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Litigation Insights 2025

A review of developments in the Singapore Courts from January to June of 2025

The first half of 2025 has seen the Singapore Courts deliver several significant judgments that provide valuable insights into key areas of commercial law. This round-up highlights notable decisions in contract law, international arbitration, and employment law, reflecting the courts' approach to resolving complex disputes. From clarifications on contractual obligations and time bars to important rulings on arbitration procedures and employment-related claims, these decisions set out legal landscape in Singapore and its implications for businesses.

Key insights include:

1. **Confidentiality obligations can arise both in contract and in equity.**
   Duties of confidentiality in contracts and equity are not mutually exclusive, allowing claimants to pursue remedies under both frameworks. In a recent case, former employees were ordered to delete confidential materials retained post-employment to prevent further misuse.
2. **Exclusion clauses can effectively limit tortious duties of care.**
   Tortious duties of care can be expressly disclaimed through contractual terms, and such exclusion clauses will be upheld if they are standard in the relevant industry.
3. **Time bars for contractual and tortious claims operate independently.**
   A claim in contract may be time-barred under statutory limitation periods, but a tortious claim may still proceed if it is brought within the relevant time frame for tort claims.
4. **Oral contracts can be upheld if essential terms are agreed and supported by evidence.**
   Courts may find an oral contract binding if the parties' conduct demonstrates an intention to be bound immediately after agreeing on essential terms. Independent and contemporaneous evidence is critical in proving the existence and content of such agreements, especially in the absence of formal documentation.
5. **Risks abound where an employment relationship is brought to an end without care.**
   For employers, failure to adhere to contractual requirements when dismissing employees, particularly senior executives, can result in significant damages. For employees, coordinated resignations and retention of confidential information may amount to a conspiracy, exposing them to claims from former employers.
6. **Directors are not liable for company losses unless their breach of duty caused the losses.**
   Directors may breach their duty of care by failing to oversee a company's operations, but they are not liable for losses unless the breach directly caused the losses. Directors are expected to act as sentinels, not forensic investigators, unless there are clear warning signs of misconduct.
7. **Omission of issues (due to non-participation of a party) may not be a breach of natural justice, but an arbitrator's failure to independently consider the specific facts and arguments may be.**
   A party with actual or deemed notice of arbitration and chose not to participate cannot later challenge an arbitral award for lack of notice. If issues have been omitted as a result of a party's non-participation, such omission will not be held as a breach of natural justice. It would, however, be a breach of natural justice if an arbitrator fails to independently consider the specific facts and arguments, such as by copying extensively from related awards.
8. **Courts have discretion to balance arbitration agreements with insolvency regimes.**
   Enforcing arbitration agreements does not automatically override insolvency regimes. Courts may allow arbitration claims to proceed if the nature of the claim, timing, and potential prejudice to creditors justify such a carve-out.
9. **Fragmentation of disputes is an inevitable consequence of upholding arbitration agreements.**
   Courts have recognised that disputes may be fragmented when parties agree to resolve different types of disputes in different forums. This fragmentation is a necessary consequence of respecting the parties' agreements.
10. **Singapore courts can grant worldwide freezing orders in support of foreign-seated arbitrations.**
    Courts may grant worldwide freezing orders to support foreign arbitrations where urgency is demonstrated, and there is a sufficient link to Singapore, such as significant assets located within the jurisdiction.

CONTRACT & TORT

Confidentiality

While duties of confidentiality may be expressly provided for in contract, they can also arise in equity. The two are not mutually exclusive, enabling a claimant whose confidential information has been compromised to sue for breach of confidentiality in contract and equity.

In *Hayate Partners v Rajan Sunil Kumar 2025 SGHC 41*, the defendant, a former employee, was found to have breached both contractual and equitable obligations of confidentiality by retaining the company's confidential documents (which included investment strategies and client-related materials) after his employment was terminated. While the defendant downloaded some documents while employed, he had breached his duties of confidentiality by retaining confidential documents beyond the termination of his employment. The judge therefore ordered deletion of certain residual cache files on the defendant's MacBook under supervision to prevent further disclosure or misuse. However, the court found that the defendant did not breach confidentiality for downloads made to a company laptop that he returned upon resignation.

