

Landmark Court of Appeal decision: Tort of Malicious Prosecution Not Extended to Civil Proceedings and Tort of Abuse of Process Not Recognised in Singapore

The Court of Appeal has, in a landmark decision, held that the tort of malicious prosecution should not be extended to civil proceedings generally and that the tort of abuse of process is not recognised in Singapore: *Lee Tat Development Pte Ltd v Management Corporation Strata Title Plan No 301* [2018] SGCA 50.

Our Comments

By its decision in *Lee Tat Development Pte Ltd v MCST No 301* [2018] SGCA 50, the Court of Appeal has departed from the English position, and settled an area of law which, until now, has not been conclusively determined in Singapore.

Our Tan Chee Meng SC, Jocelyn Ngiam Heng Hui and Chia Shi Jin of WongPartnership acted for the successful respondent, both at the trial before the High Court and at the appeal before the Court of Appeal.

This update takes a look at the Court of Appeal's decision.

Background

The key facts relevant to the issues discussed in this update are summarised below.

In 1974, the first of several court actions spanning several decades were commenced by the appellant property developer ("**Lee Tat**") against the developer of the Grange Heights condominium, Hong Leong Holdings Ltd ("**HLH**") to deny HLH and purchasers of the Grange Heights condominium development a right of way over a narrow strip of land owned by Lee Tat ("**Right of Way**"). After the Management Corporation of Grange Heights Strata Title No

301 ("**MCST**") was constituted on 12 August 1976, the residents of Grange Heights were represented in the court actions by the MCST.

In 2005, the Court of Appeal held that the residents had the Right of Way ("**2005 Decision**"). However, in 2008, the Court of Appeal overruled its earlier decision, holding that the Right of Way had been extinguished by law when the two adjoining plots of land on which Grange Heights was built were amalgamated.

Although the Right of Way issue had by 2008 been settled by the court, Lee Tat in 2012 commenced a new set of court proceedings against the MCST, claiming damages for:

- Malicious prosecution of two earlier actions to assert the Right of Way;
- Abuse of the court's process by asserting the Right of Way in four earlier actions;
- Malicious expression on two occasions of the falsehood that the residents possessed the Right of Way; and
- Trespass on Lee Tat's property by using Lee Tat's strip of land until the 2008 decision was handed down in December that year.

The High Court's Decision

Ruling in favour of the MCST, the High Court judge found that:

- It was unclear whether the tort of malicious prosecution had been extended to civil proceedings generally in Singapore. His Honour declined to decide the issue because, in His Honour's view, the claim was in any event not made out on the facts. His Honour

found that two elements of the tort (i.e., the prosecution must have been without reasonable and probable cause, and that the prosecution must have been malicious) were not satisfied;

- It was unclear whether the tort of abuse of process was recognised in Singapore. His Honour also found it unnecessary to decide the issue;
- Certain statements by the MCST to the effect that the residents enjoyed the benefit of the Right of Way were not false, and did not amount to malicious falsehoods. Further, the element of malice was not made out; and
- The claim in trespass should be dismissed on the basis of the doctrine of res judicata, which required that even erroneous judgments (such as the 2005 Decision) must be given effect to.

Lee Tat appealed to the Court of Appeal against the High Court judge's findings.

The Court of Appeal's Decision

The Court of Appeal upheld the High Court judge's decision to dismiss all the four claims brought by Lee Tat.

In particular, the Court of Appeal declined to extend the tort of malicious prosecution to civil proceedings generally and to recognise the tort of abuse of process. This update focuses on the Court of Appeal's reasons for doing so.

Tort of malicious prosecution not extended to civil proceedings

The Court of Appeal held that a party is not entitled to recover damages for the malicious prosecution of civil claims against him, save for very limited and defined categories of cases (i.e., where there is a conspiracy to injure or where there is an abuse of a public function for collateral purposes of the person performing it). This is different from the malicious prosecution of

criminal claims, for which a party would be entitled to recover damages.

The Court of Appeal highlighted reasons of principle and legal policy for its position:

- Reasons of principle
 - The public character and harsher consequences of criminal proceedings justify maintaining the distinction as to whether either is capable of giving rise to claims for malicious prosecution. First, the public character of criminal prosecution almost always has more serious effects than civil proceedings on the defendant's reputation. A charge brought against a person conveys to the public at large that a wrong has been committed against the community and also often against a victim that warrants punishment. By contrast, no similar stigma generally arises when a civil suit is brought against a person. Secondly, the legal consequences of a successful criminal prosecution are usually more invasive of the accused's rights than those of the defendant in civil proceedings. The accused may have his property, liberty or life taken from him because of his conviction, which is graver than the consequences of losing a civil suit. Thirdly, criminal prosecution is principally carried out by public authorities, which would likely result in right-thinking members of society attaching greater credibility and weight to the fact that a criminal charge has been laid against an individual than the fact that one private individual has commenced a civil suit against another.
 - Extending the tort is inconsistent with the principle that malice is generally irrelevant in the context of tort law, which assumes that if an act is lawful, a person has the right to do it even if he harbours ill motives. Further, the concept of malice

invites a subjective inquiry, which would create more uncertainty in tort law.

