IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHCR 21

HC/OS 598 of 2017
HC/SUM 2990 of 2017

Between

(1) Tan Wee Tin
(2) Teo Lee Leng
(3) Tang Hock Keng

… *Plaintiffs / Respondents*

And

Singapore Swimming Club

… *Defendant / Applicant*

JUDGMENT

[Civil Procedure – Stay of Proceedings]
[Administrative Law – Disciplinary Proceedings]
[Unincorporated Associations and Trade Unions – Disputes]
[Unincorporated Associations and Trade Unions – Legal Proceedings]

Tan Wee Tin and others
v
Singapore Swimming Club

[2017] SGHCR 21

High Court — Originating Summons No 598 of 2017 (Summons No 2990 of 2017)
Justin Yeo AR
5 and 19 September 2017, 23 November 2017

23 November 2017 Judgment reserved.

Justin Yeo AR:

1 Mr Tan Wee Tin ("the 1st Plaintiff"), Ms Teo Lee Leng ("the 2nd Plaintiff") and Mr Tang Hock Keng ("the 3rd Plaintiff") (collectively, "the Plaintiffs") are three former members of the Management Committee ("MC") of the Singapore Swimming Club ("the Defendant"). They were part of the MC that held office for the term of May 2011 to May 2012 ("the 2011 MC").

2 This is the Defendant's application to stay the proceedings commenced by the Plaintiffs in Originating Summons No 598 of 2017 ("OS 598"). The basis for seeking the stay is that the Plaintiffs have failed to exhaust internal appellate processes and to comply with the dispute resolution clause stipulated under the Rules of the Singapore Swimming Club (February 2013 reprint) ("the Club's Rules").

Background facts

3 On 21 November 2011, the Court of Appeal delivered its judgment in *Chan Cheng Wah Bernard v Koh Sin Chong Freddie* [2012] 1 SLR 506 ("*Chan Cheng Wah Bernard*"). The Court of Appeal found one Mr Freddie Koh ("Mr Koh"), the then-President of the MC for the term of May 2008 to May 2009 ("the 2008 MC"), liable for defamation.

Reaffirmation of Indemnity Resolution

4 On 14 December 2011, the 2011 MC convened a special confidential MC meeting, at which the 1st and 2nd Plaintiffs were present. The 2011 MC reaffirmed the indemnity resolution that had earlier been passed by the 2008 MC ("the Indemnity Resolution").

5 On 19 December 2011, the 2011 MC convened another special confidential MC meeting, at which all the Plaintiffs were present, and again reaffirmed the Indemnity Resolution.

6 On 18 January 2012, the 2011 MC convened an urgent special confidential meeting, at which all the Plaintiffs were present. The meeting was chaired by Mr Koh. At this meeting, the 2011 MC unanimously reaffirmed the validity of the Indemnity Resolution and its applicability to Mr Koh. The reaffirmation on three separate occasions allowed further payments to be made, pursuant to the Indemnity Resolution, towards Mr Koh's legal expenses in the proceedings relating to *Chan Cheng Wah Bernard* ("Mr Koh's Legal Expenses").

7 On 4 March 2012, the Defendant convened an extraordinary general meeting of the members. At the meeting, the members resolved to remove Mr

Koh as President of the Defendant's MC, and for the Defendant to stop making further payments towards Mr Koh's Legal Expenses.

8 On 28 March 2012, Mr Koh commenced proceedings by way of Originating Summons No 309 of 2012 ("OS 309") against the Defendant, seeking declarations that the Indemnity Resolution was valid and binding on the Defendant, and that the resolution passed on 4 March 2012 was null and void.

The 2012 AGM

9 At the Annual General Meeting held on 27 May 2012 ("the 2012 AGM"), a member of the Defendant sought the passage of a "motion of censure and no confidence" against the 2011 MC. This was in relation to the cheque of $1,021,793.48 ("the $1m Cheque") which was used for making payments towards Mr Koh's Legal Expenses.

