



High Court considers effect of strong *prima facie* case on burden of proof, applicability of presumption of advancement, in dismissing garnishee application against joint bank accounts

Abraham VERGIS SC & LIM Mingguan

In the recent case of *Timing Ltd v Tay Toh Hin and another* [2021] SGHC 5, the High Court considered, for the first time, the relevant burden of proof at the show cause stage for a garnishee order against joint bank accounts.

Separately, the Court also clarified that the principles concerning the presumptions of resulting trust and advancement applicable to joint ownership also applied to jointly-owned intangible property.

The team comprising Mr Abraham Vergis SC and Mr Lim Mingguan from Providence Law Asia LLC successfully represented the Respondents in the proceedings.

I. Background

In the earlier landmark decision of *Timing Limited v Tay Toh Hin and another* [2020] SGHC 169 (“**Timing 1**”), the Singapore High Court departed from precedent and held that a joint bank account could be the subject of a garnishee order if there was a strong *prima facie* case that all the moneys in the joint account belonged to the judgment debtor. On the facts, the Court held that there was such a strong *prima facie* case that the judgment debtor, Mr Tay owned all the moneys in two joint accounts with his wife, and granted a provisional garnishee order in respect of those accounts.

At the hearing for the garnishee to show cause, the Assistant Registrar dismissed the application to garnish the moneys in the two joint accounts. The judgment creditor appealed against that decision, and the appeal was heard by the

same coram that granted the provisional garnishee order.

II. The Decision

The Court dismissed the appeal, and declined to garnish the joint accounts. One issue which arose was the relevant burdens and standard of proof which applied in light of the finding that there was a strong *prima facie* case that the moneys in the joint accounts were wholly owned by the judgment debtor, Mr Tay.

The Appellant had argued that the finding of the strong *prima facie* case placed a *tactical* burden on the Respondents to contradict its case. On the other hand, the Respondents argued that it remained on the Appellant to show, on a balance of probabilities, that it was Mr Tay who owned the entire beneficial interest in the joint accounts. The main issue in contention was therefore the precise effect of the provisional garnishee order being made. In this regard, the Court noted that the *tactical* burden may shift following a determination that an applicant for a garnishee order had made out a strong *prima facie* case.

However, that did not in any way affect the legal burden, which remained on the applicant / Appellant. Ultimately, the Court still had to be satisfied there was sound basis to make the final garnishee order. The provisional garnishee order *might* place a tactical/evidential burden on the Respondents to challenge the Appellant’s *prima facie* case, but that assessment was ultimately still a holistic one based on the entirety of the evidence.

In arriving at this finding, the Court also distinguished the case of *Westacre Investments*

Inc and other appeals [2016] 5 SLR 372 (“**Westacre**”), where the Court of Appeal found that it was for the third party (as opposed to the judgment creditor) who would bear the legal burden. The Appellant relied on *Westacre* to argue that the legal burden was on Mrs Tay, as the third party claiming the money, to show that she had a beneficial interest in the moneys in the joint account.

The Court noted in the present appeal that it was unsurprising that the legal burden fell on the third parties in *Westacre* – they did not have any apparent basis to assert beneficial ownership over the money. That was to be contrasted with Mrs Tay, whose assertion of beneficial ownership was “*readily explicable*” because of her legal interest as a joint account holder. Mrs Tay was therefore entitled, in the absence of any other evidence, to rely on her legal title to assert beneficial ownership. It was the Appellant’s burden to show otherwise.

On the facts, the Court ultimately found that the Appellant was unable to show on a balance of probabilities that the moneys in the joint account were beneficially owned by Mr Tay alone. In particular, the Appellant had argued, among other things, that there was evidence that Mr Tay had treated the joint accounts as “his” account and had transferred moneys from those accounts freely. The Court was not convinced by that evidence, in particular because of Mr and Mrs Tay’s evidence of their close, long marriage and that both historically used the joint accounts as and when they needed. Mr and Mrs Tay’s evidence was that moneys from the joint accounts had been expended on expenses that both of them incurred. Further, the Court noted that Mr Tay’s use of one joint account for some business purposes did not preclude Mrs Tay from having beneficial ownership over the funds which were not for business purposes in the account. It also could not safely be said that once a joint account was used for a non-joint purpose, that would, without more, determine the ownership of moneys in the account. The fundamental issue which determined beneficial ownership

was ultimately the parties’ intentions. In this regard, the Appellant could not discharge its burden of proving that beneficial ownership of moneys in the joint accounts belonged entirely to the judgment debtor.

As an alternative argument, the Court also agreed with the Respondents that the strength and nature of Mr and Mrs Tay’s relationship gave rise to a strong presumption of advancement, rebutting any presumption of a resulting trust over the moneys in the joint account, and preventing the Appellant from claiming that Mr Tay had sole beneficial ownership over the joint accounts. To rebut such a presumption, the Appellant would need to adduce weighty and cogent evidence.

Pertinently, the Court also noted the principles set out in earlier cases such as *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 concerning the presumptions applicable to joint ownership should also apply to jointly-owned intangible property.

Lastly, the Court briefly dealt with the Appellant’s argument that a trial should be ordered if it did not succeed in its application for final garnishee orders, as the Respondents’ evidence had not been tested by cross-examination. The Court observed that the Appellant would need to provide “*very good reasons*” as to why the matter should go to trial, having already been unsuccessful at the application stage.

III. Conclusion

Given the potentially far-reaching effects of the Court’s findings and departure from earlier precedent in *Timing 1*, this case will be significant for parties considering enforcement options post-judgment, and especially so for garnishee banks and third party-joint account holders.

In particular, judgment creditors will have to carefully consider the evidence available to show the beneficial ownership of moneys in

joint accounts. This is especially since most joint accounts would likely be held by married couples like the Respondents in the present case, or be held by parties in similarly close relationships.

In this regard, the Court's finding that a joint account holder is entitled to rely on its legal title to assert beneficial ownership, and hence place the burden on the judgment creditor to show otherwise, will likely bring more certainty to the position of joint account holders, and hence be welcomed by them.

If you would like information on this area of law, please contact:



Abraham VERGIS SC

Managing Director
+65 6438 1969
abraham@providencelawasia.com



LIM Mingguan

Director
+65 6438 1969
mingguan@providencelawasia.com