Exclusion Clauses

While is not unreasonable for a customer to believe that the services provided would be adjusted to suit his expectations, when a dispute arises, it is the precise terms of the contractual relationship that comes to the fore. Such was the case in *Jonathan William Glassbert v UBS 2025 SGHC 4*, where a private bank customer sued the bank for a failed investment recommended by its banker, but was unsuccessful due to the robustness of the bank's contractual terms. The court found that the bank did not owe a tortious duty of care as such duty was expressly disclaimed in its general terms and conclusions. Such exclusion clauses were also found to be reasonable as they were standard clauses in the banking industry and "foundational and well understood".

Time Bars

Overlapping claims in contract and in tort are useful arrows in the quiver. Where a claim is impeded by certain claim-specific hurdles (e.g. time limits for breach of contract actions), the claimant may be able to circumvent such hurdles by pleading a distinct claim.

In *Lorinet, Pierre Andre Jacques v Helu-Trans (S) Pte Ltd 2025 SGHC 66*, the claimant sought damages from Helu-Trans (S) Pte Ltd after a sculpture by Sir Anish Kapoor fell and was damaged two years post-installation by Helu-Trans. The contractual claim was time-barred under the Limitation Act 1959 as the claim had not been brought within 6 years of the contractual breach (i.e. the date when the sculpture was installed by Helu-Trans). The tortious claim was, however, not time-barred as it had been brought within 6 years of the damage complained of materialising (i.e. the date when the sculpture fell). The court found that although Helu-Trans owed a duty of care in tort, breach of this duty was not established as the claimant had failed to adduce sufficient evidence to show that the sculpture's fall was due to the inadequacy of the mounting system.

Oral Contracts

Where close business partners have a high degree of trust in one another, they sometimes enter into informal arrangements for convenience. However, if the relationship breaks down, it may be difficult to prove the existence and content of a binding contract. Even if some contractual terms have not yet been finalised, the Court may still find a contract if it is clear based on the parties' conduct that they intend to be bound immediately after having agreed on the essential terms.

In *Kok Kuan Hwa v Yap Wing Sang* 2025 SGHC 19, the parties raised competing versions of oral contracts allegedly governing their ownership of a highly successful food and beverage business. The defendant prevailed as the court found that the plaintiff's case was only supported by his bare assertion, whereas the defendant's case was supported by contemporaneous and independent evidence (including profit-sharing documents and the evidence of the company group's accountant).

EMPLOYMENT & CORPORATE GOVERNANCE

Wrongful Dismissal and Termination for Cause

The importance of following proper process and honouring contractual rights when exercising the right to dismiss employees, especially those in senior executive roles, cannot be overstated. In *Georg Alexander Hoptner v Three Fins 2025 SGHC 26*, the court found that the employer was not justified in summarily dismissing its CEO for alleged unauthorised relocations, unauthorised expenses, and false claims of approval. The court found the dismissal wrongful as the employer failed to establish "Termination for Cause" under the employment contract. The court further found that:

- The employee had informed the relevant parties of his relocations, and no objections were raised.
- The alleged unauthorised expenses were part of a transparent process where personal expenses were deducted from the claimant's salary.
- The employer's decision to dismiss was motivated by an attempt to avoid contractual payment obligations, including a substantial termination bonus.

Further, the dismissal was not carried out by the board, as required by the contract. Consequently, the employee was awarded damages of USD 2,464,354.84, including unpaid salary, allowances, and a termination bonus.

Conspiracy and Former Employees

Former employees who set up a new business may find themselves liable for conspiracy if resignations are coordinated and confidential information retained without authorisation. In *ATT Systems v Centricore 2025 SGHC 13*, the court found that former employees of the plaintiff had breached their obligations of confidentiality by misappropriating confidential information to set up a competing business. The court also found that the defendants conspired to cause loss to the plaintiff. The deputy chief technology officer was found liable for inducing others to breach their contracts, with the court inferring his role in the conspiracy from the rapid and coordinated nature of resignations and his supervisory position over the other defendants, who appeared to defer to him.

Directors' Duties

A director would be found to have breached his duty of care as director if he was ignorant of the company's business which was used as a vehicle of fraud. However, the director cannot be held liable for the losses suffered by the company if his breach did not cause the losses suffered by the company. So decided the Appellate Division of the High Court in *Goh Jin Hian v Inter-Pacific Petroleum 2025 SGHC(A) 7*, a case where Dr Goh Jin Hian, a former director of IPP – a Singaporean fuel trading company – was alleged to have breached his duties as a director leading to significant financial losses from fraudulent cargo trading transactions.