10 In particular, the member formally raised the following matters in relation to the $1m Cheque:

(a) Who signed the cheque;

(b) Who gave instructions for the cheque to be signed;

(c) Whether the $1 million costs paid out on 14 February 2012 was budgeted? If not, was it an "emergency" expense?

(d) Did the MC approve/authorise the said payment?

(e) Why the haste in payment inspite of the coming EOGM and the costs being subject to review?

(f) [the 1st Plaintiff] was quoted in the Straits Times dated 25 February 2012 that the said payment was made only after consultation with the [Defendant's] lawyers. Please produce the legal advice;

(g) If deem fit to pass the following Motions:

> (i) "That the members of the MC2011/2012, namely … [members including the Plaintiffs]… be **censured** for not acting in the interest of the Club and in breach of their fiduciary duties."
>
> (ii) "That a Motion of No-Confidence be passed against the members of the MC 2011/2012, namely … [members including the Plaintiffs]… for not acting in the interest of the [Defendant] and in breach of their fiduciary duties".
>
> [emphasis in original]

11 Although the 1st Plaintiff did briefly mention, at the 2012 AGM, that the 2011 MC had reaffirmed the Indemnity Resolution, it appeared from the transcripts and minutes of the 2012 AGM that there was no discussion on this matter. There was also no mention about other sums of money that had been paid towards Mr Koh's Legal Expenses (on which, see [18] below). Instead, the focus at the 2012 AGM was on the 2011 MC members' involvement in giving instructions on and/or approving the $1m Cheque.

12 The "motion of censure and no confidence" was subsequently amended to be directed only against two persons:

(a) the 1st Plaintiff, allegedly because he could not deny knowledge of the payment having signed the $1m Cheque; and

(b) the 2nd Plaintiff, allegedly because she refused to provide her response and walked out of the 2012 AGM before the vote for the amended motion was taken.

13 The motion was passed at the 2012 AGM.

Legal Proceedings relating to the Indemnity Resolution

14 After the new MC was elected at the 2012 AGM, the three reaffirmations of the Indemnity Resolution were discovered.

15 On 18 June 2012, the Defendant commenced proceedings, by way of Suit No 510 of 2012 ("Suit 510"), to recover the moneys which the Defendant had paid towards Mr Koh's Legal Expenses. OS 309 and Suit 510 were subsequently consolidated as Suit No 634 of 2012 ("Suit 634").

16 The decision in Suit 634 was eventually appealed to the Court of Appeal, and on 26 April 2016, the Court of Appeal issued its judgment in *Singapore Swimming Club v Koh Sin Chong Freddie* [2016] 3 SLR 845 ("*Singapore Swimming Club*"). Amongst other things, the Court of Appeal found that Mr Koh had not acted properly in the discharge of his duties and responsibilities for and on behalf of the Defendant when he made the defamatory statements, and therefore, that his actions fell outside the scope of the Indemnity Resolution.

Disciplinary Proceedings

17 Less than a month after *Singapore Swimming Club* was rendered, on 24 May 2016, Mr Poh Pai Chin ("Mr Poh") lodged a complaint against the 2011 MC members ("the Complaint"). Mr Poh alleged that the 2011 MC members' reaffirmation of the Indemnity Resolution and payment of Mr Koh's Legal Expenses, after the decision in *Chan Cheng Wah Bernard* had been rendered, was done with the intention to prefer Mr Koh's interests rather than the Defendant's interests. Mr Poh also alleged that the 2011 MC members had therefore breached their fiduciary duties to the Defendant.

18 The Complaint was referred to the Disciplinary Panel convened under the Club's Rules. Six charges were brought against each member of the 2011 MC ("the Charges"). The Charges related to the 2011 MC's reaffirmation of the Indemnity Resolution, and specifically, the sums of money that were paid out on various dates, as follows:

(a) 1st Charge: contravention of Club's Rules by re-affirming the Indemnity Resolution and paying $58,720.26 towards Mr Koh's Legal Expenses.

(b) 2nd Charge: contravention of Club's Rules by re-affirming the Indemnity Resolution and paying $20,000 towards Mr Koh's Legal Expenses.

