Lau Lee Sheng v. Envy Asset Management Pte Ltd (in liquidation) [2026] SGCA 28 – Singapore Court of Appeal clarifies when payments to innocent employees in a Ponzi scheme may be clawed back

In *Lau Lee Sheng and others v. Envy Asset Management Pte Ltd (in liquidation) and others and another appeal* [2026] SGCA 28 ("***Lau Lee Sheng***"), the Court of Appeal largely upheld the High Court's decision that the Liquidators of the Envy Companies were entitled to claw back more than SGD 32 million in commissions and profit-sharing payments from four of the Envy Companies' former employees.

This is a further significant milestone in Ponzi scheme jurisprudence in Singapore in respect of claims against a more contentious category of "net winners" – employees / promoters of the scheme. We elaborate in this client update.

Background

Envy Asset Management Pte Ltd ("**EAM**"), Envy Global Trading Pte Ltd and Envy Management Holdings Pte Ltd (collectively, the "**Envy Companies**") purportedly operated a highly profitable business involving the purchase and resale of discounted physical nickel ("**Purported Nickel Trading**"). Investors were induced to invest substantial sums to finance the purchase of the nickel at a purportedly discounted rate, in exchange for a cut of the profits. In reality, the Purported Nickel Trading was a Ponzi scheme, and the Envy Companies did not purchase / resell any physical nickel.

As part of the Purported Nickel Trading, the Envy Companies incentivised their existing investors / employees to attract new investors by paying substantial commissions, profit-sharing payments and referral fees.[1] The Appellants in *Lau Lee Sheng* were amongst such employees, having received more than SGD 32 million in commissions, profit-sharing payments and referral fees (collectively, the "**Challenged Payments**").

Following the collapse of their Ponzi scheme, the Envy Companies were placed into liquidation and as part of their recovery efforts, the Liquidators commenced proceedings against the Appellants to claw back their Challenged Payments. The Liquidators relied, *inter alia*, on section 73B Conveyancing and Law of Property Act (version in force prior to 30 July 2020) ("**CLPA**"), section 438 Insolvency, Restructuring and Dissolution Act 2018 ("**IRDA**") and/or section 224 IRDA.[2]

At first instance, the General Division of the High Court ordered the Appellants to return their respective Challenged Payments, less the income tax that the Appellants had paid on those payments.[3] Our update on the High Court's decision is accessible here (https://shooklin.com/envy-asset-management-pte-ltd-in-liquidation-and-others-v-ng-yu-zhi-and-others-2025-sghc-143-and-envy-asset-management-pte-ltd-in-liquidation-and-others-v-lau-lee-sheng-and-others-2025-sghc-144/).

In *Lau Lee Sheng*, the Appellants appealed against the High Court's decision that they were liable to return the Challenged Payments. Amongst others, the Appellants submitted that they had provided consideration for the purposes of section 73B CLPA, section 438 IRDA and section 224 IRDA, and that they should not be liable for sums that were reinvested back into the Purported Nickel Trading.

[1] Judgment, at [1].
[2] Judgment, at [2].
[3] Judgment, at [3].

The Court of Appeal's decision in Lau Lee Sheng

Save for the referral fees received by one of the Appellants, Mr. Koh Hong Jie, the Court of Appeal dismissed the appeals in *Lau Lee Sheng*. They affirmed that the Appellants' commissions and profit-sharing payments were liable to clawback under section 73B CLPA and section 438 IRDA. As the clawback of the payments was already covered under these provisions, it was not necessary for the Court to consider section 224 IRDA.[4]

The nature of "consideration" under s 73B CLPA and s 438 IRDA

A key issue in the proceedings was whether the Appellants provided consideration for the purposes of section 73B CLPA and section 438 IRDA. This is significant since the clawback claims under section 73B CLPA and section 438 IRDA would fail if the Appellants had provided consideration of an adequate value for the Challenged Payments. Amongst others, the Appellants submitted that they did provide consideration, as these payments were for the contemporaneous discharge of the claims they had against the Envy Companies for, *inter alia*, misrepresentation.

