# Lee Tat Development Pte Ltd v Management Corporation of Grange Heights Strata Title No 301 (No 2)
[2004] SGHC 220

**Case Number** : OS 825/2004

**Decision Date** : 28 September 2004

**Tribunal/Court** : High Court

**Coram** : Woo Bih Li J

**Counsel Name(s)** : Tan Cheng Han SC (Tan Cheng Han), Ernest Balasubramaniam and Rajvant Kaur (ASG Law Corporation) for plaintiff; Edwin Lee and Looi Ming Ming (Rajah and Tann) for defendant

**Parties** : Lee Tat Development Pte Ltd — Management Corporation of Grange Heights Strata Title No 301

*Res Judicata – Issue estoppel – Whether plaintiff estopped from raising issue in present case because issue forming subject matter of previous litigation*

28 September 2004

**Woo Bih Li J:**

**Introduction**

1 I will adopt the formal facts as set out in the judgment of the Court of Appeal delivered by Goh Joon Seng J in *Lee Tat Development Pte Ltd v Management Corporation of Grange Heights Strata Title No 301* [1992] 2 SLR 865 at 866 and 867, [1] to [7].

2 Lee Tat Development Pte Ltd ("Lee Tat") is the owner of two pieces of adjoining land known as lots 111-32 and 111-33 of Town Sub-division 21. The defendant is the management corporation ("the MCST") of Grange Heights which is a condominium development on lot 687 of Town Sub-division 21. Lot 687 is an amalgamation of lot 111-34 and an adjoining lot 561 of Town Sub-division 21.

3 Adjoining lots 111-32, 111-33 and what was formerly lot 111-34 is lot 111-31. Lot 111-31 is a long, narrow but irregular strip of land containing an area of 9,274 sq ft; it is 280ft long, 60ft at its widest point and 21ft at its narrowest. Over this lot is the right of way vested by grant in the owners of lots 111-30, 111-32, 111-33 and 111-34. Lots 111-30, 111-31, 111-32, 111-33 and 111-34 were formerly parts of a larger piece of land owned by a company, Mutual Trading Ltd. In 1919, Mutual Trading Ltd, then in voluntary liquidation, sold and conveyed lots 111-30, 111-32, 111-33 and 111-34 and granted a right of way over the Reserve for Road to the purchasers of the four lots in the following terms:

> And together with full and free right and liberty for the Purchaser his executors administrators and assigns being the owner or owners for the time being of the land hereby conveyed or any part thereof and their tenants and servants and all other persons authorised by him or them in common with others having a similar right from time to time and at all times hereafter at his and their will and pleasure to pass and repass with or without animals and vehicles, in along and over the Reserve for Road coloured yellow in the said plan.

4 The Reserve for Road is lot 111-31 which is the servient tenement. The adjoining lots, lots 111-32 and 111-33, owned by Lee Tat, and lot 111-34 (now part of lot 687 on which Grange

Heights condominium stands) are the dominant tenements.

5 Presumably, Mutual Trading Ltd, the owner of the servient tenement, has since been dissolved.

6 The Grange Heights condominium was completed in or about 1976. It comprises three high-rise blocks with a total of 120 apartments and common facilities like a swimming pool, changing rooms and a tennis court. The three high-rise blocks and the swimming pool are constructed on what was formerly lot 561. The tennis court and changing rooms are in what was formerly lot 111-34.

7 Since its completion, the residents of Grange Heights have been using lot 111-31 for gaining access to and from Grange Road.