(c) 3rd Charge: contravention of Club's Rules by re-affirming the Indemnity Resolution and paying $51,000 towards Mr Koh's Legal Expenses.

(d) 4th Charge: contravention of Club's Rules by re-affirming the Indemnity Resolution and paying $1,021,793.48 towards Mr Koh's Legal Expenses (*ie*, the $1m Cheque).

(e) 5th Charge: contravention of Club's Rules by re-affirming the Indemnity Resolution and paying $60,297.90 towards Mr Koh's Legal Expenses.

(f) 6th Charge: contravention of the Defendant's Code of Conduct and Ethics relating to honesty and integrity.

19 The Disciplinary Panel Chairman convened a Disciplinary Committee (comprising three senior legal practitioners) to hear the Complaint. The Plaintiffs did not object to the constitution of the Disciplinary Committee. The 1st and 2nd Plaintiffs submitted supporting documents for their respective disciplinary hearings, while the 3rd Plaintiff did not submit any supporting documents. The Plaintiffs eventually did not attend their respective disciplinary hearings, or the subsequent mitigation hearing. The Disciplinary Committee decided to expel the Plaintiffs on each of the Charges, with effect from 28 October 2016.

20 Under the Club's Rules, a member who is dissatisfied with the decision of the Disciplinary Committee may appeal to the Appeals Board (comprising five senior legal practitioners), within 14 days of being notified of the decision of the Disciplinary Committee. Each of the Plaintiffs informed the Defendant that they would be appealing against the Disciplinary Committee's decision.

21 On 22 March 2017, the Defendant's general manager, Mr Alfred Poon ("Mr Poon"), wrote to the Plaintiffs to inform them of their Appeals Board hearings. The Plaintiffs sought to obtain documents and information from the Defendant, such as the Disciplinary Committee's grounds of decision, and details regarding the Appeals Board members. The Defendant provided the latter, but not the former, as this was not required under the Club's Rules and Bye-Laws, and the Defendant's practice was not to give such grounds. In any event, the Appeals Board would hear the matter *de novo*, and the Plaintiffs were entitled to re-canvass all the arguments that had raised to the Disciplinary Committee.

22 On 25 May 2017, Mr Poon wrote to the Plaintiffs to inform them that the Appeals Board had dismissed their appeals. Mr Poon also informed the Plaintiffs that pursuant to Rules 14(f) of the Club's Rules ("Rule 14(f)") and Bye-Law 19(j) of the Club's Bye-Laws ("Bye-Law 19(j)"), they may, within 21 days, further appeal the Appeals Board's decision to a meeting of general members. The Plaintiffs had until 15 June 2017 (*ie*, 21 days after the issuance of the Appeals Board's decision on 25 May 2017) to lodge their appeal under Rule 14(f).

23 However, instead of lodging an appeal under Rule 14(f), on 31 May 2017, the Plaintiffs commenced OS 598, seeking the following orders:

> (a) A declaration that the Disciplinary Committee's decision to expel the Plaintiffs is *ultra vires* the Club's Rules and/or wrong in fact and/or wrong in law and/or against the Club's Rules and/or null and void and/or in breach of natural justice. Alternatively, there be an injunction to restrain the Defendant from enforcing the expulsion decision.
>
> (b) A restraining order to stop the Defendant from re-initiating fresh disciplinary actions against the Plaintiffs based on the Plaintiffs' substantive arguments in Suit No 1115 of 2016 ("Suit 1115").

The Application

24 The Defendant therefore brought the present application, seeking the following orders:

> (a) 1st Prayer: All further proceedings in OS 598 be stayed in favour of the process mandated by Rule 14(f) (*ie*, appeal to a meeting of general members – see [27] below), followed by Rule 45 of the Club's Rules

("Rule 45", *ie*, the dispute resolution clause requiring mediation to be attempted before court proceedings are brought – see [60] below).

(b) 2nd Prayer: The Plaintiffs shall, within 21 days of this order, comply with the process mandated by Rule 14(f), failing which OS 598 shall be dismissed.

(c) 3rd Prayer: All further proceedings in OS 598 be stayed, pending the final disposal (including any appeals) of the 1st Prayer.