- In addition, extending the tort would introduce uncertainty into other areas of law, such as the law of privilege.
- Finally, if the tort were extended to civil proceedings generally, the issue as to what sorts of damage might be recoverable poses problems.
- Reasons of legal policy
 - Extending the tort would undermine the principle of finality in the law and legal process. It may, as in the present case, encourage needless satellite litigation, particularly among parties who have an acrimonious history. This would risk opening the floodgates of litigation and waste the time and resources of the court.
 - It would also have a chilling effect on regular litigation by deterring genuine claimants from invoking the court's jurisdiction.
 - Further, extending the tort would also be incompatible with an increasing shift towards integrating mediation into the fabric of the Singapore legal system.
 - Finally, there already exist various legal mechanisms in the current rules of civil procedure (such as striking out, judgment and costs) for bringing to a prompt and early end, claims that would otherwise constitute malicious prosecutions. Victims

of malicious prosecution of civil proceedings would therefore not necessarily be left without remedy.

On the facts of the present case, the Court of Appeal agreed with the MCST that, even if the tort were extended to civil proceedings, Lee Tat plainly failed to establish both malice and the lack of any reasonable and probable cause on the MCST's part. In the circumstances, the tort of malicious prosecution clearly was not made out.

Tort of abuse of process not recognised

The Court of Appeal held that it would be inappropriate to introduce the tort of abuse of process in Singapore.

It recognised that the torts of abuse of process and malicious prosecution are similar both as to their elements as well as their underlying rationale. Both torts stem from the instinct that those who suffer injury as a result of abusive legal proceedings should not be without remedy.

However, the Court of Appeal noted that recognition of either tort (in the case of the latter, if it were extended to civil proceedings) would give rise to many common problems. As such, the legal policy reasons compelling the Court of Appeal not to extend the latter to civil proceedings also compel the Court of Appeal not to recognise the former. These include the need to not undermine the principle of finality and to not create a chilling effect for genuine litigants.

If you would like information on this or any other area of law, you may wish to contact the partner at WongPartnership that you normally deal with or the following partner:



TAN Chee Meng, Senior Counsel

Deputy Chairman

d +65 6416 8188

e cheemeng.tan

@[wongpartnership.com](https://www.wongpartnership.com)

Click [here](#) to view Chee Meng's CV.

WPG MEMBERS AND OFFICES

- contactus@wongpartnership.com

SINGAPORE

-

WongPartnership LLP
12 Marina Boulevard Level 28
Marina Bay Financial Centre Tower 3
Singapore 018982
t +65 6416 8000
f +65 6532 5711/5722

CHINA

-

WongPartnership LLP
Beijing Representative Office
Unit 3111 China World Office 2
1 Jianguomenwai Avenue, Chaoyang District
Beijing 100004, PRC
t +86 10 6505 6900
f +86 10 6505 2562

-

WongPartnership LLP
Shanghai Representative Office
Unit 1015 Corporate Avenue 1
222 Hubin Road
Shanghai 200021, PRC
t +86 21 6340 3131
f +86 21 6340 3315

MYANMAR

-

WongPartnership Myanmar Ltd.
Junction City Tower, #09-03
Bogyoke Aung San Road
Pabedan Township, Yangon
Myanmar
t +95 1 925 3737
f +95 1 925 3742

INDONESIA

-

Makes & Partners Law Firm
Menara Batavia, 7th Floor
Jl. KH. Mas Mansyur Kav. 126
Jakarta 10220, Indonesia
t +62 21 574 7181
f +62 21 574 7180
w makeslaw.com

wongpartnership.com

MALAYSIA

-

Foong & Partners
Advocates & Solicitors
13-1, Menara 1MK, Kompleks 1 Mont' Kiara
No 1 Jalan Kiara, Mont' Kiara
50480 Kuala Lumpur, Malaysia
t +60 3 6419 0822
f +60 3 6419 0823
w foongpartners.com

MIDDLE EAST

-

Al Aidarous International Legal Practice
Abdullah Al Mulla Building, Mezzanine Suite 02
39 Hameem Street (side street of Al Murroor Street)
Al Nahyan Camp Area
P.O. Box No. 71284
Abu Dhabi, UAE
t +971 2 6439 222
f +971 2 6349 229
w aidarous.com

-

Al Aidarous International Legal Practice
Zalfa Building, Suite 101 - 102
Sh. Rashid Road
Garhoud
P.O. Box No. 33299
Dubai, UAE
t +971 4 2828 000
f +971 4 2828 011

PHILIPPINES

-

Zambrano Gruba Caganda & Advincula
27/F 88 Corporate Center
141 Sedeño Street, Salcedo Village
Makati City 1227, Philippines
t +63 2 889 6060
f +63 2 889 6066
w zglaw.com/~zglaw