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High Court rules that joint bank accounts may be subject to garnishee order

*Timing Ltd v Tay Toh Hin
and another* [2020] SGHC 169

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LEGAL UPDATE

In this Update

In the recent case of *Timing Ltd v Tay Toh Hin and another* [2020] SGHC 169, the High Court departed from its earlier decision, and found that a joint account may be subject to a garnishee order, if there is strong prima facie evidence that the monies in the joint account belonged to the judgment debtor.

The case represents a significant development for parties seeking to begin enforcement proceedings against judgment debtors holding joint bank accounts in Singapore.

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INTRODUCTION

In the recent case of *Timing Ltd v Tay Toh Hin and another* [2020] SGHC 169 (“**Timing Ltd**”), the High Court ruled that joint bank accounts may, under certain conditions, be the subject of a garnishee order under Order 49 of the Rules of Court (“**ROC**”).

This ruling is significant as it departs from the High Court’s previous position in *One Investment and Consultancy Ltd and another v Cham Poh Meng (DBS Bank Ltd, garnishee)* [2016] 5 SLR 923 (“**One Investment**”), where it was held that joint bank accounts should not be the subject of a garnishee order due to the potential prejudice it could cause to the garnishee bank and non-judgment-debtor joint account holders.

THE PREVIOUS POSITION IN *ONE INVESTMENT*

Prior to *Timing Ltd*, the prevailing position as set out in the High Court case of *One Investment* was that joint bank accounts should not be the subject of a garnishee order, for, *inter alia*, the following reasons:

- (a) such an order could potentially prejudice other account holders (who are not judgment debtors) as the Rules of Court do not include any obligation to notify them of the garnishee order, nor are there any mechanisms for them to seek determination of the judgment debtor’s interest in the joint account. Hence, a garnishee order infringing on the interests of other innocent account holders could potentially be made;
- (b) even if the other account holders were notified, there is difficulty in determining what proportion of the joint account to freeze in the interim period before the garnishee order is made final; and
- (c) there is also potential prejudice to the garnishee bank itself, as it may be ill-suitedly placed in an adjudicating role even though it has no visibility on the respective contributions of the joint account holders. This problem is worsened when the judgment debtor has multiple joint accounts, with the total sum from these accounts exceeding the judgment debt, in the same bank.

KEYPOINT

Joint bank accounts were not previously subject to garnishee orders where only one account holder was a judgment debtor

One Investment was considered the leading authority on this issue until the recent case of *Timing Ltd*.

BACKGROUND TO *TIMING LTD*

In *Timing Ltd*, the plaintiff sought to enforce an arbitral award in Singapore. On 9 January 2020, judgment was entered in terms, requiring each of the two defendants to pay the plaintiff a sum of US\$34,375,342.47 plus interest on a joint and several basis.

After the defendants failed to satisfy the judgment sum, the plaintiff sought and obtained an order for the examination of judgment debtor (“**EJD**”) against the first defendant. During the EJD hearing, the first defendant disclosed that he jointly held with his wife four accounts in Standard Chartered Bank. The following was also revealed:

- (a) one of the joint accounts was the “*primary account*” the first defendant used;
- (b) the “*moneys that were paid to [the first defendant] personally were put into joint account*”; and
- (c) the first defendant also referred to one of the joint accounts as “*my*” account.

The plaintiff subsequently took out a summons for a garnishee order against Standard Chartered Bank in relation to the four accounts the plaintiff jointly held with his wife, contending that the monies in all four joint accounts were in fact beneficially owned by the first defendant.

THE AR’S DECISION AT FIRST INSTANCE

The plaintiff’s summons was dismissed by an Assistant Registrar (“**AR**”) at first instance. The AR considered *One Investment* as authority for the general proposition that a joint account could never be garnished to satisfy a judgment debt owed by one of the joint account holder. In response to the plaintiff’s argument that the first defendant was the sole beneficial owner of the joint accounts, the AR held that:

- (a) the ability to establish the respective contributions of the joint account holders was an irrelevant consideration; and
- (b) even if it were relevant, the evidence fell short of establishing that all the monies in the joint accounts wholly belonged to the first defendant.