(d) 4th Prayer: Costs of the application to be paid by the Plaintiffs to the Defendant.

Issues

25 The application raises two main issues:

(a) First, whether OS 598 should be stayed in favour of the internal appellate process stipulated in the Club's Rules.

(b) Second, whether OS 598 should be further stayed in favour of the dispute resolution process stipulated in the Club's Rules.

Issue 1: Whether stay to be granted in favour of the stipulated internal appellate process

26 The first issue is whether OS 598 should be stayed in favour of the internal appellate process stipulated in the Club's Rules.

27 In this regard, Rule 14(f) requires that an appeal against the decision of the Appeals Board be brought to a meeting of general members. Rule 14(f) provides as follows:

> Any member … aggrieved by the decision of the Appeals Board to expel him may within twenty-one (21) days of the notification of such decision, appeal to a meeting of the general members to be convened for this purpose. Notwithstanding [the rule relating to extraordinary general meetings], such appeal shall be sufficient requisition for a meeting of general members and the Management Committee shall so convene such a meeting not later than sixty (60) days of receipt of the appeal.

28 The process of bringing an appeal under Rule 14(f) is further governed by Bye-Law 19(j). Bye-Law 19(j) provides as follows:

> Appeals under Rule 14(f) to a Meeting of General Members
>
> i) A member must at the time of filing the appeal under Rule 14(f) deposit a sum of $15,000.00 with the Club. If the appeal is not filed with the deposit of $15,000.00, the appeal shall be deemed to have been withdrawn.
>
> ii) Subject to the member being present throughout the duration of the meeting, the Club shall refund the deposit of $15,000.00 to the member 7 working days after the meeting.
>
> iii) Where the member fails to turn up at the meeting or where the member turned up at the meeting but leaves the meeting before the conclusion of the meeting without the consent of the Chairman of the Meeting, the appeal shall be deemed to have been withdrawn by the member and the Club may use the deposit of $15,000.00 to defray the costs and expenses incurred in convening the meeting but without prejudice to the right of the Club to claim against the member the deficiency.

The Law

29 The legal relationship between any club and its members lies in contract, and the rights of members are determined by the terms of the contract which are found in the constitution or rules of the club (see, *eg*, *Kay Swee Pin v Singapore Island Country Club* [2008] 2 SLR(R) 802 at [2]).

30 There appears to be no local case directly relating to the need to exhaust the internal appellate process stipulated by the rules of a club. However, Defendant's counsel cited a decision of the High Court of Malaysia that dealt with this point, *ie*, *Dato' Hj Talaat bin Hj Husain v Chak Kong Yin* [2004] 7 MLJ 295 ("*Dato' Hj Talaat*").

31 In *Dato' Hj Talaat*, a complaint had been filed against the defendant, who was a member of the golf club in question, and also a member of the club's MC. Following an inquiry, the Disciplinary Sub-Committee decided to expel the defendant with immediate effect, and prohibited him from entering the club. Members of the club thereafter requisitioned for an extraordinary general meeting, requesting that the Disciplinary Sub-Committee reinstate the defendant as a member. However, under the club's rules, reinstatement by the extraordinary meeting was possible only after an appeal had been brought to and disposed of by the MC. The club's President therefore announced that the reinstatement of the defendant by the extraordinary general meeting was void. Notwithstanding this, the defendant ignored the prohibition. The club therefore filed a suit for trespass and nuisance against the defendant. The Malaysia High Court allowed the club's claim, holding that the defendant had to abide by the procedure in the club rules to appeal against his expulsion, and having failed to do so, cannot challenge the expulsion in court.

32 It is also useful to have regard to the cases decided in the context of judicial review applications, where the applicant seeks to impugn the relevant authority's decision on grounds of breach of natural justice. In such cases, the Singapore courts have consistently required that the applicant must first exhaust the remedies available before bringing the matter to court. For instance:

(a) In *Borissik Svetlana v Urban Redevelopment Authority* [2009] 4 SLR(R) 92 ("*Borissik*"), the applicant applied to the High Court for a quashing order and a mandatory order that the Urban Redevelopment Authority approve her redevelopment plan and refund the relevant processing fee. The court dismissed the application on the ground that the applicant had failed to exhaust her remedies by appealing to the Minister under s 22 of the Planning Act (Cap 232, 1998 Rev Ed) before coming to court (*Borissik* at [30]).

