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## Trees and Neighbors

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*Trees from one property may stretch over to another, just as trees from the Muzayyin's home might stretch their limbs elsewhere. Boundaries have no meaning to trees which obey only the law of nature.*

”

Justice Choo Han Teck in the High Court case **Shi Ka Yee v Nasrat Lucas Muzayyin and Priscilla Goh Puay Shan** [2016] SGHC 138

It is natural for leaves to fall and for branches to overhang. A neighbor cannot willy-nilly chop off branches that hang onto his property just because he doesn't like it.

But where the overhanging branches pose a risk of falling and causing injury and damage, like dead branches would, the neighbor may have a valid claim in nuisance and therefore grounds to have the branches on his side trimmed.

### The law of nuisance

Nuisance has 4 elements, **all of which** must be established:

- The conditions and activities of the tree owner interfere with the complainant's use and enjoyment of the land;
- The tree owner's interference was unreasonable;
- The complainant has possessory rights over the land; and
- Damage was caused.



## The Story

In 2016, both the Magistrates Court and the High Court of Singapore heard the case about a Rain Tree.<sup>1</sup>

This grand and lovely 80-year-old tree grew at 12 Astrid Hills, but large and thick branches overhung onto the adjacent land, at No. 13. The neighbors didn't like this and wanted them trimmed.

Turning to the governing authority, the National Parks Board, they were advised to first seek the consent of the owner and then engage an arborist and contractor to do the job.

Attempts to obtain the consent were futile. Nothing happened.

Both arborists engaged by the owner and the neighbor alike reported that the Rain Tree had dead branches on both No. 12 and 13. These would fall and cause injury and damage, and therefore were a hazard.

Taking matters into their own hands, the neighbors engaged a contractor to do the trimming, which in turn triggered off a series of dramatic events that resulted in tortious suits by the neighbor for nuisance, trespass and assault.

This article focuses on Nuisance.

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<sup>1</sup> Nasraf Lucas Muzayyin & Anor v Shi Ka Yee [2016] SGMC 26 and Shi Ka Yee v Nasrat Lucas Muzayyin and Priscilla Goh Puay Shan [2016] SGHC 138

## Are overhanging branches, which are found to be at risk of falling and causing damage and injury, and much of which are dead, a nuisance?

The Magistrates Court examined each of the 4 elements in the law of nuisance against the overhanging and dead branches of the Rain Tree and found that all four had been established. Accordingly, nuisance existed.

### 1. The first element really is the crux of nuisance.

Did the tree owner cause or permit to exist a state of affairs on his property from which damage to his neighbor's property is likely to arise.

The Rain Tree grew along the boundary wall of both properties. The overhang was at the front yard of the neighbor's. The risk of damage and injury was high.

### 2. Was it a reasonable use of land to have a tree with 30% of its branches dead, some of which overhangs on the neighbor's land, a reasonable use of one's land?

It was not. The use had created and continued to create a hazard which the tree owner knew or should have known carries a foreseeable risk of damage.

### 3. Given that the branches were overhanging on the No. 13 side from 2014 when the neighbour moved in and he became an owner later in 2016, could he claim nuisance for the time when he had possession but not ownership?

The nuisance being a continuing one right up to the time of the suit, where it continued inflicting damage to the property, a person in possession could recover losses that began before or after becoming an owner.

#### 4. Was there damage caused by the overhanging and dead branches and was it foreseeable?

There was actual damage caused from the falling sap of the Rain Tree that fell onto the neighbor's driveway and this seeping continued.

Also the Magistrates Court found that it was foreseeable that the neighbor would have had to expend time, effort and costs to clear withered leaves, dead branches and sap from the broken branches that stain the driveway and continued to do so.

### The Award

Nuisance having been proved to exist and to be continuing at the time of the suit, the Magistrates Court made the following awards:

- A. To abate the nuisance (which continued to pose risks), the Owner was ordered to trim the branches on the No. 13 side; and
- B. Payment for damages, which were foreseeable as arising out of the nuisance, being the expenditure incurred by the neighbors to abate the nuisance; viz.
  - the costs of the arborist and contractor to clear the sap, stop the Rain Tree from seeping further sap onto the driveway and to remove the branch of the Rain Tree which was seeping sap
  - the costs of the services of an arborist and contractor for attending at the neighbor's property

### How could the dispute have been handled differently?

"...this dispute should not have involved so many lawyers and so much of time in court.", said Justice Choo Han Teck.

Here are some suggestions as what could have been done differently:

- **Talk**  
Whatsapp messages, email exchanges and letters can seem impersonal, especially when individuals live next to each other. Ringing the doorbell and having a chat can be a more sensitive and personable approach.
- **Seek the help of a Neighborhood Committee or other community dispute resolution channel.**  
Here is a [useful link](#).

