Koh Lau Keow and others *v* Attorney-General
[2014] SGCA 18

Case Number	: Civil Appeal No 79 of 2013
Decision Date	: 17 March 2014
Tribunal/Court	: Court of Appeal
Coram	: Sundaresh Menon CJ; Chao Hick Tin JA; Andrew Phang Boon Leong JA
Counsel Name(s)	: Suresh Damodara (Damodara Hazra LLP) for the appellants; Lim Wei Shin, Leon Michael Ryan and Russell Low (Attorney-General's Chambers) for the respondent.
Parties	: Koh Lau Keow and others — Attorney-General

Charities – Charitable Trusts

17 March 2014 Judgment reserved.

Chao Hick Tin JA (delivering the judgment of the court):

Introduction

1 This appeal concerns a trust ("the Trust") declared in a deed on 12 October 1960 ("the Trust Deed") by the first appellant, the plaintiff in the action below, over a property at 10 Rangoon Lane (formerly 156E Rangoon Road) ("the Property"). The action below, *ie*, Originating Summons No 1021 of 2012 ("OS 1021/2012"), was instituted by the appellants for a declaration that the Trust is void and that the first appellant ("Koh") is the sole beneficial owner of the Property. The application was opposed by the respondent in his capacity as the protector of charities, and it was dismissed by the High Court judge ("the Judge"): see the report of the decision in *Koh Lau Keow and others v Attorney-General* [2013] 4 SLR 491. The sole issue at the hearing before the High Court and in this appeal is whether the Trust created in the Trust Deed is a valid charitable trust.

Facts

2 Koh, presently aged 96, was born in China and came to Singapore in 1936. Sometime in 1948, she decided to purchase the Property to serve as a home for herself and three other women (whom she refers to as her "Aunts" although they were unrelated by blood). She paid the entire purchase price of $3,500. However, in the conveyance of the Property to Koh, she added the Aunts, in addition to herself, as registered owners of the Property because she did not want them to become homeless should she pre-decease them.

3 Initially Koh built on the Property a small wooden structure, with a hall in the front portion and two rooms in the back portion. The hall was used as a Buddhist temple for religious worship while the two rooms were used as living quarters by Koh and her Aunts. Later, in 1957, as the wooden structure had become badly in need of repair, Koh engaged a contractor to erect a concrete single-storey building on the Property. In the agreement with the contractor, the building to be erected was described as a "Chinese nunnery". [note: 1] The building has since been renovated twice, in 1993 and 2009; the last renovation saw the conversion of part of the kitchen into two additional bedrooms.

4 Soon after purchasing the Property, Koh was advised by some devotees who prayed at the

Property that she could request for an exemption from the payment of rates on the basis that the Property was being used for religious purposes, that is, as a temple. Accordingly, she engaged lawyers who corresponded on her behalf with the authorities on the issue. It appears from the correspondence that the first application for exemption was made in April 1948, and in relation to which the Municipal Assessor asked the following questions: [note: 2]

> (a) Whether the [P]roperty was vested under a Deed of Trust and, if so, the names of the Trustees in whom the management of the building is vested?
>
> (b) Particulars as to how funds for the upkeep of the Temple are derived?
>
> (c) Whether the whole was used for public religious worship and, if not, the number of persons dwelling therein, with their occupations?
>
> (d) Was any pecuniary profit derived from the occupation of the [P]roperty, such as selling joss-sticks etc.?

Koh's lawyers did not reply to this query from the Municipal Assessor. In July 1949, Koh wrote to the Municipal Assessor again requesting for exemption from rates. The Municipal Assessor replied on 22 July 1949 repeating the questions which he had posed in the previous letter. On 16 August 1949, Lim Boon Hian (one of Koh's Aunts) replied as follows ("the 16 August 1949 Letter"): [note: 3]

> …
>
> (a) The [P]roperty was not vested under a Deed of Trust but it was owned by four female vegetarians viz: Koh Low Kiew, Chia Siang Kim, Low Wee Lan; and Lim Boon Hian as joint tenants.
>
> (b) Earnings from needle work and sewing and charity from the worshippers, help us to up-keep the temple.
>
> (c) The front portion of the premises was used for public religious worship and the back portions utilised by us for dwelling purposes. Our occupation is needle work and sewing.
>
> (d) No pecuniary gains are derived from the occupation of the Temple.
>
> …

5 There is a substantial gap in the evidential record as to the further correspondence between Koh and the authorities on this issue. The next letter on record is dated 27 September 1960 from one Chan See Kan, Secretary of the Assessment Appeals Committee, informing Koh's lawyers of the following: [note: 4]

> …
>
> With reference to your application for exemption from payment of assessment on the above [P]roperty, I have to inform you that the Assessment Appeals Committee, at its meeting held on 17.8.60, agreed that No. 156E, Rangoon Road be exempted from the payment of rates with effect from 1.1.59 for so long as the premises are used for religious purposes.
>
> …

6 Upon obtaining exemption from rates in respect of the Property, Koh was advised by her lawyers that, in view of the 27 September 1960 letter, it would be helpful for evidential purposes to sign a document declaring that the Property was being and would continue to be used for religious purposes. Accordingly, she and her Aunts executed the Trust Deed prepared by her lawyers. The relevant portions of the Trust Deed state:

> …
>
> WHEREAS [Koh and the Aunts] are seised for an estate in fee simple as joint tenants in possession free from incumbrances of the land and premises described in the Schedule hereto and have for some time past permitted the said land and premises and the buildings erected thereon to be used occupied and enjoyed as a temple or place of public worship for persons professing the Buddhist faith and as a home or sanctuary for Chinese women vegetarians of the Buddhist faith and as a place for practising promoting teaching and studying the doctrines principles and teachings of the Buddhist Religion.
>
> AND WHEREAS with the object of perpetuating such use occupation and enjoyment of the said land and premises and the buildings now and from time to time erected thereon for the purposes aforesaid, [Koh and the Aunts] are *desirous of dedicating the same to charity* and of settling the same in manner hereinafter appearing.
>
> NOW THIS DEED WITNESS that for effectuating the said desire and in consideration of the premises, [Koh and the Aunts] … declare that they and the trustees for the time being of this deed (hereinafter called "the trustees") shall henceforth stand seised of ALL the land and premises described in the Schedule hereto upon the trusts and with and subject to the powers provisions agreements and declarations hereinafter declared and contained concerning the same, that is to say:-
>
> (1) The trustees shall permit the said land and premises and the buildings now and from time to time erected thereon to be used in perpetuity under the name of "Chee Teck Kwang Imm Tng" (hereinafter referred to as "the said Temple") as and for *all or any of the following purposes*, that is to say:-
>
> (a) As and for a temple or place of worship for persons of the Chinese race professing the Buddhist faith. ["Purpose A"]
>
> (b) *As and for a home or sanctuary for such Chinese women vegetarians of the Buddhist faith as may from time to time be chosen by the trustees of this deed.* ["Purpose B"]
>
> (c) As and for a place for practising promoting teaching and studying the doctrines principles and teachings of the Buddhist Religion. ["Purpose C"]
>
> …
>
> (4) *The Chinese women vegetarians of the Buddhist faith who may reside in the said Temple shall be such persons as the trustees may from time to time in their absolute and uncontrolled discretion choose* and allow with liberty to the trustees from time to time and at all times at their absolute and uncontrolled discretion to expel without assigning any reason therefor any such person or persons.
>
> …

[emphasis added]

7 Two of the Aunts passed away in April 1970 and April 1975 respectively. The third and remaining Aunt retired as a trustee in June 1976 and passed away in April 1990. [note: 5] The second to sixth appellants were appointed as trustees between 1992 and 2003 at the behest of Koh. The third and fourth appellants were adopted by Koh at birth. The second, fifth and sixth appellants were close to Koh, who treated them as daughters.

8 Since its establishment, the following temple activities have been conducted on the Property:

(a) mass worship sessions and celebrations four times a year (on the birthdays of the Goddess of Mercy in the second, sixth and ninth lunar month and on the Lunar New Year);

(b) daily prayer recitals in the morning and evening;

(c) ad hoc worship sessions by relatives, close friends and neighbours; and

(d) teaching of Buddhist doctrines to a few old and uneducated vegetarian women (but this was stopped since 1970).

According to Koh, the Temple was never open to the public for worship except for the aforementioned four times a year. In other words, the public did not have any access to the Property for prayers except on these four occasions in a year. All along, she only allowed a close group of relatives, friends and neighbours (initially numbering about 20 but currently numbering about 70 to 80) to freely visit or use the temple.

9 The individuals who have resided on the Property include Koh, her Aunts, her adopted daughters, her granddaughter, and one Ms Koh Chun, the daughter of one of her relatives in China. Koh deposed that no one else has lived on the Property besides these individuals.

10 At this juncture we would pause to explain that with the enactment of the Property Tax Ordinance 1960 (No 72 of 1960), "rates" payable in respect of property had thereafter become known as "property tax". In 2005, the Inland Revenue Authority of Singapore ("IRAS") reviewed the property tax exemption for the Property and informed Koh that property tax on it was payable retrospectively from 1 January 1999.

11 Due to her advanced age and limited physical mobility, Koh has been contemplating ceasing all temple activities on the Property. Her adopted daughters are either unwilling or unable to continue maintaining the temple. Wishing to terminate the Trust and make provisions for the Property in a will, Koh (together with the other trustees) filed OS 1021/2012 and the decision of the Judge on that summons is the subject of the present appeal.

Proceedings below

12 The appellants initially sought to impeach the Trust on two grounds. First, Koh claimed that she had no intention to give up beneficial ownership of the Property absolutely when she executed the Trust Deed. Because she and her aunts did not understand English, they did not read the Trust Deed before signing it; neither did her lawyers explain to them that this would be the effect of the Trust. But at the hearing before the Judge, the appellants decided to abandon this ground. Hence, the second and only ground relied on by the appellants at the hearing below was that the Trust is not a valid charitable trust because the use of the Property "as and for a home or sanctuary for such

Chinese women vegetarians of the Buddhist faith as may from time to time be chosen by the trustees of this deed" (*ie*, Purpose B) is not a valid charitable purpose. Accordingly, the Trust is void for violating the rule against perpetuities, and there is a resulting trust of the Property in favour of its original owners, of whom Koh is the only survivor.

13 On the other hand, the respondent argued that Purpose B was charitable because it advanced religion. Significantly, he agreed in the proceedings below that Purpose B was *not* for the relief of poverty.

14 The Judge held that the Trust was a valid charitable trust and dismissed the application. With respect to Purpose B, he found that the phrase "home and sanctuary" connotes "a religious institution where the defined class of persons (of that religion) is looked after and finds refuge or sanctuary" (at [31]). In his judgment, the use of the Property for this purpose directly advances religion, as the persons residing in the Property would have benefited from "passive advancement and personal spiritual contemplation" (at [36]). Furthermore, despite the respondent's concession, the Judge found that Purpose B also had the effect of relieving poverty, given that those who choose to reside in the Property (with the approval of the trustees) are likely to be compelled by special circumstances such as orphanhood, poverty or dysfunctional family situations (at [47]).

The parties' arguments on appeal

15 It is common ground that Purpose A and Purpose C advances the Buddhist religion and are therefore charitable. But that is not sufficient to render the trust as a whole charitable unless Purpose B is also a charitable purpose. Thus the proper construction of Purpose B is the bone of contention. The appellants submit that Purpose B is not charitable in nature. They aver that the Judge had erred in reading words into Purpose B that were not there – that is, that the Buddhist Chinese female vegetarians who choose to reside in the Property are likely to be compelled by special circumstances such as orphanhood, poverty or dysfunctional family situations. Purpose B, as drafted, is not restricted to such individuals and should not have been found to relieve poverty. Furthermore, even if the Judge's interpretation of Purpose B were correct, the personal spiritual contemplation of the residents of the Property does not and could not advance religion or confer a public benefit.

16 The respondent contends that the Judge was correct in interpreting "home or sanctuary" exegetically to mean a place of refuge for persons who need care or have no home of their own. Such a purpose advances religion because activities relating to social welfare undertaken by religious bodies have been held to advance religion. The element of public benefit is also present because the category of "Chinese women vegetarians of the Buddhist faith" is capable of capturing a sufficiently broad segment of the public.