(b) In *Tey Tsun Hang v Attorney-General* [2015] 1 SLR 856 ("*Tey Tsun Hang*"), the applicant brought judicial review proceedings against the Immigration and Checkpoints Authority of Singapore regarding its decision to cancel his application for renewal of re-entry permits. The court dismissed his application. One of the grounds for dismissal was that the applicant had failed to exhaust his remedies by pursuing his statutory right to appeal to the Minister under s 11(3) of the Immigration Act (Cap 133, 2008 Rev Ed). The court held that the bringing of judicial review proceedings was, in the circumstances, an abuse of the court's process (*Tey Tsun Hang* at [47]).

33 The English courts have taken a similar approach. For instance, in *R (Echendu) v School of Law, University of Leeds* [2012] EWHC 2080 (Admin); [2012] ELR 449 ("*Echendu*"), the English High Court stated that if the applicant had any complaint against the way that his examination had been marked, he had 12 weeks from the notification to launch an academic appeal to the relevant body within the university. Having failed to do so, the applicant could not complain to the court, even if the matters at hand were open to challenge in court (*Echendu* at [25]).

34 Depending on the specific facts of each case, there may be departures from the general position that a party must exhaust internal appellate processes before being permitted to bring the matter to court. One such example is the case of *Chiu Teng @ Kallang v Singapore Land Authority* [2014] 1 SLR 1047 ("*Chiu Teng*"). In *Chiu Teng*, the applicant applied for judicial review, seeking a quashing order against the assessed differential premium for state land and a mandatory order to direct the Singapore Land Authority ("SLA") to assess the differential premium based on the Table of Development Charge ("the DC Table"). The SLA argued that the applicant had not exhausted all local remedies as he had failed to write to the SLA, after which the SLA would consult the Chief Valuer for a spot valuation. The High Court rejected the SLA's argument, because the stipulated appeal process assumed that the developer was dissatisfied with the differential premium payable on the DC Table. However, in *Chiu Teng* itself, the differential premium had in fact been determined by the Chief Valuer, rather than the DC Table. The appeal process therefore did not provide the applicant with any alternative remedy, as it was precisely the spot valuation by the Chief Valuer that the applicant was seeking to impugn.

35 In the light of the above authorities, it is clear that members of a club are generally bound to follow the procedures found in the club's rules, including exhausting internal appellate processes provided under those rules. There may, however, be exceptional cases, such as where the appeal process in question was inapplicable to the case at hand.

Parties' Arguments

36 Defendant's counsel submitted that, in line with the general propositions at [35] above, OS 598 should be stayed, on the basis that the Plaintiffs have not

exhausted the internal appellate process stipulated in the Club's Rules, and in particular, Rule 14(f).

37 The Plaintiffs argued that they should not be compelled to comply with Rule 14(f) in the present case. Their arguments may be crystallised as six distinct arguments, as follows:

(a) First, Rule 14(f) is not mandatory, because the language used in the rule is "may", not "must".

(b) Second, the Plaintiffs should not be compelled to complete the disciplinary proceedings, because these had been improperly taken out. Indeed, this was the very basis for the Plaintiffs' bringing OS 598 (see [23] above). In the Plaintiffs' view, the Complaint and ensuing disciplinary proceedings dealt with matters for which the Plaintiffs had earlier been punished, and thus had been improperly taken out. In particular, they contended that the 2012 AGM had already conclusively dealt with the matter relating to the $1m Cheque, that the necessary punishment had been meted out, and that the Plaintiffs were – by virtue of the Complaint – facing the prospect of "double jeopardy".

(c) Third, the requirement under Bye-Law 19(j) of a $15,000 deposit for bringing an appeal under Rule 14(f) is both unreasonable and unnecessary. In any event, Bye-Law 19(j) had not been validly passed, because it had not previously been listed for endorsement in the relevant notice of meeting.