The plaintiff appealed the AR’s decision.

HIGH COURT'S DECISION ON APPEAL

On appeal, the High Court declined to follow the approach set out in *One Investment* and held that a joint account may be the subject of a garnishee order where the plaintiff has a strong prima facie case that all the monies in the joint account belong to the judgment debtor. In addition, the following requirements were imposed:

- (a) first, the burden is on the applicant to show a strong prima facie case that all the monies in the joint account sought to be garnished belong to the judgment debtor;
- (b) second, the applicant (and not the garnishee bank) must serve notice on any joint account holder(s) of the garnishee application by the show cause hearing; and
- (c) third, the applicant must provide an undertaking to pay for any costs and reasonably foreseeable losses of the garnishee, or joint account holder, should it be shown that the moneys subject to the show cause order are not in fact payable in whole or in part to the judgment debtor.

Though the aforementioned requirements were not expressly provided under Order 49 of the ROC, the High Court held that they could be applied in the exercise of its discretion conferred within the provision's wording. Upon satisfaction of these requirements, the matter could proceed to a show cause hearing, where arguments from the garnishee bank and other joint account holder(s) would be heard before the order is confirmed.

In explaining its decision, the High Court gave the following reasons:

- (a) preventing all garnishee orders on joint accounts, even where the applicant is able to show strong prima facie evidence that all the monies in the joint account belong to the judgment debtor, would permit judgment debtors to insulate their assets by holding them in joint bank accounts. This would undermine the position of judgment creditors and permit judgment debtors to frustrate court rulings; and
- (b) the practical difficulties raised in *One Investment* (such as the lack of notice to the other account holders) are sufficiently addressed by the three requirements mentioned above. In particular, the plaintiff will be obliged to provide compensation for any costs or prejudice occasioned by the plaintiff's application.

KEYPOINT

Preventing joint accounts from being garnished may result in an arbitrary position where the recoverability of a judgment debt depended on how the debtor had organised his personal finances, which would undermine the position of judgment debtors and frustrate Court orders

In this case, the High Court found that there was indeed a strong prima facie case that the monies in the four joint accounts in Standard Chartered Bank belonged solely to the first defendant.

COMMENTS

Timing Ltd represents an important development for parties looking to enforce judgments or arbitral awards in Singapore. Should a judgment debtor's monies be found in joint accounts, this no longer represents an insurmountable barrier for judgment creditors.

However, judgment creditors should take care to ensure it has good evidence that the monies in the joint account wholly belong to the judgment debtor, as it may otherwise be exposed to significant liabilities if it turns out that the monies sought to be garnished belonged to the innocent account holder. What would be sufficient to represent "*strong prima facie evidence*", which the High Court found in *Timing Ltd*, may differ in other circumstances, and is likely to be a fact-sensitive exercise. The factors which the High Court took into account in this case would be an obvious starting point for judgment creditors looking to garnish monies in a joint account.

KEYPOINT

Given the requirements imposed, there may well not be many instances where judgment creditors pursue garnishee orders against joint bank accounts

Whilst at first blush this decision may appear to have placed garnishee banks in an unenviable position when faced with garnishee applications in respect of joint accounts, this may not necessarily be the case.

Insofar as the High Court's proposed conditions oblige the applicant to give notice to the non-judgment-debtor joint account holder, and to undertake to bear the costs and reasonably foreseeable losses of the garnishee bank, the garnishee bank is not obliged to descend into the fray, and even if it may be obliged in specific circumstances to appear at the show cause hearings, its costs would be covered by the applicant. That said, because this decision represents a departure from the previous position in *One Investment*, it may be prudent for garnishee banks to seek legal advice if it is uncertain of its position when faced with a similar situation.

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