17 As for the relief of poverty, the respondent now adopts the Judge's view that Purpose B does relieve poverty as well. He contends that the intention to relieve poverty may be inferred from the very nature of the gift itself, and it is not necessary for Purpose B to expressly stipulate that the Buddhist Chinese female vegetarians who reside in the Property must be poor.

Our decision

18 The following propositions are undisputed by the parties:

(a) The Trust must be a charitable trust to be valid. This is because (i) the Trust is stated to be "in perpetuity" and would be void for offending the rule against perpetuities (which does not apply to charitable trusts); and (ii) the Trust is a purpose trust with no definite beneficiaries and

is void unless charitable.

(b) Under common law, if the funds of a charitable trust may be used for some non-charitable purpose, it will not be a valid charitable trust: see Hubert Picarda, *The Law and Practice Relating to Charities* (Bloomsbury Professional, 4th Ed, 2010) ("*Picarda*") at pp 329–330. For it to be a charitable trust, its objects must be wholly charitable: Peter Luxton, *The Law of Charities* (Oxford University Press, 2001) at paras 6.01–6.03. The common law position has since been modified by s 64(1) of the Trustees Act (Cap 337, 2005 Rev Ed), which provides that no trust shall be invalidated by reason that its purposes include some non-charitable and invalid purpose as well as some charitable purpose. However, this provision is not relevant here because it does not apply to trusts declared before 14th July 1967.

(c) For a purpose to be classified as charitable, it must fall within one of the four heads of charity enunciated by Lord Macnaghten in *The Commissioners for Special Purposes of the Income Tax v John Frederick Pemsel* [1891] 1 AC 531 ("*Pemsel*") at 583: (i) trusts for the relief of poverty; (ii) trusts for the advancement of education; (iii) trusts for the advancement of religion; and (iv) trusts for other purposes beneficial to the community.

(d) Leaving Purpose B aside, the other purposes of the Trust (see [6] above) are charitable in nature because they advance religion.

19 Thus, the only issue before us is whether Purpose B, on its true construction, is charitable because it falls within one of the *Pemsel* categories. Only two of Pemsel's categories are relevant here: trust for the relief of poverty and trust for the advancement of religion.

How should Purpose B be interpreted?

20 For ease of reference, we set out again the terms of Purpose B:

> As and for a home or sanctuary for such Chinese women vegetarians of the Buddhist faith as may from time to time be chosen by the trustees of this deed.

21 It is trite that the principle of benignant construction applies to charitable gifts – in other words, where a bequest is capable of two constructions, one of which would make it void, and the other would make it effectual, the latter should be adopted: *Tudor on Charities* (Sweet & Maxwell, 9th Ed, 2003) ("*Tudor*") at para 4-002. On the other hand, the court must not strain the will to gain money for charity: *Picarda* at p 354.

22 As mentioned at [14] above, the Judge's interpretation of Purpose B hinged on the meaning he ascribed to the phrase "home or sanctuary". First, he considered the dictionary definitions of "home" and "sanctuary" separately, as follows (at [25]–[26]):

> 25 The *Shorter Oxford English Dictionary* (Oxford University Press, 6th ed, 2007) (Volume 2) has several definitions for "sanctuary" (at p 2661), two of which are relevant to the language of Purpose B:
>
> > **1** A building or place set apart for the worship of a god or gods; a church; a temple. Also (*arch.*), a church or body of believers; a priestly office or order.
> >
> > …

> **5 a** Orig., a church or order sacred place in which, by the law of the medieval church, a fugitive or debtor was immune from arrest. Later *gen*., any place in which a similar immunity is granted to a fugitive; a place of refuge and safety. **b** Immunity from arrest or punishment, secured by taking refuge in a sanctuary; the right or privilege of such protection; shelter, refuge.

26 The *Shorter Oxford English Dictionary* (*ibid.*) (Volume 1) also has several relevant definitions for "home" (at p 1266):

> …
>
> **2** The place where one lives permanently, esp. as a member of a family or household; a fixed place of residence. Freq. without article or possessive, esp. as representing the centre of family life. ["Definition 2"]
>
> …
>
> **4** A place or region to which one naturally belongs or where one feels at ease. Also *spiritual home*.
>
> …
>
> **6** An institution looking after people etc. who need care or have no home of their own. ["Definition 6"]
>
> …
>
> [emphasis in original]

23 He found that the most apt definition for "home" was Definition 6 ("[a]n institution looking after people *etc* who need care or have no home of their own"), and the most apt definition for "sanctuary" was "a place of refuge and safety". He then held at [31] that because there was a sufficient overlap in the meaning between "home" and sanctuary", the phrase "home or sanctuary" should be interpreted exegetically and not conjunctively as true alternatives. In other words, instead of applying Definition 2 of "home" as a place of residence and construing it as an alternative use to which the Property might be put (thereby rendering Purpose B not exclusively charitable), the Judge read "home or sanctuary" as a phrase whereby "sanctuary" is a synonym that *explains* the true meaning of the word "home", which is not Definition 2 but Definition 6. Thus, Purpose B does not allow the trustees to use the Property as a place of residence for *any* Buddhist Chinese female vegetarian but only those who are homeless or otherwise in need of care.

24 With respect, we are unable to agree with the Judge's interpretation of Purpose B as it is inconsistent with the express terms of the Trust Deed as well as the circumstances prevailing at the time the Trust Deed was executed. First, it is contradicted by cl 4, which confers on the trustees the "absolute and uncontrolled discretion" to select the persons who may reside in the Property. Equally significant is the fact that the Trust Deed nowhere states that only destitute or needy persons would be allowed to reside in the Property. Indeed this omission is completely in line with the intention as expressed in cl 4. Second, the Judge's interpretation is inconsistent with the circumstances surrounding the execution of the Trust Deed. The uncontroverted evidence indicates that Koh had

never meant to restrict the class of persons who could reside on the Property to *needy* Buddhist Chinese female vegetarians. Before the Trust was declared, Koh stayed on the Property together with her Aunts, and this did not change even after the Trust was declared. Beside Koh and her Aunts, the only people who had ever stayed on the Property were her relatives, and there is no evidence that these individuals were homeless or in need of care. In short, the Property was at all times used as a private residence rather than as an institution or place of refuge for needy individuals. Given this factual matrix, we do not think it was justified for the Judge to infer and conclude that the Buddhist Chinese female vegetarians who choose to reside in the Property (with the approval of the trustees) are likely to be compelled by unfortunate circumstances such as poverty or family dysfunction to live there.

