

Court of Appeal dismisses appeal by Andrew Left

26 Feb 2019

The Court of Appeal has dismissed the appeal by Mr Andrew Left of Citron Research against the determination of the Market Misconduct Tribunal (MMT) on points of law under the Securities and Futures Ordinance (SFO) (Note 1).

This came after the rejection of a separate application for leave to appeal by Left against the determination of the MMT on the questions of facts following MMT's findings of misconduct against him over the publication of a research report on Evergrande Real Estate Group Limited in 2012 (Evergrande) (Notes 2 & 3).

In the judgment, the Court of Appeal said:

- Left's argument that the MMT did not have the jurisdiction to hear the case has no merits, not to mention that he did not raise this argument during the MMT proceedings;
- Left's submission that the test of recklessness formulated by the MMT was wrong was untenable, and on the contrary, the MMT applied the correct test of recklessness in criminal law as stated in a previous case *Sin Kam Wah*, nor did the MMT deviate from this case (Note 4);
- there was no error in law and in reaching the conclusion that the standard of care which Left owed to the market when compiling and publishing the research report should be one that was comparable to a market commentator or analyst;
- section 277(1) of the SFO creates a duty of care on any and all persons who choose to disseminate information that is likely to have market impact to make sure it is not materially false or misleading, otherwise its protective purpose in the context of the speed and fluidity of financial market will be fundamentally defeated or undermined.

End

Notes:

1. The judgment is available on the [Judiciary's website](#).
2. On August 2016, the MMT found that Left, the head of research of Citron Research, was culpable of disclosing false or misleading information inducing transactions in the publication of a report on Evergrande in June 2012. The MMT imposed several orders on Left including a "cold shoulder" order banning him from trading securities in Hong Kong for five years.

For further details of the MMT proceedings, please see the Securities and Futures Commission's (SFC) press releases dated [22 December 2014](#), [19 March 2015](#), [2 November 2015](#) and [26 August 2016](#).

3. Left applied for leave to appeal against the determination of the MMT on questions of fact in November 2016. His application for leave was dismissed by the Court of Appeal. For further details of the appeal hearing, please see the SFC's press release dated [13 January 2017](#).
4. *Sin Kam Wah v HKSAR* (2005) 8 HKCFAR 192.

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