The court further held that a director's duty is to act as a sentinel but not to be a forensic investigator or sleuth unless there are clear warning signs ("red flags") that would put the director on inquiry. Thus, while the lower court had held Dr Goh liable to pay US$146 million in damages, this was set aside by the Appellate Division, effectively absolving Dr Goh from compensating IPP for the losses despite his breach of duty of care. On the duty to act in the best interests of IPP's creditors (described as the "creditor duty"), the court found that Dr Goh did not breach this duty since he did not authorize the fraudulent transactions and was unaware of the cargo drawdowns.

ARBITRATION

Notice and Participation in Arbitration

A party cannot challenge an arbitral award for lack of notice if they had actual or deemed notice of the arbitration but chose not to participate. In *DEM v DEL 2025 SGCA 1*, the appellant argued improper notice of arbitration and failure of the arbitrator to consider a key issue relating to lack of consideration. The Singapore Court of Appeal, however, found that the appellant had actual notice of the arbitration but deliberately chose not to participate. The Court of Appeal further found that deemed notice was established as the arbitration documents were served at contractually agreed addresses. Emphasising that a party cannot later raise issues they failed to present during the arbitration, the Court of Appeal dismissed the appeal and upheld the arbitration award.

While the arbitrator omitted to specifically address an issue, that did not constitute any breach of natural justice because the omission would have been the direct consequence of the appellant's failure to raise the issue by reason of his non-participation in the arbitration.

Arbitrability of Taxation Disputes

In *Clarence Lunn v Rodyk Davidson 2025 SGCA 25*, the Singapore Court of Appeal considered whether a dispute should be resolved by arbitration, specifically a dispute over taxation or assessment of solicitor's costs. Observing that a mere assertion that a dispute comes within the scope of an arbitration clause does not automatically trigger the court's power to stay arbitration proceedings, the court found that the court proceedings for taxation of solicitor's costs could proceed independently of the validity of the retainer, which was subject to arbitration. The court also declined to stay the taxation proceedings, noting that fragmentation of disputes was an inevitable consequence of upholding the parties' agreement which provided for some types of disputes to be resolved by arbitration and other types of disputes to be subject to court proceedings.

Arbitration and Insolvency Proceedings

The policy of enforcing arbitration agreements does not necessarily trump the insolvency regime. The Singapore Court of Appeal has clarified in *Sapura Fabrication v GAS 2025 SGCA 13* that there is no mandatory obligation for courts to carve out arbitration proceedings from a restructuring moratorium. Instead, a court has the discretion to allow particular claims to be carved out which discretion is guided by factors such as the nature of the claim, the timing of the application and any undue prejudice to the general body of creditors. For instance, where the insolvency regime is inadequate to deal with the complexities of the dispute, this would suggest that it may be appropriate to grant a carve-out for arbitration proceedings to proceed. Further, where the arbitration claims represent only a small fraction of the total debt, that creditor's vote would likely be inconsequential to the viability of any restructuring proposal, so the grant of a carve-out would not affect the debtor's "breathing space" to propose a restructuring.

Copying from Related Awards

In *DJP v DJO 2025 SGCA(I) 2*, the Singapore Court of Appeal reaffirmed that arbitrators must independently and impartially consider the specific facts and arguments before them. An arbitrator failing to do so may breach the rules of natural justice which justifies setting aside an award. The court found a serious breach of natural justice where the presiding arbitrator copied extensively–212 out of 451 paragraphs–from awards in parallel arbitrations involving the same respondent. This copying included application of wrong legal principles and misattribution of submissions, indicating the tribunal did not approach the case with an open mind.

Worldwide Freezing Orders in Support of Foreign Arbitration

Singapore courts may grant a worldwide freezing order in support of a foreign-seated arbitration. This power is provided for in Section 12A(2) of the International Arbitration Act 1994, and exercised in the case of *Novo Nordisk v KBP Biosciences 2025 SGHC(I) 3*. The Singapore International Commercial Court granted a worldwide freezing order in support of a New York-seated arbitration on the basis that the respondents had failed to disclose material information.

A sufficient link between the foreign arbitration and Singapore was evident from the fact that the respondents had significant assets in Singapore. Urgency was also demonstrated as the New York arbitral tribunal had not been constituted yet, recourse to an emergency arbitrator was not available *ex parte* (i.e. without notice to the other party) and New York law purportedly did not permit worldwide freezing orders.

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