25 We note that the respondent has contended that the intentions of the settlor should be inferred from the Trust Deed as a whole, and that the actual use of the Property as a private residence by Koh and the trustees should be regarded as a breach of trust instead of causing the trust to fail. [note: 6] But this is plainly a circular argument, as whether or not there has been a breach of trust depends on how this Court should construe Purpose B. We further reject the proposition that extrinsic evidence should be ignored when interpreting a trust deed. While purely subjective and uncorroborated evidence by a settlor as to his intentions at the time the trust deed was drafted is inadmissible (*Tudor* at para 4-004), *objective* evidence of the settlor's intent is highly relevant in construing a trust deed, especially in cases where its language is ambiguous. As stated in *Picarda* (at p 358):

> Naturally the contemporaneous acts of the donor are of particular importance for the purpose of construing a deed of gift executed by him. Evidence is also admissible of the early application or distribution of the fund, and of the construction placed on doubtful questions which arose in the early administration of the trust.

Likewise, *Tudor* states (at para 4-008):

> The contemporaneous acts and condition of a donor are of the greatest possible importance for the purpose of construing a deed of gift executed by him … So also the manner in which the donor of the fund, if he was the first trustee, conducted himself in distributing it, the contemporaneous application of the funds, and contemporaneous deeds relating to the same charity, are of importance.

Given that the word "home" in Purpose B is capable of multiple meanings, including Definition 2 (a fixed place of residence) and Definition 6 (an institution looking after people who need care or have no home of their own), it is important to consider the contemporaneous evidence to ascertain Koh's intent when the Trust Deed was drafted.

26 As we have noted, Koh's use of the Property both before and after the Trust was executed demonstrates that she had intended to use it as a private residence and not as a home for the needy. This is corroborated by the 16 August 1949 Letter, which stated that the back portion of the Property was used for "dwelling purposes" by the owners (see [4] above). As this letter was written in support of a request for property tax exemption, one would expect that if Koh and her Aunts had indeed meant to use the Property as a home for the needy, they would have put this fact front and centre. Instead, their letter made it clear that half of the Property was being used as a temple and the other half as a private residence. There is also no evidence that this intention had changed by the time the Trust Deed was executed – on the contrary, this intention persisted as Koh has been living in the Property with her relatives from 1960 till today. Thus, if the respondent's contentions were accepted, it would mean that Koh had set up the Trust with the intention of breaching it from

the very outset – a rather strange proposition or outcome indeed.

27 In endorsing the Judge's interpretation of "home", the respondent also cites the case of *In re Isabel Joanna James* [1932] 2 Ch 25 ("*Re James*"), in which Farwell J held that a trust to provide a "Home of Rest for the sisters of the Home of the Community of the Epiphany at Truro, the Clergy of the Diocese of Truro, and such persons as the Mother Superior for the time being of the said Home of the Community of the Epiphany at Truro shall from time to time nominate and appoint" was charitable. He stated (at 30–33):

> Prima facie at any rate, I think, a gift of a fund or property for the purpose of founding and endowing a Home of Rest is a charitable object. … It may be that to provide a Home of Rest for a particular class of persons, who could not be in any sense described as in need of such a home, would not be charitable; but *prima facie in my judgment the words "Home of Rest" themselves indicate something in the nature of a hospital, although not strictly a hospital, that is to say, a home which is to provide relief for those who are in need of it, not by means of medicine or medical attendance, but by providing them with the means and possibility of rest, and that is in my view in a true sense providing for the impotent, and accordingly to provide a Home of Rest is, in my judgment, prima facie a good charitable object.* If that be so, if the provision of a Home of Rest is prima facie a good charitable object, then it does not necessarily follow that the gift will fail because some of the uses to which the Home may be put might, upon a right construction of the language of the will, be uses which would not be strictly charitable. …
>
> In the present case, looking at the terms of this will, the object is to establish a Home of Rest, and the persons for whose benefit that Home of Rest is to be provided are, firstly, the Sisters of the Home of the Epiphany at Truro. That is an association of ladies for the purpose of doing charitable work. I do not think that it is necessary for me to consider exactly what is the position of these ladies, *except to say that from the evidence it appears that under the rules* ***the ladies who enter the community give up their private means, and are themselves, therefore, without means*** *.* The lady who desired to found this Home of Rest was anxious that among the persons who might benefit from such a home should be those ladies who carry on what is I think clearly a charitable work. Then there are the clergy, who are to have the advantage of the Home. ***The clergy of the diocese are clearly persons who are carrying on charitable work.***
>
> But when one comes to the words "such persons as the Mother Superior for the time being of the said Home of the Community of the Epiphany at Truro shall from time to time nominate and appoint," they would indicate that the Mother Superior, who is not a trustee, would have the widest possible discretion to appoint anybody she pleased, irrespective of their means or any question of that kind. I think that the words bear that meaning, but, *in my judgment, when one reads the clause as a whole the duty of the Mother Superior (not because she is the Mother Superior of this particular Home, or in any way owing to her position in the Home, but owing to the fact that the object of the trust is charitable) is* ***to nominate only such persons as are properly suitable to a Home of Rest as a charity*** *, and if she were to nominate persons who were unsuitable for such a purpose, it would, in my judgment, be the duty of the trustees to refuse such nomination*. It is for the trustees to see that the Home of Rest is used and carried on as a charity, and, in my judgment, *the power of the Mother Superior to nominate persons must be limited to that overriding purpose, and only such persons as are suitable for the Home can be properly nominated and appointed by her*.
>
> [emphasis added in italics and bold italics]

