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Tort of Abuse of Process – Case Note of Lee Tat Development Pte Ltd v Management Corporation Strata Title Plan No. 301 [2018] 2 SLR 866; [2018] SGCA 50

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Tort of Abuse of Process

Case Note of Lee Tat Development Pte Ltd v Management Corporation Strata Title Plan No. 301 [2018] 2 SLR 866; [2018] SGCA 50

There has been growing public interest surrounding the tort of abuse of process. In the landmark decision of Lee Tat Development Pte Ltd v Management Corporation Strata Title Plan No 301 [2018] 2SLR 866; [2018] SGCA 50, it was held by the Court of Appeal that the tort of abuse of process was not recognised in Singapore [at 149].



Facts

The Appellant in the present case, Lee Tat Development, had been engaged in a series of litigation with the Respondent, the Management Corporation Strata Title (MCST) of Grange Heights condominium since the 1970s. The initial issue in the 1970s was whether Grange Heights residents had a right of way over a strip of land which gave access to Grange Road. The condominium was built on an amalgamation of two adjoining plots of land, Lots 11-34 and 561 and the former had been a dominant tenement possessing a right of way over the strip of land. It was thus necessary to examine whether the amalgamation of land had extinguished this right. The SGCA then held in 1992 that Grange Heights residents had a right of way over the strip of land as the amalgamation had not extinguished their right.

Between 2004 and 2009, MCST and Lee Tat commenced fresh actions against each other, with the former arguing that it had the right to repair and maintain the strip of land and the latter seeking a declaration that would state definitively that the Grange Heights residents did not have right of way over the strip of land, which it had acquired in 1997. With regard to Lee Tat's action, the SGCA held in 2005 that Lee Tat was estopped by the court's 1992 decision from re-litigating this issue. However, in 2008, the SGCA, in the matter concerning MCST, reversed its 2005 decision, stating that since the 1992 decision was prior to Lee Tat's acquisition of the strip of land, the decision estopped Lee Tat in its former capacity as owner of the neighbouring dominant tenements and not in its current capacity as owner of the strip of land. In 2009, the SGCA dismissed the MCST's claim to set aside the 2008 decision for breach of natural justice.



Facts (cont.)

In 2012, Lee Tat sought to claim damages against the MCST under four causes of action, chief among which, for the purposes of this case summary, is the tort of abuse of process. Lee Tat claimed that the MCST had committed this tort by participating in all previous actions, with the exception of the first, in their series of litigation for the collateral purpose of increasing the price of its land, since the possession of the right of way would

Holding of the Court

It was held by the SGCA that the tort of abuse of process was not recognised in Singapore [at 149]. The reasons are as follows:-

- a. Recognising the tort may undermine the principle of finality in the law;
- b. The tort may open the floodgates of litigation;
- c. The tort of abuse of process may also create a “chilling effect” on regular litigation;
- d. There are other remedies to abusive litigation; and
- e. The introduction of the tort of abuse would be incompatible with the increasing shift towards integrating mediation into the local legal system.



Holding of the Court (cont.)

In considering whether the tort of abuse of process should be introduced in Singapore, the SGCA drew various similarities between this and the tort of malicious prosecution. The policy consideration that allowing the tort of malicious prosecution to be used in Singapore would undermine the principle of finality in the law was thus relevant in the court's analysis with respect to the tort of abuse of process.

It was stated [at 151] that the introduction of the tort would encourage unnecessary satellite litigation and lengthen disputes, since cases involving the tort are largely pleaded in the context of “fresh litigation about prior litigation”. Aside from the increased length of disputes that an introduction of the tort would entail, the court also expressed its concern that, owing to the capacity of litigation to bring out the unpleasant side of human nature [at 116], many claims would take the form of unmeritorious, vindictive attempts which would eventually result in the wastage of the court's time and resources.



Holding of the Court (cont.)

In addition to undermining the principle of finality, the introduction of the tort would also open the floodgates of litigation, exposing the court to the same array of claims that would arise in respect of malicious prosecution in the civil sphere. Once the abusive institution of legal proceedings is capable of giving rise to tortious liability, the boundaries of tort are extended and blurred [at 154]. The court also recognised that a counter to this “floodgates” argument might be supported by English case law. However, there remains a dearth of case law on the tort in the UK, with Grainger and Gilding appearing to be the only two cases where the tort has succeeded. It would thus seem that the tort is “on the verge of extinction” in its own country of birth [at 155], citing Lord Sumption in *Crawford Adjusters*. On the other hand, this tort has been utilised more commonly in Australia. Hence, the English experience may not be indicative as to whether the tort should be similarly introduced in Singapore. Alternatively, an argument can be made for the English experience, which would mean that since the tort has fallen into desuetude in England, there may not be any point in introducing it in Singapore [at 155].

The SGCA then went on to examine the effect of the extension of the tort on litigants, terming the influence it may create as a “chilling effect” [at 156]. Litigants would have to be mindful of the risk that they may be sued or found liable for the abuse of process. However, the effect of this may be addressed and reduced by the difficulty in establishing the tort.



Holding of the Court (cont.)

The availability of other remedies to address the problem of abusive litigation was also another factor that led to the SGCA's decision not to recognise the tort of the abuse of process in Singapore. The court postulated that the system of various rules of civil procedure, which deal specifically with different aspects of the abuse of process of court would permit the litigant to apply to the court to prevent such abuse well before the claim concerned has even advanced significantly [at 157]. Innocent litigants are hence not inconvenienced and left without a remedy [at 159].

Lastly, the court stated that the introduction of the tort of abuse would be incompatible with the increasing shift towards integrating mediation into the local legal system and should thus not be carried through.

Notably, at [163], the Court of Appeal had also held that even if the tort was recognised (which the court had emphasized it is not the case), there was no ulterior purpose in the present case. Citing the English Court of Appeal decision of *Goldsmith v Sperrings Ltd* [1977] 1 WLR 478, having “an ulterior purpose in view as a desired byproduct of the litigation” does not amount to an illegitimate purpose.

Conclusion

In conclusion, the Court of Appeal had upheld the Trial Judge's decision to reject Lee Tat's claim in abuse process.



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