However, the Court rejected these submissions, affirming that consideration has to be analysed in the context of the transaction to be impugned.[5] In particular, the consideration given and received must be within the parties' contemplation at the time of the transaction. Unbargained-for benefits that are subsequently conferred are not relevant.[6] Applying this framework, the Court held that since the commission / profit-sharing payments were purportedly made pursuant to the Appellants' employment contracts, only the employment contracts formed the context for the analysis of consideration.[7]

The Court affirmed that the relevant employment contracts provide that the Appellants' commission and profit-sharing payments could only be paid if the Envy Companies earned an actual profit from the Purported Nickel Trading.[8] Given that the Purported Nickel Trading was a mere Ponzi scheme and no actual profits were generated:

a) there was no contractual basis for the Envy Companies to pay the commissions and profit-sharing payments; and
b) the Appellants did not provide consideration for their respective commissions and profit-sharing payments.

The Court of Appeal dismissed the Appellants' submission that discharge of their alleged putative claims against the Envy Companies (i.e. for misrepresenting to them that the Purported Nickel Trading was real and inducing them to stay on as employees and promote the Purported Nickel Trading), served as consideration.[9] As the Appellants never knew that the Purported Nickel Trading was a mere Ponzi scheme when the commissions / profit-sharing payments were made, the Appellants did not contemplate, and could not have agreed to discharge, such hypothetical claims that would only arise after discovery of the scheme.

However, the Court held that the referral fees received by Mr. Koh were not subject to clawback as he had provided consideration for these payments. Exceptionally, and unlike the Appellants' commission / profit-

[4] Judgment, at [51].
[5] Judgment, at [56].
[6] Judgment, at [57].
[7] Judgment, at [82].
[8] Judgment, at [68]-[74].
[9] Judgment, at [82].

sharing payments, Mr. Koh's referral fees were calculated based on the amount invested by the investors whom he referred to the Purported Nickel Trading.[10] The Court disagreed with the High Court's decision that referral fees calculated in this way were dependent on the Purported Nickel Trading actually being carried out. Accordingly, since Mr. Koh had no knowledge of the fraud and the transaction could not be analysed with the benefit of hindsight – EAM was contractually obliged to pay these referral fees to Mr. Koh upon his procurement of an investment.[11]

Nevertheless, the Court emphasised that this did not amount to a general rule that referral payments in the form of a percentage of funds invested could never be clawed back – it would for example depend on whether the percentages given to the referrer were exorbitant (although the percentages of 0.8-2.75% were held not to be exorbitant in this case, considering the returns represented).[12]

Commissions returned by way of reinvestments may still be clawed back

Apart from the above, another of the Appellants, Ms. Shen Xu Huai, argued that she should not be liable for clawback of up to SGD 909,473.16 in commissions claimed against her. In particular, Ms. Shen submitted that she did not actually withdraw SGD 909,473.16 of her commissions and that these were internally reallocated to her investment account in the Purported Nickel Trading instead (the "**Reinvested Sum**"). Amongst others, Ms. Shen submitted that since these commissions remained within the Envy Companies' estate, it did not cause any diminution in the estate's value.[13]

The Court rejected Ms. Shen's submission. Whilst there was no transfer of monies per se, this was only because she chose not to receive these commissions and directed that they be invested with EAM instead.[14] This was no different from the situation where Ms. Shen received the cash in hand and reinvested the same in the Purported Nickel Trading.[15] The fact that she reinvested the monies subsequently is irrelevant. The focus is on the conveyance to be impugned – the Court characterised the reinvestment as diminishing the Envy Companies' estate since it gave Ms. Shen an investment and claim she otherwise would not have had.[16]

The Court's discretion not to order a clawback will only be exercised in exceptional circumstances

The Court affirmed that it holds a discretion not to order a clawback, even if the substantive requirements under the clawback provisions (i.e. section 73B CLPA, section 438 IRDA and section 224 IRDA) are fulfilled. Nevertheless, it reiterated that the discretion should only be exercised in exceptional circumstances, where a clawback would be so prejudicial to the transferee that it displaces the policy objective of reconstituting the estate.[17]

This would entail a balancing exercise involving factors such as: (a) the transferee's mental state; (b) any changes in the transferee's position; (c) the possibility of restoring the transferee to the *status quo ante*; and (d) the benefit that the creditors enjoyed from a restoration of the conveyance.[18]

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[10] Judgment, at [103].
[11] Judgment, at [107], [116].
[12] Judgment, at [114]-[118].
[13] Judgement, at [92].
[14] Judgement, at [95].
[15] Judgement, at [96].
[16] Judgement, at [99].
[17] Judgement, at [136].
[18] Judgement, at [139].