In our view, however, *Re James* is distinguishable from our case. In the first place, the use of initial

capital letters in "Home of Rest" indicates that the phrase was meant as a specialised term and did not simply refer to a private residence. Second, Farwell J was influenced by the fact that the named beneficiaries such as the Sisters and the clergy were either without means themselves or carrying on charitable work, and it would therefore be charitable to provide them with a home. No such assumption can be made of "Chinese women vegetarians of the Buddhist faith" – these women need not necessarily be poor or destitute (see for example the case of *In re Sanders' Will Trusts* [1954] 1 Ch 265 where a trust to provide dwellings for the "working classes" was held not to be a trust to relieve poverty since "working classes" did not necessarily mean to relieve the poor). Third, there was no evidence of contrary intent on the part of the testator in *Re James*, whereas in our case there is evidence that the donor of the Property – Koh – had regarded the Property as a private residence and had administered the Trust as such from the very beginning. Fourth, the wording of the clause in *Re James* allowed Farwell J to hold that the Mother Superior's seemingly broad discretion to nominate persons to reside in the Home of Rest was in fact restricted; this is not possible in our case as cl 4 of the Trust Deed expressly gives the trustees the absolute unfettered discretion to decide whom they wish to permit to reside at the Property.

28 What, then, is the effect of the phrase "or sanctuary"? Reading Purpose B in context, the word "sanctuary" was probably used for its religious connotations. It is clear from the Trust Deed as a whole and the surrounding circumstances that Koh had meant to use the Property as a place to conduct Buddhist worship; indeed, as mentioned at [3] above, the Property was described as a "Chinese nunnery" in Koh's 1957 renovation agreement. Consequently, the phrase "home or sanctuary" is more likely to mean a residence for religious individuals who would practise their faith in the course of their stay.

29 We therefore find that Purpose B does not require the trustees to allow only homeless or needy people to stay on the Property, and cannot be said to be charitable on the basis that it relieves poverty.

Does Purpose B advance religion?

30 The next question is: does Purpose B advance religion because the individuals living on the Property would likely benefit from passive advancement and personal spiritual contemplation?

31 In holding that it does, the Judge at [33] relied on a report by the Charity Commission for England and Wales, *The Advancement of Religion for the Public Benefit* (December 2008, as amended December 2011) ("*English Charity Commission Report*"), which stated that religion could be advanced in two ways: (i) seeking new followers or adherents, and (ii) encouraging and facilitating religious practice by existing followers or adherents (at p 24). One example of the second way is "'passive advancement', meaning leaving religious buildings open for people to enter and benefit from personal spiritual contemplation and the provision of property for retreat" (at pp 24–25).

32 But it is trite law that for a trust that purports to advance religion to be considered charitable, there must be a sufficient element of public benefit (*Picarda* at pp 111–113). In *In re White* [1893] 2 Ch 41 ("*Re White*"), Jenkin LJ said (at 51): "A society for the promotion of private prayer and devotion by its own members, and which has no wider scope, no public element, no purposes of general utility, would be a 'religious' society, but not a 'charitable' one." As the *English Charity Commission Report* itself notes (at p 21):

> … a fundamental part of the public benefit requirement is that the benefits that are identified must be sufficiently available or accessible to the public. *So where the practices of the organisation advancing religion are* ***essentially private or limited to a private group of***

***individuals** , this requirement would not be met*.

[emphasis added in italics and bold italics]

33 There is a long line of authority stating that gifts in favour of individuals conducting private religious worship do not satisfy the public benefit requirement. We have already referred to *Re White*. It suffices to cite four more such cases here.

34 In *Cocks v Manners* (1871) LR 12 Eq 574 ("*Cocks v Manners*"), the testatrix bequeathed her property to, *inter alia*, two institutions. The first was a Dominican convent consisting of Roman Catholic females living together by mutual agreement in a state of celibacy, under a common superior, for the purpose of sanctifying their own souls by prayer and pious contemplation. The second was the Sisters of Charity of St Paul, an institution composed of Roman Catholic women living together by mutual consent, whose primary object was personal sanctification, and who, as a means thereto, employed themselves in the exercise of works of piety and charity in teaching the poor and nursing the sick. Sir John Vickens VC held that the Sisters of Charity was a charitable institution because of their social work, but not the Dominican convent (at 584–585):

> … The community of sisters at Selley Oak is, in point of law, a voluntary association for the purposes of teaching the ignorant and nursing the sick; and I cannot distinguish it in this respect from any of the numerous voluntary associations established in London, such as the Scripture Readers, Home Missionaries, or Anglican Sisters of Mercy, in which zealous persons unite for the purpose of performing charitable functions, taking out of the funds of the association so much as is necessary for their own wants, and extending their operations as their means permit.
>
> …
>
> As regards the Dominican convent the case is a little different, and more difficult. … A voluntary association of women for the purpose of working out their own salvation by religious exercises and self-denial seems to me to have none of the requisites of a charitable institution, whether the word "charitable" is used in its popular sense or in its legal sense. *It is said, in some of the cases, that religious purposes are charitable, but that can only be true as to religious services tending directly or indirectly towards the instruction or the edification of the public;* an annuity to an individual, so long as he spent his time in retirement and constant devotion, would not be charitable, nor would a gift to ten persons, so long as they lived together in retirement and performed acts of devotion, be charitable. Therefore the gift to the Dominican convent is not, in my opinion, a gift on a charitable trust.
>
> [emphasis added]

35 *Cocks v Manners* was cited with approval by the House of Lords in *Gilmour v Coats and others* [1949] 1 AC 426. The latter case concerned a trust in favour of a priory consisting of cloistered nuns who devoted their lives to prayer, contemplation, penance and self-sanctification within their convent and engaged in no exterior works. The court held that the purposes of the priory were not charitable because the element of public benefit was absent. In particular, Lord Simonds rejected the argument that intercessory prayer by the nuns or edification by example could constitute benefit to the public (at 446–447):

