

IP INVESTMENT MANAGEMENT PTE LTD AND ORS V ALEX BELLINGHAM: FIRST REPORTED DECISION ON A PRIVATE ACTION BROUGHT FOR PDPA BREACHES

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Introduction

1. In the five years that have elapsed since the Personal Data Protection Act 2012 (“**PDPA**”) first came into force in 2014, the Personal Data Protection Commission (“**PDPC**”) has issued numerous decisions arising from complaints made directly to it.
2. However, there has only been one reported decision to-date concerning a private action brought before the Singapore courts pursuant to section 32 of the PDPA. This is the recent case of *IP Investment Management Pte Ltd and ors v Alex Bellingham* (“**IP Investment**”) [2019] SGDC 207.

Facts

3. The 1st and 2nd Plaintiffs in *IP Investment* were related Singapore companies in the business of fund management. The Defendant was a marketing consultant formerly employed by the 2nd Plaintiff.
4. During his employment with the 2nd Plaintiff, the Defendant was involved in marketing an investment fund called the “Edinburgh Fund”. The investors in the Edinburgh Fund (“**Investors**”) included the 3rd Plaintiff, a natural person.
5. Sometime around January 2017, the Defendant left the employ of the 2nd Plaintiff and joined another investment company.
6. In August 2018, the Defendant sent emails to the personal email addresses of the Investors, including the 3rd Plaintiff, soliciting their business (“**Emails**”). These Emails contained the name of each Investor and discussed their “*upcoming Edinburgh exit*”.
7. The Investors expressed their concern over these Emails to the 1st Plaintiff. This resulted in the 1st and 2nd Plaintiffs filing

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an originating summons (“OS”) under section 32 of the PDPA for:

- (a) an order enjoining the Defendant from using, disclosing, or communicating personal data of the Investors; and
 - (b) an order for the Defendant to deliver up any copies of the Investors’ personal data.
8. The 3rd Plaintiff subsequently joined as a plaintiff in the OS, seeking the same remedies as those sought by the 1st and 2nd Plaintiffs, save that the personal data to which his claim related was limited to that pertaining to the 3rd Plaintiff himself.
9. The Court allowed the application of the 3rd Plaintiff, but not that of the 1st and 2nd Plaintiffs.

Issues

10. The issues before the Court were:
- (a) whether names, personal email addresses, and investment activity information constitute personal data under the PDPA (“**Personal Data Issue**”);
 - (b) whether the 1st and 2nd Plaintiffs had standing to bring proceedings against the Defendant under section 32 of the PDPA (“**Standing Issue**”);
 - (c) whether there were breaches of Parts IV, V, or VI of the PDPA (“**Breach Issue**”); and
 - (d) whether there was loss or damage arising from the breaches (“**No Loss Issue**”).

Decision

Personal Data Issue

11. Applying principles established in prior decisions issued by the PDPC, the Court found that the Investors’ names, personal email addresses and investment activity information constitute personal data. This is rather uncontroversial given that these categories of personal data clearly satisfy the PDPA’s definition of personal data as “*data, whether true or not, about an individual who can be identified (a) from that data; or (b) from that data and other information to which the organization has or is likely to have access*”.
12. What is more significant is the Court’s dismissal of the Defendant’s submission that the publicly available exception applied as the names and email addresses used were available in the public domain. This is because the Court found that

“these names and email addresses would have [had] no value to the Defendant had they not been accompanied by the information (or data) that these names

and addresses were those of persons who had invested in and who were about to exit the Edinburgh Fund”: [51] of IP Investment.

Standing Issue

13. The Court decided that whilst the 3rd Plaintiff had standing to bring a private action against the Defendant, the 1st and 2nd Plaintiffs did not.

14. Section 32(1) of the PDPA provides that:

“Right of private action

32.—(1) Any person who suffers loss or damage directly as a result of a contravention of any provision in Part IV, V or VI by an organisation shall have a right of action for relief in civil proceedings in a court.” (emphasis added)

15. As “person” is not explicitly defined in the PDPA, there was some ambiguity as to whether the right of private action under section 32 extends to body corporates.

16. The 1st and 2nd Plaintiffs argued that in the absence of an explicit definition of “person” in the PDPA, section 2(1) of the Interpretation Act should apply. Crucially, section 2(1) extends “person” to include “*any company or association or body of persons, corporate or unincorporate*”.

17. However, the Court rejected this submission. In reaching its decision, the Court considered that the PDPA’s approach is “prophylactic” rather than “remedial” in nature. For instance, section 24 of the PDPA obliges organisations to take steps to prevent the risks of *inter alia* unauthorized use and disclosure of personal data. This would require an organisation to implement appropriate contractual and operational safeguards to ensure that it would be able to take steps to address data breaches.