**Background to the present action**

8 As can be seen, there has been previous litigation regarding the right of way over the servient tenement lot 111-31. Indeed, the first reported action commenced by Lee Tat in respect of the servient tenement was in 1974 (see *Collin Development (Pte) Ltd v Hong Leong Holdings Ltd* [1975–1977] SLR 457). This was Suit No 3667 of 1974 ("the First Action"). At that time, Lee Tat was known as Collin Development (Pte) Ltd ("Collin"). It filed an action against Hong Leong Holdings Ltd ("HLHL") who was the developer of Grange Heights. The MCST is the body constituted after Grange Heights had been completed. Collin's action was not successful. Subsequently, in 1989, the MCST commenced an action in Originating Summons No 404 of 1989 against Lee Tat ("the Second Action") for an injunction to compel Lee Tat to remove an iron gate and a fence it had erected on the servient tenement. The MCST was successful in the Second Action. I will elaborate later on the First and the Second Actions.

9 Subsequent to the Second Action, Lee Tat acquired the servient tenement on 17 January 1997. Also, the MCST initiated committal proceedings in respect of breaches of the injunction which was granted in the Second Action. I shall elaborate later on the outcome of those proceedings.

10 On 4 June 2004, the MCST commenced Originating Summons No 706 of 2004 ("OS 706") against Lee Tat seeking a declaration that the MCST was entitled to repair and/or maintain the right of way over the servient tenement.

11 On 26 June 2004, Lee Tat commenced Originating Summons No 825 of 2004 ("OS 825") seeking various declarations.

12 It was agreed between the parties that I should hear OS 825 first in view of the declarations sought. In the course of arguments, the main argument raised by the MCST was that there was a cause of action estoppel or an issue estoppel against Lee Tat in view of the decisions in the First and Second Actions.

13 After hearing arguments, I decided that Lee Tat was estopped from claiming the main reliefs sought. OS 706 was adjourned for the parties to try and resolve the delineation and dimensions of the right of way and, failing such resolution, to obtain further evidence of such delineation and dimensions before the next hearing of OS 706. Lee Tat has appealed against my decision in OS 825.

14 I set out below the prayers sought by Lee Tat in OS 825 and I shall elaborate on the First and Second Actions.

**Reliefs sought in OS 825**

15 The main reliefs sought by Lee Tat in OS 825 were and I quote:

1. a declaration that the grant of easement in favour of inter alia, Lot 111-34 was not intended to be made appurtenant to Lot 122 (later Lot 561 and now part of Lot 687);

2. a declaration that the amalgamation of Lot 111-34 with Lot 122 (later Lot 561) to form Lot 687 did not result in the conferment of any easement rights to Lot 561 and/Lot 687 being land other than the dominant tenement (Lot 111-34);

3. a declaration that the right of way over Lot 111-31 shall not be used as an access to Lot 687;

4. a permanent injunction to prohibit all the owners, residents, occupants and/or visitors of the apartments in the condominium known as Grange Heights from using any part of Lot 111-31 to access Grange Heights from Grange Road and vice versa absolutely and indefinitely;

5. an order directing the Registrar of Titles and Deeds to expunge any and all entries, notices and registration of any easements or Orders of Court registered against Lot 111-31 in the Index to Land Books in the Registry of Deeds and Land Register comprised in Certificate of Title Vol 464 Folio 159;

6. further and/or alternatively, a declaratory order that all the owners, residents, occupants and/or visitors of the apartments in the condominium known as Grange Heights are not entitled to use any part of Lot 111-31 to access Grange Heights from Grange Road absolutely and indefinitely; …

**The estoppel argument**

16 As stated by Goh J in the Second Action, lot 111-34 has been amalgamated with an adjoining lot, *ie* lot 561 of Town Sub-division 21. The tennis court and changing rooms of the condominium stand on the former lot 111-34 and three high rise blocks of apartments and a swimming room stand on the former lot 561.

17 In OS 825, Lee Tat's counsel, Mr Tan Cheng Han SC, argued that as the right of way was originally granted to the former lot 111-34, the right of way did not extend to the former lot 561. Therefore the right of way could not be used by the residents of Grange Heights to reach the former lot 111-34 and then to cross over to the former lot 561. This was the issue before me ("the Issue").