Applied to the present case, the Court held that it was not appropriate to exercise its discretion, as the Appellants did not adduce cogent evidence of what prejudice they would suffer. Whilst they insisted that they would suffer financial hardship from a clawback, these assertions were broad, lacked specificity and particulars, and were not supported by meaningful documentary evidence.[19]

Insolvency set-off was also not available

Lastly, the Court held that Ms. Shen was not entitled to reduce the Challenged Payments that she is liable for pursuant to an insolvency set-off against her Underwithdrawn Sums (i.e. outstanding investments). This is since the requisite mutuality of parties and of debts between the clawback claims against her and her alleged claims against the Envy Companies was absent.[20] The statutory avoidance provisions enable the reconstitution of the estate for the benefit of the creditors – in contrast, Ms. Shen's claims were against the Envy Companies. Significantly, allowing the set-off would allow Ms. Shen to bypass the *pari passu* principle by securing payment ahead of other unsecured creditors.[21]

Significance of the decision for insolvency practitioners

Lau Lee Sheng provides welcome guidance for insolvency practitioners on the scope of statutory avoidance provisions generally, and particularly within the context of a Ponzi scheme.

In ascertaining consideration for the purposes of the defence under section 73B(3) CLPA and undervalue transactions under section 224 / 438 IRDA, it is imperative that insolvency practitioners carefully examine the terms of the transaction / conveyance to be impugned. As clearly demonstrated by the Court's decision on the Appellants' commissions and profit-sharing payments, as opposed to Mr. Koh's referral fees, the precise arrangement agreed at the time has a significant bearing on whether it will be impugned.

The Court of Appeal's latest decision also affirms the robust nature of the remedies offered under the statutory clawback provisions, providing an invaluable avenue for insolvency practitioners to recover assets on behalf of bankruptcy / insolvency estates. Pertinently, *Lau Lee Sheng* demonstrates that:

a) The Courts will be robust and principled in the clawback of Ponzi scheme payments. It does not matter whether one was paid in the capacity of an employee, or investor, or otherwise, or how the payments were named. So long as the payment turned on the execution of the promised investment strategy (i.e. in this case, both the relevant investor referred and the Envy Companies making actual profit), it can be impugned in principle.
b) Even if the monies from the impugned transaction were not actually received / returned to the transferor following the transaction, but credited for other purposes, this does not preclude a clawback action from being brought against them. As seen with Ms. Shen's Reinvested Sum, such sums may still be clawed back on the basis that the relevant transaction to be impugned is the initial credit given.
c) The discretion not to order a clawback will only be exercised in exceptional circumstances. Any recipient that seeks the exercise of such discretion must provide cogent evidence of prejudice that he will suffer. It is insufficient to make bare or improperly substantiated assertions that he will suffer financial hardship.
d) Statutory avoidance claims are generally not subject to insolvency set-off. As affirmed in *Lau Lee Sheng*, such claims are brought on behalf of the creditors and/or arise only after the commencement of the

[19] Judgement, at [141].
[20] Judgement, at [152].
[21] Judgement, at [157].

winding up. Thus, the requisite mutuality of debts / parties for an insolvency set-off against any claims that the transferee may have, is generally absent.

The team who acted for the Liquidators and the Envy Companies comprised Partners David Chan, Daryl Fong and Lin Ruizi, as well as Senior Associates Louis Lai, Ryan Mark Lopez and Tan Wei Sze. Should you have any queries on this case update or generally, please do not hesitate to contact them.

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