18. The Court took the view that extending section 32 to organisations would allow them to:

“... use section 32 as a substitute for contractual or other arrangements, which they might otherwise be expected to put in place (for instance, pursuant to section 24 of the PDPA), to protect personal data in their possession ... Parliament could [not] have intended that section 32 of the PDPA should serve as a kind of crutch for organisations which have not complied with their obligations under the PDPA, for this would severely undermine the stated aim of the PDPA as legislation to ‘safeguard individuals’ personal data against misuse by regulating the proper management of personal data’.”: [85]-[86] of IP Management.

19. Applying the purposive approach to statutory interpretation, the Court thus held that section 32 should not extend to the 1st and 2nd Plaintiffs suing in their own rights.

Breach Issue

20. In deciding the Breach Issue, the Court first observed that the Defendant is capable of being an “organisation” under section 32 of the PDPA. This is because section 2 of the PDPA expressly includes an “individual” in the definition of “organisation”. The Defendant was therefore bound to comply with the data protection obligations under the PDPA in respect of the Investors’ personal data.
21. In this regard, the Court held that the Defendant had breached:
- (a) the obligation not to use an individual’s personal data without his consent (“**Consent Obligation**”); and
 - (b) the obligation to use an individual’s personal data only for purposes which a reasonable man would consider appropriate and for purposes which an individual has been informed of (“**Purpose Limitation Obligation**”).

No Loss Issue

22. As the Court had decided that the 1st and 2nd Plaintiffs did not have standing to bring the proceedings, the Court confined its determination on this issue to the loss and damage suffered by the 3rd Plaintiff.
23. In this regard, the Court noted that both the Plaintiffs and the Defendant had recognized in their arguments that the 3rd Plaintiff himself would have suffered loss and damage through the misuse of his personal information.
24. The Court also cited with approval the PDPC’s decision in *My Digital Lock* [2018] SGPDPC 1, where the PDPC suggested that the fact that one’s banking records had been unlawfully accessed could now give rise to actionable claims under section 32.
25. It is noteworthy that the Court did not specifically address the type of damage or loss required under section 32 or, indeed, whether *actual* damage or loss was required. The argument that there was no loss suffered was simply rejected on the grounds that:
- (a) it was a stated aim of the PDPA to safeguard individuals’ personal data against misuse; and
 - (b) the Defendant had used the 3rd Plaintiff’s personal data in contravention of the PDPA.

Relief granted

26. Since the 3rd Plaintiff had established the requirements under section 32, the Court granted:

- (a) an injunction restraining the Defendant from using, disclosing, or communicating to any third party personal data of the 3rd Plaintiff; and
- (b) an order for the Defendant to destroy all personal data of the 3rd Plaintiff.

27. It is notable that the Defendant had sought to rely on the High Court's decision in *Jardine Lloyd Thompson Pte Ltd v Howden Insurance Brokers (S) Pte Ltd and ors* [2015] SGHC 202 to assert that no injunction ought to be granted as there was no misuse of specific confidential information or a real risk of such abuse.

28. Significantly, the Court rejected the Defendant's submission and held at [160]-[161] that:

"... The Plaintiffs' action herein is not premised upon any common law doctrine pertaining to the abuse of confidential information (which formed the basis of the injunction sought in the Jardine Lloyd Thompson decision); instead, it is brought pursuant to section 32 of the PDPA, which provision is intended to provide an avenue to individuals to seek relief against entities which have collected or used their personal data in contravention of the obligations imposed by the PDPA.

The contravention of the obligations imposed by the PDPA therefore constitutes the 'wrong' in response to which an injunction must be issued under section 32 of the PDPA. That being the case, there is no basis for superimposing requirements, pertaining to an injunction founded upon a wholly different legal basis, upon an injunction to be issued pursuant to section 32 of the PDPA, once an entitlement to relief under section 32 has been demonstrated."

Conclusion

29. As the first reported decision involving a private action for breaches of the PDPA, *IP Investment Management* is important in Singapore's data protection landscape. It clarifies that:

- (a) corporations do not have *locus standi* to bring private proceedings in their own right under section 32 of the PDPA; and
- (b) it is not necessary to establish misuse of specific confidential information or a real risk of such abuse for an injunction to be granted under section 32.

30. However, as noted in [25] above, the Court did not specifically address the issue of whether *actual* loss and damage is required under section 32, and the types of damage

and loss which it would recognize. Therefore, it remains an open question how the Courts will deal with this issue in future private action cases for breaches of the PDPA.

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