> My Lords, I would speak with all respect and reverence of those who spend their lives in cloistered piety, and in this House of Lords Spiritual and Temporal, which daily commences its proceedings with intercessory prayers, how can I deny that the Divine Being may in His wisdom

think fit to answer them? But, my Lords, whether I affirm or deny, whether I believe or disbelieve, what has that to do with the proof which the court demands that a particular purpose satisfies the test of benefit to the community? Here is something which is manifestly not susceptible of proof. But, then it is said, this is a matter not of proof but of belief: for the value of intercessory prayer is a tenet of the Catholic faith, therefore in such prayer there is benefit to the community. But it is just at this "therefore" that I must pause. It is, no doubt, true that the advancement of religion is, generally speaking, one of the heads of charity. But it does not follow from this that the court must accept as proved whatever a particular church believes. *The faithful must embrace their faith believing where they cannot prove: the court can act only on proof. A gift to two or ten or a hundred cloistered nuns in the belief that their prayers will benefit the world at large does not from that belief alone derive validity any more than does the belief of any other donor for any other purpose*. …

I turn to the second of the alleged elements of public benefit, edification by example. And I think that this argument can be dealt with very shortly. *It is in my opinion sufficient to say that this is something too vague and intangible to satisfy the prescribed test. The test of public benefit has, I think, been developed in the last two centuries. To-day it is beyond doubt that that element must be present. No court would be rash enough to attempt to define precisely or exhaustively what its content must be.* But it would assume a burden which it could not discharge if now for the first time it admitted into the category of public benefit something so indirect, remote, imponderable and, I would add, controversial as the benefit which may be derived by others from the example of pious lives.

[emphasis added]

36 Next is the case of *In re Warre's Will Trusts* [1953] 1 WLR 725 ("*Re Warre's*"), where the testatrix gave the residue of her estate to be held on trust for, *inter alia*, the provision and upkeep of "a retreat house". Harman J held that such a purpose was not charitable (at 728–729):

The testatrix proposed secondly what she called a retreat house; this phrase is explained as meaning a house devoted to a form of religious activity or inactivity which is known as a "retreat," and that is a well understood form of religious experience in the Church of England. It is a retirement from the activities of the world for a space of time for religious contemplation and the cleansing of the soul. No doubt that it is a highly beneficial activity for the person who undertakes it, but it is not an activity, which for the reasons so often set out in English law is a charitable activity. …

…

Activities which do not in any way affect the public or any section of it are not charitable. Pious contemplation and prayer are no doubt good for the soul, and may be of benefit by some intercessory process, of which the law takes no notice, but they are not (legally speaking) charitable activities. …

[emphasis added]

The respondent points out that *Re Warre's* has been criticised by *Tudor* and *Picarda* as being wrongly decided. [note: 7] The authors of those textbooks argue that there is public benefit in a diocesan retreat house because it is open to any member of the Church of England, and individual retreatants return to the outside world after their short stay to mingle with their fellow citizens. [note: 8] As argued by *Picarda* (at p 128):

> … There is surely a material difference between a closed religious community consisting of private individuals working out their own salvation in private and a retreat house to which members of the public resort for only a very limited period of time and possibly only once. …

But this argument, even if accepted, would not apply to the present case where the clear intent of Purpose B was to create a long term residence for individuals selected by the trustees, and not a temporary religious retreat that any Buddhist Chinese female vegetarian can resort to. And while we accept that some mingling between the residents and the public might occur when the Property is open to the public four times a year for the public to participate in the religious activities, such sporadic interaction and participation is simply insufficient to change the essentially private character of Purpose B. In any event, we would underscore the fact that the terms of the Trust, in particular Purpose B, do not require the trustees to open the Property and allow the public to reside therein temporarily for the purposes of a retreat. It was because of this aspect of public participation in retreats in *Re Warre's* that academic writers viewed that case as being wrongly decided.

37 Last, but not least, there is the local case of *Re Chionh Ke Hu, Deceased* [1964] MLJ 270, where the executors of a will were directed to distribute some shares to "such persons professing or practising the Buddhist religion" as the executors in their absolute discretion thought fit. The High Court found that the trust did not advance the Buddhist faith as there was no element of public benefit, and held that it was not a charitable trust.

38 Therefore, even if Purpose B can be said to advance religion in the sense that the women selected to live on the Property would benefit from "passive advancement", we find that it does not benefit the public.

39 Before leaving this issue, we would also like to address briefly the appellants' argument that Purpose B does not satisfy the public benefit requirement because the category of "Chinese women vegetarians of the Buddhist faith" is too small. In this regard, the appellants rely on *Inland Revenue Commissioners v Baddeley and others* [1955] 1 AC 572, where Viscount Simonds apparently said in *obiter* that a charitable trust might fail the public benefit test if it restricted access to something of general utility only to a selected body of public. But it is clear on a reading of Viscount Simonds' remarks that he was referring to the *fourth* head of charity, *viz*, other purposes beneficial to the community. This is plain from the following extracts (at 590–592):

> … as I have said elsewhere, it is possible … *that a different degree of public benefit is requisite according to the class in which the charity is said to fall.* But it is said that if a charity falls within the *fourth class*, it must be for the benefit of the whole community or at least of all the inhabitants of a sufficient area. …
>
> …
>
> It is, however, in my opinion, particularly important *in cases falling within the fourth category* to keep firmly in mind the necessity of the element of general public utility, and I would not relax this rule. For here is a slippery slope. In the case under appeal the intended beneficiaries are a class within a class; they are those of the inhabitants of a particular area who are members of a particular church: the area is comparatively large and populous and the members may be numerous. But, if this trust is charitable for them, does it cease to be charitable as the area narrows down and the numbers diminish? …
>
> …

> … Somewhat different considerations arise if the form, which the purporting charity takes, is something of general utility which is nevertheless made available not to the whole public but only to a selected body of the public—an important class of the public it may be. For example, a bridge which is available for all the public may undoubtedly be a charity and it is indifferent how many people use it. *But confine its use to a selected number of persons, however numerous and important: it is then clearly not a charity. It is not of general public utility: for it does not serve the public purpose which its nature qualifies it to serve.*
>
> Bearing this distinction in mind, though I am well aware that in its application it may often be very difficult to draw the line between public and private purposes, I should in the present case conclude that *a trust cannot qualify as a charity within the fourth class* in [*Pemsel*] if the beneficiaries are a class of persons not only confined to a particular area but selected from within it by reference to a particular creed. …
>
> [emphasis added]

Thus, the fact that Purpose B is restricted to Buddhist Chinese female vegetarians does not *ipso facto* strip it of public benefit. As we have found, the real reason why the Trust fails the public benefit requirement is that Purpose B only benefits the handful of Buddhist Chinese vegetarian women, who need not be poor, chosen in the absolute discretion of the trustees to live on the Property. Those women were, in fact, simply Koh's close friends and relatives.