18 Mr Tan relied on a number of cases such as *Purdom v Robinson* (1899) 30 SCR 64, a decision of the Supreme Court of Canada; *Harris v Flower* (1904) 91 LT 816 which was a decision of an English Court of Appeal; and more recent decisions of the English Court of Appeal in *Peacock v Custins* [2001] 2 All ER 827, *Das v Linden Mews Ltd* [2003] 2 P&CR 4; [2002] 2 EGLR 76 and *Massey v Boulden* [2003] 2 All ER 87, as well as a decision of Gabriel Moss QC in *Macepark (Whittlebury) Ltd v Sargeant* [2003] 1 WLR 2284. The *classicus locus* appeared to be *Harris v Flower.* All of these cases were persuasive authorities in favour of the proposition he was advocating. However, Mr Tan had to meet the argument about cause of action or issue estoppel.

19 Although Mr Tan had stressed in his written submission that Lee Tat was commencing OS 825 in a "completely different capacity" as owner of the servient tenement and not as owner of lots 111-

32 and 111-33 which are some of the dominant tenements, he did not assert that if I were to find that there was a cause of action or issue estoppel against Lee Tat arising from the decisions in either one of both of the First and Second Actions, Lee Tat could nevertheless avoid the estoppel because Lee Tat was a party in these two actions only in its capacity as owner of two of the dominant tenements. Accordingly, Mr Tan sought to establish that the Issue had not been raised or, if raised, had not been decided in either the First or the Second Action. Mr Edwin Lee, counsel for the MCST, sought to establish that it had been raised and decided or that it should have been raised.

**The First and Second Actions**

20 It was therefore necessary for counsel for each party to submit in some detail about the First and Second Actions and, consequently, for me to go into some detail about these two actions.

21 As I have mentioned, Collin (as Lee Tat was previously known) had commenced the First Action in 1974 against HLHL. Collin did so as owner of the two dominant tenements, lots 111-32 and 111-33. HLHL was at that time in the course of building the three blocks of high rise flats and other amenities on the amalgamated lot 687 comprising lots 111-34 and 561.

22 According to the judgment of F A Chua J at first instance, Collin had complained, *inter alia*, that HLHL had permitted its contractor employed for the construction of Grange Heights to use the right of way for access into and egress from lot 561. Collin claimed:

> (1) A declaration that the defendants Hong Leong Holdings Ltd as the owners of Lot 561 of TS XXI by their directors, officers, servants, workmen or agents or any of them or otherwise howsoever are not entitled to use, nor as such owners to permit or invite any persons or purchasers of apartments in the Grange Heights to use Lot 111, of TS XXI, District of Claymore, Singapore or any part thereof for the purpose of passing either to or from Grange Road, Singapore aforesaid.
>
> (2) An injunction to give effect to the said declaration restraining the defendants as the owners of Lot 561 of TS XXI by their directors, officers, servants, workmen or agents or any of them or otherwise howsoever from so using and inviting their purchasers and other persons so to use the said passage.
>
> (3) Damages.

23 In its defence, HLHL denied that it had substantially interfered with Collin's enjoyment of the right of way and contended that it was entitled to pass or repass over the right of way and was entitled to authorise other persons to pass and repass over the right of way. It counterclaimed, *inter alia*, for a declaration that HLHL was entitled to authorise other persons to pass and repass the servient tenement for access to lot 561 so long as such user did not substantially affect Collin's enjoyment of its right of way.

24 Chua J accepted HLHL's submission that Collin had no cause of action unless Collin proved that HLHL's steps had caused substantial interference with Collin's own right of way. After hearing arguments and inspecting the right of way, Chua J found that there was no substantial interference with Collin's enjoyment of its right of way and dismissed Collin's claim with costs. HLHL's counterclaim was also dismissed with costs by Chua J as the judge was of the view that HLHL could not obtain the declarations it sought because Collin was not the owner of the servient tenement.

