



13 JUNE 2013

PRESS SUMMARY

Crawford Adjusters and others (Appellants) v Sagicor General Insurance (Cayman) Limited and another (Respondents) [2013] UKPC 17

MEMBERS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL: Lord Neuberger, Lady Hale, Lord Kerr, Lord Wilson, Lord Sumption

BACKGROUND TO THE CASE

This appeal concerns the scope of two closely related torts. The first is the tort of abuse of process, which concerns the abuse of civil proceedings for a predominant purpose other than that for which they were designed. The second is the tort of malicious prosecution, which concerns the launch of ultimately unsuccessful proceedings instituted with malice and without reasonable or probable cause.

In 2004, Hurricane Ivan struck Grand Cayman, and extensively damaged a residential village insured with Sagicor General Insurance (Cayman) Limited (“Sagicor”). Sagicor appointed Mr Alastair Paterson to act as its loss adjuster in relation to a claim arising from the insurance. On Mr Paterson’s recommendation, advance payments of CI\$2.9m were made to a company known as Hurlstone, which had been appointed to repair the damage. Mr Frank Delessio, who joined Sagicor as Senior Vice President, became concerned that there was a serious deficiency in the documentation to support the advance payments. He instructed another loss adjuster, who valued the work completed by Hurlstone at only CI\$0.8m, of which CI\$0.7m was said to be the responsibility of Sagicor. Mr Delessio stated that he intended to drive Mr Paterson out of business and to destroy him professionally.

Sagicor claimed damages against Mr Paterson and Hurlstone for deceit and conspiracy, and alleged that (i) Sagicor had paid Hurlstone CI\$2.9m for works for which it was liable to pay only CI\$0.7m, (ii) the payments were made as a result of fraudulent misrepresentations about the value of the works, (iii) Mr Paterson and Hurlstone had conspired together to make the misrepresentations. Mr Delessio was instrumental in alerting a journalist to the allegations, and “The Caymanian Compass” subsequently reported them. Three months prior to the dates fixed for the trial, Hurlstone made disclosure of documents which indicated its extensive payments to subcontractors and suppliers. Sagicor discontinued the action. Henderson J ordered Sagicor to pay the costs of Mr Paterson and Hurlstone on an indemnity basis, and granted Mr Paterson leave to amend his counterclaim (for fees payable under his contract with Sagicor) so as to include a claim against Sagicor founded on the tort of abuse of process, and treated this amendment as relying alternatively on the tort of malicious prosecution.

Henderson J concluded that Sagicor was not liable for abuse of process, nor for malicious prosecution. However, he concluded that, save in one respect, Mr Paterson had established all of the elements of the tort of malicious prosecution: prior proceedings had been determined in his favour; allegations of fraud and conspiracy had been made maliciously, and without reasonable cause; and, as a result of the allegations, he had suffered substantial financial loss and significant other damage to the sum of CI\$1.335m. However, Henderson J held that he was precluded from holding Sagicor liable to Mr Paterson, because in the light of the observations of the House of Lords in *Gregory v Portsmouth City Council* [2000] 1 AC 419, the present state of the law confined the tort of malicious prosecution to criminal proceedings, and did not allow for its extension to civil proceedings. The Court of Appeal dismissed the appeal.

ADVICE

The Board humbly advises Her Majesty (i) unanimously, that Sagicor is not liable for abuse of process, and (ii) by a majority of three to two (Lord Neuberger and Lord Sumption dissenting), that Sagicor committed the tort of malicious prosecution, and therefore that the appeal should be allowed and judgment entered for Mr Paterson in the sum of CI\$1.335m. Lord Wilson gives the lead judgment for the majority.

REASONS FOR THE ADVICE

The tort of abuse of process

Sagicor did not commit the tort of abuse of process. It was not alleged that the legal process was used for any purpose for which it was not designed, and such an allegation could not have been made out on the facts [79],[93],[158],[163].

The tort of malicious prosecution

The majority consider that the common law originally recognised that the tort of malicious prosecution extended to civil and criminal proceedings [40]-[56]. The arguments against renewed recognition of the tort in civil proceedings fail to override the need for the law to be true to the rule of public policy that wrongs should be remedied [73],[81],[94]. There is no evidence that the tort deters the honest bringing of litigation [72],[87],[100], or that it leads to interminable litigation [72],[103],[108]. The requirements to demonstrate both malice and the absence of a reasonable or probable cause for the launch of the proceedings present a formidable hurdle to prospective claimants [78],[109]-[110]. It is unnecessary to impose a further condition that there must be a public function dimension in the malicious prosecution of proceedings [87],[104]-[106]. The disparate situations to which the tort has been confined in the context of civil proceedings are a rag-bag of cases, linked only by the occurrence of prejudice to the victim at or close to the outset of the proceedings [58],[67],[78],[86]. Substantial damage to the reputation of a defendant can be caused by false allegations made in civil proceedings long before it is restored, even if full restoration is then possible, by his or her vindication at trial [61]. As no other tort is capable of extension so as to remedy the wrong in this case, the observations of the House of Lords in *Gregory* should not discourage application of the tort [36]-[39],[115]-[118]. Further, control of abuse of legal proceedings is particularly well-suited to judge-made law [78],[84].

Lady Hale queries whether the Law Commission might consider the desirability of consolidating malicious prosecution and abuse of process into a single tort of misusing legal proceedings [83].

Lord Kerr adds that there is obvious logic in the suggestion that if a claim for malicious prosecution of civil proceedings is available, a claim for malicious defence of civil proceedings must also be available [111], although he deems it possible to remain sanguine about its likely prevalence [113].

The minority consider that confinement of the tort to the abuse of criminal proceedings has been a cardinal feature of the tort from its inception [136]-[142]. The class of civil cases in which the tort has been invoked all involve ex parte interlocutory orders, which give rise to special considerations [143],[178]-[179]. The distinction between civil proceedings and criminal prosecutions is neither arbitrary nor unsatisfactory. A malice-based tort makes no sense in the context of private litigation where the plaintiff is not exercising any public function [145]. The law has always been extremely reluctant to go beyond the exercise of the court's procedural powers to control its proceedings in a way that may deter access to justice [123]-[125]. The precise ambit of the tort will be both uncertain and potentially very wide [147],[194], and offers litigants an occasion for prolonging disputes [148]. Nothing has changed since *Gregory* to undermine the authority of that decision [131],[146],[159].

Lord Neuberger considers that the minority's conclusion is reinforced by analysis of decisions of courts in the United States of America, which is the only jurisdiction in which there has been extensive discussion of the policy implications of extension of the scope of the tort [165]-[196].

NOTE

This summary is provided to assist in understanding the Judicial Committee's decision. It does not form part of the reasons for that decision. The full opinion of the Judicial Committee is the only authoritative document. Judgments are public documents and are available at: www.jcpc.gov.uk/decided-cases/index.html.