Is Purpose B merely ancillary to the other charitable purposes of the Trust?

40 The Judge held in the alternative that even if Purpose B, read alone, does not strictly constitute the advancement of religion, it is merely ancillary to the overriding charitable intention of the Trust to advance religion and therefore would not render the Trust non-charitable. In defence of the Judge's holding, the respondent referred us to certain authorities.

41 In *Presbyterian Church (New South Wales) Property Trust v Ryde Municipal Council* [1978] 2 NSWLR 387 ("*Presbyterian Church*"), the New South Wales Court of Appeal had to consider whether a trust of land in favour of the Presbyterian Church of Australia in New South Wales was charitable. It was found that the land had to be used for the purposes of the Presbyterian Church, which was primarily the advancement of religion but also included other purposes which were non-charitable in nature. The land was in fact used to build a home for the aged. Nonetheless, the court held that the trust was charitable because it was for the advancement of religion. Glass JA explained (at 393):

> … the Presbyterian Church is an organization whose main purpose is the advancement of religion, although it doubtless has incidental and ancillary purposes of a non-charitable kind. If a body holds property on trust for purposes of that kind it is proper to describe it as a public charity. What was said by the High Court in *Thistlethwayte's* case [(1952) 87 CLR 375 at 442] respecting the Congregational Union applies with equal force, in my opinion, to the Trust: "We are concerned with the question whether a particular corporate body is a charitable institution. Such a body is a charity even if some of its incidental and ancillary objects, considered independently, are non-charitable. The main object of the Union is predominantly the advancement of religion … *an institution is a charitable institution if its main purpose is charitable although it may have other purposes which are merely concomitant and incidental to that purpose*. The fundamental purpose of the Union is the advancement of religion. It can create, maintain and improve educational, religious and philanthropic agencies only to the extent to which such agencies are conducive to the achievement of this purpose." [emphasis added]

Mahoney JA similarly held as follows (at 408):

> In my opinion, it is proper to recognize that, *where a gift is made to a church or equivalent body as such, the gift may be upheld as for the advancement of religion, notwithstanding that the church has purposes which extend beyond the purposes which are*, in the conventional formulation as set out in such cases as the *Keren Kayemeth* case [[1931] 2 KB 465]. There is, in my opinion, a proper basis for recognizing that, where what is involved is a church, such a body has necessarily a direct connection with, or influence on, the advancement of religion in the relevant sense, so that it should be recognized as charitable, even though its property may be applied to some purposes which, were they purposes of bodies of a different kind, would not be seen as charitable purposes. [emphasis added]

42 In *Neville Estates Ltd v Madden and others* [1962] 1 Ch 832 ("*Neville Estates*"), the issue was whether a trust of land to a synagogue was charitable. The trust deed included a clause authorising the trustees of the synagogue to establish, *inter alia*, halls for religious and social purposes, pursuant to which the synagogue had erected a communal hall near the synagogue building in which social functions were held. Cross J held that this did not render the trust non-charitable because the social activities were merely ancillary to the religious activities (at 851–852):

> The chief purposes which a synagogue exists to achieve are the holding of religious services and the giving of religious instruction to the younger members of the congregation. But just as today church activity overflows from the church itself to the parochial hall, with its whist drives, dances and bazaars, so many synagogues today organise social activities among the members. … The plaintiffs … argue that the trust in this case is open to the objections which proved fatal to the trust for the foundation of a community centre which came before the court in *Inland Revenue Commissioners v. Baddeley*. But in my judgment there is a great difference between that case and this. *Here the social activities are merely ancillary to the strictly religious activities*. … [emphasis added]

43 We agree that a trust in favour of a religious entity like a church or a synagogue would generally be charitable despite the fact that the entity also engages in ancillary activities which are not in and of themselves charitable. But we do not think that this principle applies here. Unlike the trusts in *Presbyterian Church* and *Neville Estates*, the Trust in the present case is not a trust in favour of an established religious entity whose primary purpose was the advancement of religion. Instead, it is a trust allowing the trustees to use the Property for *all or any* of three listed purposes, including Purpose B. The trustees are hence free to use the Property *only* for Purpose B, *viz*, as a residence for Buddhist Chinese female vegetarians selected in their sole discretion. This is the vital aspect of the Trust Deed which makes all the difference.

44 The Judge was alive to this difficulty. He sought to overcome it at [37]–[38] by relying on the preamble to the Trust Deed, which states that the settlors were "desirous of dedicating [the Property] to charity", and cl 1, which states that the Property shall be used for the listed purposes under the name "Chee Teck Kwang Imm Tng" (*ie*, Chee Teck Guan Yin Temple) (see [6] above). Such language, he held, allowed him to construe Purpose B as being ancillary to the "overriding charitable intention" of the Trust to advance religion. But it is trite law that an unequivocal statement of a general charitable intention on the part of the settlor is insufficient to render a trust charitable if, on its true construction, its purposes are in fact not exclusively charitable: *In re Sanders' Will Trusts* [1954] 1 Ch 265 at 273. And the mere fact that the Property is to be named "Chee Teck Kwang Imm Tng" cannot override the express words of cl 1, which state that the trustees may use the Property for "all or any" of the listed purposes, thereby giving them the discretion *not* to use it as a temple at all despite its name. It thus cannot be said that the overriding object of the Trust is to advance

religion, with Purpose B being merely ancillary to that purpose.

