

# Court's Power to Set Aside Garnishee Order and Order Return of Sums Paid

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## Introduction

The Singapore courts are empowered to support arbitration proceedings in a number of ways, including through the granting of orders to aid in the enforcement of arbitral awards. However, what happens if the judicial decision to enforce the arbitral award is reversed on appeal to a higher court? Can the orders granted to aid enforcement be set aside? Can sums already paid be ordered to be returned?

These were the issues faced by the Singapore Court of Appeal in *ST Group Co Ltd and others v Sanum Investments Limited* [2022] SGCA 2, a dispute involving commercial arrangements in and parties from Laos. Here, an earlier Singapore Court of Appeal had previously set aside an order granting leave to the Respondent to enforce an arbitral award against the Appellants. Prior to the Court of Appeal's decision, and pursuant to the leave order, the Respondent had obtained a judgment in terms of the arbitral award and three garnishee orders, and had garnished sums from the Appellants.

After the Court of Appeal's decision, the Respondent refused to return the garnished sums to the Appellants. The Appellants thus applied to set aside the judgment and final garnishee orders, and for the return of the garnished sums.

The Singapore Court of Appeal here considered the existence and exercise of a Singapore court's inherent power to set aside a judgment and garnishee orders, and to order the return of sums paid pursuant to those

garnishee orders in circumstances where the earlier order giving rise to the judgment and garnishee orders was reversed.

The Appellants were successfully represented by Francis Xavier, SC, Edwin Tan, Kristin Ng and Alvin Tay from Rajah & Tann Singapore LLP.

## Brief Facts

The substantive dispute between the parties concerned arrangements relating to a slot machine club in Laos. The Respondent in the present court proceedings had commenced arbitration proceedings in Singapore under the rules of the Singapore International Arbitral Centre ("**SIAC**") against the Appellants for what it claimed were breaches of contract. The Respondent was a company based in Macau, and the Appellants were companies based in Laos ("**the Lao Appellants**").

The course of proceedings was as follows:

- The arbitral tribunal granted an award ("**SIAC Award**") in favour of the Respondent.
- The Respondent obtained a leave order ("**Leave Order**") from the Singapore courts to enforce the SIAC Award in the same manner as a judgment, subsequently obtaining judgment ("**Judgment**") against the Lao Appellants for the relief stated in the SIAC Award.
- Pursuant to this Judgment, the Respondent obtained garnishee orders ("**Garnishee Orders**") against the Lao Appellants, and received certain sums under the Garnishee Orders ("**Garnished Sums**").
- The Lao Appellants appealed against the decision to grant the Leave Order, and the Court of Appeal found in their favour, setting aside the Leave Order.
- The Lao Appellants then applied for: (a) the Judgment to be set aside; (b) the Garnishee Orders to be set aside; and (c) the return of the Garnished Sums with interest.

The Court of Appeal here had to consider whether to set aside the Judgment and the Garnishee Orders, and whether it had the power to order the return of the Garnished Sums to the Lao Appellants.

## Holding of the Court of Appeal

The Court of Appeal granted the Lao Appellants' application.

### Judgment and Garnishee Orders

The parties agreed that, since the debt arising from the SIAC Award was effectively extinguished, the Singapore courts would have the inherent power to set aside the Judgment and Garnishee Orders against the Lao Appellants. However, the Court of Appeal highlighted that this inherent power could only be justifiably invoked in certain circumstances, such as where the substratum or the very foundation of a court order has been destroyed, such that the continued existence or future performance of the court order would lead to injustice.

On the facts, the Court of Appeal found that it should exercise its power to set aside the Judgment and the Garnishee Orders as their substratum in the form of the Leave Order had been destroyed. It would be unjust

not to exercise this power as it would leave entirely invalid court orders formally operative. The Court of Appeal opined that this would bring the legal system into disrepute.

## **Return of Garnished Sums**

The Court of Appeal held that an appellate court has the inherent power to order the return of sums paid under orders or judgments that have been reversed or otherwise nullified as a result of an appeal. The Court of Appeal stated that no court should countenance a defendant being deprived of moneys because of a court order that is eventually found to be wrong or which should not have been made. Further, as a general rule, justice will require that the money be returned with interest.

On the facts, the Court of Appeal found that it should make the necessary orders for the return of the Garnished Sums to the Laos Appellants. The starting point was that the Garnished Sums should be returned as a matter of justice, and the Respondent had not shown that this starting point should be departed from in this case.

## **Concluding Remarks**

This decision demonstrates the approach of the Singapore courts in how they aid the enforcement of arbitral awards. While the Singapore courts may grant orders to assist in enforcement, it may also reverse such orders to suit the requirements of justice.

In particular, the decision shows how the Singapore courts are empowered to set aside orders in support of enforcement of arbitral awards (including garnishee orders) where the decision to enforce the award is overturned. Further, where sums have been paid pursuant to such garnishee orders, the Singapore court may order the recipient to return the sums with interest.

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