a judgment against bank accounts held in joint names by means of garnishee proceedings. Presently, a judgment creditor may not garnish a bank account held by the judgment debtor and another in joint names (see *One Investment and Consultancy Ltd and another v Cham Poh Meng (DBS Bank Ltd, garnishee*) [2016] 5 SLR 923). Although the HC, at paragraph 87, emphasised that its decision is confined to joint tenancies in respect of land, and not extendable to bank accounts held in joint names, the HC's treatment of the underlying principles relating to joint ownership are arguably relevant to any future judicial or legislative review of the position concerning execution against joint bank accounts.

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