25 In such circumstances, I was of the view that there was no cause of action or issue estoppel

against Collin arising from Chua J's decision.

26 The First Action did not end there. Collin appealed to the Court of Appeal. The issue was whether Collin could demonstrate that there was likely to be a substantial interference with its enjoyment of its right of way. The appeal was dismissed with costs. Chief Justice Wee Chong Jin, delivering the judgment of the Court of Appeal (see [1975–1977] SLR 202), said that Collin had not made out its case for a *quia timet* injunction at that time and the dismissal of the appeal did not preclude Collin from seeking whatever remedy it might be advised to seek if and when the facts and circumstances changed.

27 Accordingly, I was also of the view that there was no cause of action or issue estoppel against Collin arising from the decision of the Court of Appeal in the First Action.

28 By the time the Second Action was commenced by the MCST in 1989, the construction and development of Grange Heights had been completed and the MCST had been constituted under the provisions of the relevant statute. Also, Collin had changed its name to Lee Tat. On 25 April 1989, Lee Tat had caused an iron gate across the Grange Road end of the servient tenement and a fence across the Grange Heights end to be erected, thereby preventing or interfering with the use of the right of way by the residents of Grange Heights. In response, the MCST commenced the Second Action to seek a mandatory injunction against Lee Tat to remove the iron gate and the fence.

29 At first instance, Punch Coomaraswamy J said that the question before him was whether Lee Tat was entitled to erect the iron gate and the fence (see [1990] SLR 1193). This question turned on the rights of the parties and the extent of such rights over the servient tenement. Coomaraswamy J added at 1195–1196, [9] and [10]:

> The defendants have not complained, and it is not their case, that there has been excessive use of the servient tenement by the residents of Grange Heights. Hence, the question of excessive use of the servient tenement does not arise.
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> I now turn to the right of the defendants. The defendants are not the owners of the servient tenement; they are the owners of the dominant tenements, namely, lots 111-33 and 111-32 and enjoy a right of way over the servient tenement. They are entitled to take necessary steps to protect their right of way and have recourse to legal remedy against any interference of their enjoyment of that right. However, they are not entitled to erect the gate and fence as they did and close the right of way, which they have in common with others. They have not shown to me that they are entitled to do so. They are not complaining of any interference of their rights of way by the plaintiffs or any residents of Grange Heights. That is certainly not their case here.

I would add that the relief granted by Coomaraswamy J in the main action was on 5 December 1990 and included an order to restrain Lee Tat from interfering or preventing or hindering or otherwise howsoever obstructing the right of way of the MCST ("the 5 December 1990 Order"). The 5 December 1990 Order gave rise to subsequent committal proceedings.

30 It seemed to me that Coomaraswamy J had decided the Issue, *ie* whether the residents of Grange Heights could use the right of way to gain access not only to lot 111-34 but also to lot 561, since the question of interference with Lee Tat's rights was not the issue before him.

31 However, Mr Tan stressed that Coomaraswamy J had noted that Lee Tat was not the owner of the servient tenement but the owner of dominant tenements. He submitted that therefore there was no cause of action or issue estoppel against Lee Tat. Yet, as I have said, Mr Tan did not assert

that Lee Tat could avoid such an estoppel, if it existed, on the ground that it was now claiming in its capacity as owner of the servient tenement. Mr Tan's argument was that the Issue had not been decided in either the First or the Second Action.