45 Moreover, *Picarda* states (at 333–334) that if a non-charitable activity or benefit is an independent object of the trust (*ie*, it is an end in itself and not merely the means to or consequence of some other charitable end), then the trust is not exclusively charitable. The leading case cited by *Picarda* for this proposition is *Oxford Group v Inland Revenue Commissioners* [1949] 2 All ER 537 ("*Oxford Group*"). In that case, the appellant company sought exemption from income tax on the ground that it was a body of persons established for charitable purposes only. The appellant's memorandum of association set out its objects as follows:

> (3) The objects for which the association is established are:
>
> (A) The advancement of the Christian religion, and, in particular, by the means and in accordance with the principles of the Oxford Group Movement, founded in or about the year 1921 by Frank Nathan Daniel Buchman.
>
> (B) The maintenance, support, development and assistance of the Oxford Group Movement in every way, and, in particular, (subject to the provisions of s. 14 of the Companies Act, 1929), by holding, administering and dealing with property, including all or any of the property which at the date of the incorporation of the association was held by trustees or nominees for the Oxford Group Movement.
>
> (C) The exercise of all or any of the following powers:
>
> …
>
> (9). To establish and support or aid in the establishment and support of any charitable or benevolent associations or institutions, and to subscribe or guarantee money for charitable or benevolent purposes in any way connected with the purposes of the association or calculated to further its objects.
>
> (10). To do all such other things as are incidental, or the association may think conducive, to the attainment of the above objects or any of them.

Tucker LJ noted that it was common ground between parties that the "main objects" of the appellant were expressed in cll 3(A) and 3(B), and held that although cl 3(A) was clearly charitable, cl 3(B) was not exclusively so (at 539–540). But more pertinent for present purposes was Cohen LJ's reasoning. He held that although cl 3(C) was not a main object, paras (9) and (10) thereof conferred wide powers on the trustees to engage in non-charitable activities, and thus could not be construed as being merely ancillary to the main objects expressed in cll 3(A) and (B) (at 544–546):

> Counsel for the appellants … said that where, as here, you have got no such provision … making each sub-clause of the objects clause a separate and independent main object, you must, when you have found the main object, construe the remainder as ancillary thereto. Now, that may be true if you get no guidance from the various clauses themselves, but I think counsel for the Crown was right when he said that, ***although sub-cl. (C) is expressed to be only a collection of powers, the extent to which they must be construed as subsidiary to the main objects under sub-cll. (A) and (B) is defined in the sub-clauses themselves*** .
>
> When I turn to para. (9) of sub-cl. (C) I find, first of all, that this paragraph authorises the establishment and support of benevolent associations or institutions and the subscription of

money for benevolent purposes. *Prima facie* this is not a charitable object, but it is said that the benevolent purposes must be connected with the purposes of the association and calculated to further its objects, and that, therefore, although *prima facie* non-charitable, it is ancillary to a charitable object and thus itself charitable. … I feel, however, a difficulty in reaching a similar conclusion here, for the power given to apply money for benevolent purposes is not confined to benevolent purposes which further the advancement of religion, but to benevolent purposes in any way connected with the main object. I think an institution could be connected with the advancement of religion without being itself an institution for the advancement of religion.

Then, again, under para. (10) of sub-cl. (C), the association is empowered to do, not merely things which are incidental or conducive to the attainment of the main object, but also such things as the association may think conducive to it. In other words, the question which the court would have to decide, if any activity of the association was being challenged as being *ultra vires*, would be not whether, in the opinion of the court, the activity was conducive to the main object, but whether the association, in undertaking it, had thought it conducive. …

…

… I am unable to hold that such wide powers as are given in paras. (9) and (10) of sub-cl. (C) are merely ancillary to the main objects specified in sub-cll. (A) and (B). For these reasons I would dismiss the appeal.

[emphasis added in bold italics]

46 In our view, Cohen LJ's reasoning in *Oxford Group* applies to the present case. Even if it could be said that the main object of the Trust is the settlors' overriding charitable intention to advance religion, the language of Purpose B confers wide powers on the trustees to decide who could reside on the Property without any qualification that the individuals selected must be destitute or must contribute in some way to the running of the temple or otherwise do anything to advance religion. Purpose B therefore must be construed as an independent object of the Trust, and, because it is not a charitable purpose, it renders the Trust void.

The property tax issue

47 As mentioned at [10] above, IRAS had reviewed the property tax exemption for the Property in 2005 and determined that property tax was payable retrospectively from 1 January 1999. But under s 6(6)(c) of the Property Tax Act (Cap 254, 2005 Rev Ed) ("PTA"), a building is entitled to be exempted from property tax if it is used exclusively for charitable purposes. As there seemed to be an inconsistency in the position of the State in levying tax on the Property on the one hand and maintaining before us that the Trust is entirely charitable on the other, we invited the respondent to file further written submissions on this point.

48 Having made inquiries with IRAS, the respondent conveyed the following information to us:

(a) IRAS did not have the Trust Deed in its file records. It made the decision to levy tax on the Property based on (i) a form signed by Koh stating that the Property was only used as a Buddhist temple by friends and relatives and was not open to the public, and (ii) a site inspection.

(b) Property tax was only payable with effect from 1999 because of s 21(7) of the PTA as at October 2005, which stated that tax shall not be payable in respect of a property for more than

six years prior to the property's inclusion for the first time in a Valuation List for any year.

(c) If it is proved to the satisfaction of the Comptroller that any tax has been paid in excess of the amount with which any property is properly chargeable, the owner of the property shall be entitled to have the amount so paid in excess refunded, provided that the claim for refund is made within five years of such excess payment: ss 6(13) and 6(14) of the PTA. By way of example, if a valid refund claim is made by Koh in January 2014, IRAS may refund property tax from January 2009 onwards.

49 We record these facts here purely for the sake of completeness, as we do not think that our decision – which is based on a construction of the Trust Deed and the application of trust law – is affected in any way by this additional information.

Conclusion

50 For the foregoing reasons, we hold that the Trust is not a valid charitable trust. We therefore allow the appeal and declare that:

(a) the Trust is void; and

(b) Koh is the sole beneficial owner of the Property.

[note: 1] 2 CB 43 & 54.

[note: 2] 2 CB 75.

[note: 3] 2 CB 76.

[note: 4] 2 CB 77.

[note: 5] Koh's Affidavit dated 19 March 2013 at para 13.

[note: 6] RC at paras 32–35.

[note: 7] RC at para 55.

[note: 8] *Picarda* at 128; *Tudor* at para 2-068.

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