Some of the content at this link is reproduced.

### Mediation as a form of dispute resolution *(for various kinds of disputes)*

You are encouraged to first approach the other dispute party to discuss solutions that may resolve matters amicably. If this is not effective, mediation may be considered.

Mediation is a process in which a neutral third-party mediator facilitates the parties' settlement negotiations, to help them arrive at a mutually acceptable solution. The focus of mediation is on finding solutions that will meet the parties' concerns. The mediator will not make a decision concerning who is at fault in the dispute.

For non-contractual disputes such as community and neighbourly disputes, you may consider approaching the [Community Mediation Centre \(CMC\)](#), which is administered by the Ministry

of Law. Mediation at CMC is a cost effective way for parties to resolve their issues. You may read [examples of cases mediated by CMC](#). For contractual disputes, you may consider mediation bodies such as the [Singapore Mediation Centre \(SMC\)](#).

For **encroachment / boundary line disputes**, you may consider to ascertain your own land/ boundary ownership by obtaining a registered surveyor's certification on your legal boundary. You may then consider mediation via CMC or SMC to help resolve the dispute.

## Neighbourhood Committees

*(for neighbourly disputes)*

Neighbourhood Committees (NCs) encourage active citizenry and foster stronger community bonds within private housing estates. One of the NCs' functions is to promote neighbourliness, harmony and cohesiveness amongst residents, and also foster good citizenship amongst residents.

If you live in a private estate, you may consider approaching your NC to see if they can help to mediate the dispute. For a list of NCs, you may visit the [People's Association website](#).

## Management Corporation Strata Titles (MCSTs)

*(for disputes in Strata Titled Developments e.g. Condominiums)*

MCSTs managing strata-titled developments are empowered under the Building Maintenance and Strata Management Act (BMSMA) to regulate and manage affairs within their estates.

When people of different backgrounds and interests live in the same estate, there are bound to be disagreements and disputes. In order to live happily in a community, everyone has to practise good neighbourliness and is encouraged to adopt "win-win" solutions.

With this in mind, dispute parties may first approach their MCST to mediate the dispute. If this is ineffective, mediation at the CMC or SMC may be considered.

## Strata Titles Boards

*(for disputes in Strata Titled Developments e.g. Condominiums)*

The Strata Titles Boards are tribunals established under the BMSMA to mediate and hear applications between subsidiary proprietors and management corporation, or between subsidiary proprietors, in matters relating to certain disputes arising in respect of strata titled property and orders for collective sales of property under the Land Titles (Strata) Act.

Examples of common disputes in strata titled developments brought before the Boards include those on:

- inter-floor water leakages,
- performance or failure to perform certain duties under the BMSMA or by-laws,
- applications to convene meetings or invalidate resolutions passed by the management corporations,
- car parking woes,
- complaints with regard to alterations to common property,
- applications to revoke or invalidate certain by-laws,
- supply of information by management corporation,
- management corporation requesting to enter an apartment to carry out particular work etc

If there are disputes with your MCST, or a fellow SP that cannot be resolved via mediation, you may consider lodging an application with the STB at [this link](#).

## Community Disputes Resolution Tribunal (CDRT)

*(for neighbourly disputes)*

The Community Disputes Resolution Act (CDRA) creates a new statutory tort of interfering with the enjoyment or use of places of residence. The underlying principle is that no person should cause unreasonable interference with his neighbour's enjoyment or use of that neighbour's place of residence. The CDRA also establishes the Community Disputes Resolution Tribunal (CDRT) as part of the State Courts to hear cases under the CDRA.

Neighbours should consider starting proceedings in the Community Disputes Resolution Tribunal (CDRT) only after all self-help options, including community mediation, have been tried and exhausted. Please visit the [CDRT's website](#) for more information.

### ■ Mediation

The Law Society of Singapore offers mediation services as well.

Here is the [link](#).

### ■ Neutral evaluation

If mediation does not work, the Law Society of Singapore's Neutral Evaluation and Determination Scheme offers yet another service.

Neutral evaluation aims to deal with disputes and gives parties the option to decide if they wish to pursue the formal routes at resolution – ie. a suit. It is a private process where the parties agree to refer their dispute to a neutral third party whose role is to provide a quick summary evaluation of the dispute – which includes an estimate of the disputing parties' chances of success.

Here is the [link](#).

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*The good neighbor looks beyond the external accidents and discerns those inner qualities that make all men human and, therefore brothers.*

Martin Luther King Jr. ”



## About the Author



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