32 The answer to the question whether the Issue had been raised and decided upon in the Second Action became clear when I considered the judgment of Goh J in respect of Lee Tat's appeal to the Court of Appeal. I have already adopted part of Goh J's judgment ([1] *supra*) for the formal facts. In addition, Goh J said at 868–869, [13]–[24]:

> [13] … The main contentions of the defendants before the learned trial judge were:
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> (i) the amalgamation of Lot 111-34 with Lot 561 into Lot 687 extinguished the plaintiffs' right of way over Lot 111-31; and
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> (ii) as all the apartments in Grange Heights stand on Lot 561, the residents therefore are not using Lot 111-31 as a right of way for the dominant tenement which is Lot 111-34 but for Lot 561, and this the plaintiffs are not entitled to do.
>
> [14] It was not the defendants' case that there had been excessive use of the servient tenement by the plaintiffs, thereby substantially interfering with their enjoyment of the right of way.
>
> …
>
> [18] The appeal came up for hearing before us. After hearing counsel for the parties we reserved judgment. We now give our decision and the grounds for the same.
>
> [19] Sub-division and amalgamation are only for purposes of survey, conveyance and transfer of land and the issue of documents of title. On sub-division and amalgamation of land, the dominant tenement does not cease to exist and the right of way appurtenant thereto is not thereby extinguished. On amalgamation, so long as the user on the servient tenement is not excessive, the enlargement of the dominant tenement by such amalgamation does not affect the existence of the right of way. In *Graham & Anor v Philcox & Anor* in an action by the owner of a dominant tenement against the owner of the servient tenement, it was held that the right of way appurtenant to the first floor of a coach house was not affected by the whole of the coach house being turned into one dwelling. …
>
> [20] The defendants, who were formerly known as Collin Development (Pte) Ltd, as owners of Lots 111-32 and 111-33 are only entitled to protection of their right of way over Lot 111-31 if their enjoyment of that right is substantially interfered with by the plaintiffs. …
>
> [23] The residents of Grange Heights have not subjected Lot 111-31 to such heavy vehicular traffic as to substantially interfere with the right of way of the defendants. In fact, they do not use it for vehicular traffic at all but only as footpath. …
>
> [24] Therefore, there is still no likelihood of such excessive user as to substantially interfere with the defendants' right of way over this servient tenement or to cause a nuisance to the defendants. Accordingly, we dismiss the appeal with costs.

33 It was clear to me that that part of the judgment which dealt with sub-division and

amalgamation and which stated that the right of way was not extinguished by the amalgamation was the decision of the Court of Appeal on the first of the two contentions raised by Lee Tat, as set out by Goh J.

34 I was also of the view that the next part of the judgment dealing with the enlargement of the dominant tenement by amalgamation and the case of *Graham v Philcox* [1984] QB 747 was the decision of the Court of Appeal on the second contention raised by Lee Tat, as set out by Goh J. Its decision was in favour of the MCST.

35 It was not disputed that the second contention was the same as the Issue. However, Mr Tan went so far as to assert that there was not even an *obiter dicta* by the Court of Appeal on the second contention. He supported his argument by referring to (a) that part of the judgment, subsequent to the reference to *Graham v Philcox*, which mentioned, at 869, [20], that Lee Tat was only entitled to protection of its right of way if its enjoyment of that right was substantially interfered with by the MCST and (b) the last part of the judgment, at 870 and 871, [23] and [24], which dealt with no substantial interference with Lee Tat's right of way. Mr Tan suggested that the question of substantial interference was the issue in the Second Action.

36 Bearing in mind that both Coomaraswamy J and Goh J had stated explicitly that it was not Lee Tat's case that there had been substantial interference with its right of way, it was obvious to me that that was not the issue in the Second Action.

37 Also, bearing in mind that Goh J had clearly set out the two contentions of Lee Tat, I was of the view that those were the issues and the Court of Appeal did decide on both of them.

38 In the circumstances, the references in Goh J's judgment to Collin's/Lee Tat's entitlement of protection if its right of way was substantially interfered with and to the non-substantial interference by the residents of Grange Heights were *obiter dicta*.

39 Although it is true that Coomaraswamy J and Goh J noted that Lee Tat was the owner of dominant tenements, I was of the view that this did not mean that the High Court or the Court of Appeal had declined to rule on the Issue. The reference to Lee Tat's status as owner of dominant tenements was in the context of the concept of substantial interference with its rights at that time, although that was not the issue in the Second Action. The concept of substantial interference with one's rights had to be considered in the context of the right claimed, and in that case, the right claimed was a right of way as owner of dominant tenements instead of a right of ownership as owner of the servient tenement.

