

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 53

Civil Appeal No 61 of 2019

Between

Leong Sze Hian

... Appellant

And

Lee Hsien Loong

... Respondent

EX TEMPORE JUDGMENT

[Civil Procedure] — [Striking out]

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Leong Sze Hian

v

Lee Hsien Loong

[2019] SGCA 53

Court of Appeal — Civil Appeal No 61 of 2019

Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Judith Prakash JA

27 September 2019

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Sundaresh Menon CJ (delivering the judgment of the court *ex tempore*):

1 This is an appeal against an order of the judge striking out the counterclaim brought by the appellant which was framed in terms that the respondent's action was an abuse of the process.

2 We begin with a brief recitation of the salient facts. The appellant posted a link to an article that was apparently published on a Malaysian site, suggesting that the ongoing Malaysian investigations concerning the 1Malaysia Development Berhad fund extended to looking into allegedly “secret deals between the two corrupted Prime Ministers of Singapore and Malaysia”. The article referenced, among other things, “several unfair agreements” that Mr Najib Razak had entered into with the respondent including the agreement to build the Singapore-Malaysia High-Speed Rail. The respondent brought suit against the appellant for defamation. The appellant intends to defend the claim. Among other things, he does not concede the falsity of the article, and even if

the article were shown at trial to be false, he contends that he would in any case be entitled to raise as a defence the argument that the action was brought as an abuse of process. In the court below, the appellant filed a counterclaim premised on the tort of abuse of process as the relevant cause of action. In other words, he was seeking to rely on the alleged abuse of process not only as a defence to the claim but also as the basis for a counterclaim. The respondent applied to strike out the appellant's counterclaim, while the appellant applied to strike out the respondent's defamation claim on various grounds including that it was an abuse of process. The judge struck out the appellant's counterclaim while dismissing his application to strike out the respondent's claim.

3 We say nothing about the appellant's defences to the claim because these are not before us. What is before us is the appellant's contention that aside from raising his defences, he is also entitled to sue the respondent and mount a cause of action in abuse of process. As a preliminary point, we observe that no case has been cited to us, by the appellant's counsel Mr Lim Tean, even in jurisdictions that recognise the tort of abuse of process, where such a claim has been recognised. While this is not determinative, it seems to us improbable that one could make a potentially defamatory publication and then mount a viable claim against a party at the receiving end of that publication for attempting to act to protect his interests.

4 Mr Lim argued that this would not be surprising if the respondent, who is the Prime Minister, was acting in his public capacity and, in his words, using the "machinery of the state" to silence his critics. Before we deal with this point, it is necessary to unpack that submission a little. This was an action brought by the respondent evidently in his own capacity and using his own solicitors. On the face of it, as we observed to Mr Lim, the only organ of state that was involved in these proceedings is the judiciary, and Mr Lim clarified, correctly,

that he was not at all referring to the courts. Instead, he pointed to statements by the Infocomm Media Development Authority (IMDA) and other agencies, but as we observed to Mr Lim, whatever their actions might be, those have nothing to do with this suit.

5 Mr Lim submitted that the real motivation of the respondent was to silence a critic of the government. We think it is important to view the facts in their proper setting. A plaintiff in a defamation action is entitled to seek the aid of the court in an effort to vindicate his interests if he considers that he has been at the receiving end of a defamatory publication. The courts do not limit the rights of injured parties to access the courts, even if they happen to be public figures.

6 In the final analysis, however, the biggest and, in our judgment, insuperable obstacle that the appellant faces is that his claim is foreclosed by the recent decision of the Court of Appeal in *Lee Tat Development Pte Ltd v Management Corporation Strata Title Plan No 301* [2018] 2 SLR 866 (“*Lee Tat Development*”). In a judgment that was fully and carefully reasoned and reflected the unanimous views of a five-judge panel of the Court of Appeal, it was held that the tort of abuse of process is not a recognised tort under the law of Singapore. Mr Lim accepted that this is the law of Singapore but he submitted that we should carve out an exception in favour of the claim that the appellant wishes to pursue. We do not accept that any such carve-out is warranted.

7 *Lee Tat Development* was based on a consideration of a number of key policy considerations. Every defendant in litigation faces the prospect that at the end of the proceedings, if he prevails, the vindication of victory may not be sufficient to address all the inconvenience, stress, pain and other suffering that he might have endured. The common law has historically dealt with this by

allowing for costs awards. A successful party in litigation will be able to recover an award of costs and as Mr Lim accepted, the court has a wide discretion in fashioning an appropriate award of costs. In *Lee Tat Development*, the court was invited implicitly, if not explicitly, to go beyond this mechanism and to allow a party to bring an action seeking damages where it can show that the claim it had been faced with was an abuse of process. The Court of Appeal declined to do so and it held in no uncertain terms that the tort of abuse of process is not part of the law of Singapore. Among the reasons for this, the court highlighted these factors. First, recognising the existence of the tort of abuse of process would undermine the principle of finality and encourage unnecessary satellite litigation and, in this way, prolong disputes. Second, it would open the floodgates to a variety of claims, including for the allegedly abusive commencement of civil proceedings. Third, this in turn could deter genuine litigants with potentially valid claims from pursuing their remedies for fear of being sued. Fourth, the existing rules of civil procedure already provide adequate means for dealing with abuses of our process. In our judgment, these reasons remain valid, and we are satisfied that there is no reason or basis for departing from *Lee Tat Development*.

8 In the circumstances, we dismiss the appeal.

9 The appellant shall pay the respondent costs fixed at \$20,000, inclusive of disbursements. We also make the usual order for the payment out of security.

Sundaresh Menon
Chief Justice

Andrew Phang Boon Leong
Judge of Appeal

Judith Prakash
Judge of Appeal

Lim Tean (Carson Law Chambers) for the appellant;
Davinder Singh s/o Amar Singh SC, Lin Xianyang Timothy,
Fong Cheng Yee, David, Darveeniah Rajula Rajah and
Shannon Valencia Peh (Davinder Singh Chambers LLC)
for the respondent.