40 Furthermore, an owner of the servient tenement would be able to claim relief which an owner of dominant tenements would not be able to, such as damages for trespass if there was trespass on the servient tenement.

41 In my view, an owner of some dominant tenements can raise the issue on the scope of the right of way enjoyed by another owner of another dominant tenement if it were alleged that the right of way enjoyed by the other owner affected the first owner's enjoyment of his own right of way. To this extent, I was of the view that Chua J could have granted the declaration sought by HLHL (as stated in [23] above) in the First Action. In any event, the Issue was raised and argued by Lee Tat and answered in the Second Action. Accordingly, it did not lie in Lee Tat's mouth to argue that even if it had raised the Issue in the Second Action, it had no *locus standi* to do so.

42 When Lee Tat subsequently acquired the servient tenement, it was aware of the decision of

the Court of Appeal in the Second Action.

43 In the circumstances, I was of the view that although Lee Tat had become the owner of the servient tenement, it remained bound by the decision of the Court of Appeal in the Second Action on the Issue. There was issue estoppel. It was not entitled to raise the Issue afresh in OS 825. Likewise, if Lee Tat had subsequently acquired another dominant tenement, assuming there was one to be acquired, it would still have been bound by the said decision. Otherwise, Lee Tat could raise the Issue afresh each time it acquired another dominant tenement.

44 Furthermore, if Lee Tat were not bound by the Court of Appeal's decision in the Second Action because it is the owner of the servient tenement and if it were then to succeed in its argument on the Issue, this would mean that the Court of Appeal's decision would be rendered nugatory.

45 Mr Tan had also stated that cases like *Harris v Flower* ([18] *supra*) were not considered by the Court of Appeal in the Second Action. In my view, that was irrelevant. It is trite law that a party who argues an issue must do so as best as he can. If he fails to draw the court's attention to certain cases relevant to the issue, it is too late for him to try and raise the issue afresh. However, I should mention that *Harris v Flower* was raised in argument and considered by the court in *Graham v Philcox* ([34] *supra*) which in turn was cited by Goh J in his judgment.

**Other arguments**

46 After Lee Tat acquired the servient tenement on 17 January 1997, it did not raise the Issue in response to committal proceedings against it for breach of the 5 December 1990 Order.

47 On 17 December 1997, its director, Mdm Ching Mun Fong, gave an undertaking to the court that Lee Tat would strictly and unconditionally abide by the said order and would not make or publish any statement to the effect that the residents of Grange Heights have no right of way over the servient tenement. Although there was a qualification to these undertakings in that they did not prohibit Lee Tat from commencing such legal action as it may be advised, the point was that the Issue was not specifically raised then or even soon thereafter. It may even be that the qualification did not extend to allowing Lee Tat to take a legal action inconsistent with the right of way claimed by the MCST all along but it was not necessary for me to express a view on that.

48 On 1 July 1999, Mdm Ching, as a director of Lee Tat, was ordered to pay a fine of $3,000 and the MCST's costs fixed at $10,000 for another instance of Lee Tat's failure to obey the 5 December 1990 Order. The Issue was not specifically raised in response to the committal proceedings.

49 On 26 March 2004, Lee Tat and Mdm Ching were ordered to pay the MCST's costs on an indemnity basis fixed at $13,000 in respect of another set of committal proceedings. Again, the Issue was not specifically raised in response to such proceedings.

50 Mr Lee sought to rely on these developments to argue laches and acquiescence by Lee Tat. In view of my decision on issue estoppel, it was also not necessary for me to reach a conclusion on these arguments.

**Summary**

51 I made no order on prayer 1 sought by Lee Tat as that prayer was irrelevant and I dismissed the rest of its prayers.