(d) Fourth, the Plaintiffs "should not be compelled to go to a General Meeting to appeal before a body of members", because the general meeting "is likely to be another kangaroo court".[1]

(e) Fifth, grounds of decision had not been provided by the Disciplinary Committee and the Appeals Board. Without knowledge of the grounds of decision, it was not possible to bring an appeal.

(f) Sixth, the 21-day timeline prescribed in Rule 14(f) had already expired, and there was no provision within the Club's Rules that allowed for reactivation of the timeline.

Analysis and Decision

38 I reject all six arguments put forward by the Plaintiffs, for the reasons elaborated upon in the following paragraphs.

The first argument

39 In relation to the first argument (see [37(a)] above), contrary to the Plaintiffs' arguments, the word "may" does not mean that compliance with Rule 14(f) is optional; instead, it refers to the optional nature of bringing an appeal against the Appeals Board's decision. Put another way, it is *not* mandatory to bring such an appeal, but a party aggrieved by his expulsion, and who wishes to seek recourse to a higher body, "may" do so. Such an interpretation is also supported by an understanding of the entire scheme of Rule 14 of the Club's Rules, which envisages that Rule 14(f) provides the *only* way to appeal, if a

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[1] Plaintiffs' Joint Reply Affidavit (dated 8 August 2017), at para 111.

member so wishes to appeal, against a decision of the Appeals Board. I therefore reject the first argument.

The second argument

40 The second argument (see [37(b)] above) concerned whether the disciplinary proceedings dealt with matters for which the Plaintiffs had already earlier been punished. This argument required detailed analysis of the scope of overlap between the disciplinary proceedings and the 2012 AGM. I therefore sought further information from the parties on what, precisely, the scope of overlap was. The parties requested for some time to respond on this issue, and tendered written submissions to set out their arguments.

41 The Plaintiffs raised three arguments:

(a) First, the subject matter of the 2012 AGM was "one and the same" with that raised in the disciplinary process, as both proceedings concerned allegations that the 2011 MC had breached its fiduciary duties to the Defendant. The decision of *Chan Cheng Wah Bernard* was the basis for both proceedings.

(b) Second, the passage of the "motion of censure and no confidence" at the 2012 AGM was a disciplinary action, because Rule 21(a)(viii)(9) of the Club's Rules ("Rule 21(a)(viii)(9)") provides that the Plaintiffs would therefore be barred from being elected to the MC for 5 years after being issued with a motion of no confidence by a general meeting of members.

(c) Third, the commencement of the disciplinary proceedings contradicted the decision of the 2012 AGM to merely censure the 1st and

2nd Plaintiffs. As such, the disciplinary proceedings were therefore invalid pursuant to Rule 21(j) of the Club's Rules ("Rule 21(j)"). Rule 21(j) provides, in relevant part, as follows:

> … The Management Committee may not act contrary to the decisions of the General Meeting made in accordance with the rules in this Constitution and always remains subordinate to the General Meetings. …

42 Defendant's counsel disagreed with all of these arguments.

(a) First, while there was some factual overlap between the subject matter of the 2012 AGM and the disciplinary proceedings, the legal issues were clearly different.

(i) As at the 2012 AGM, the Defendant's members were not aware of the 2011 MC's reaffirmation of the Indemnity Resolution, and the reaffirmation was not on the 2012 AGM agenda. The 1st Plaintiff had merely made a brief and peripheral mention of the reaffirmation, and was never further questioned about this issue. It was only *subsequent* to the 2012 AGM, in the *Singapore Swimming Club* decision, where the Court of Appeal addressed the issue of the reaffirmation of the Indemnity Resolution.

(ii) As at the 2012 AGM, the Defendant's members were not aware of the money that was paid out in relation to the 1st, 2nd, 3rd and 5th Charges. While the 4th Charge related to the $1m Cheque, the focus at the 2012 AGM was on the 2011 MC members' *knowledge* of the issuance of the $1m Cheque. In contrast, the disciplinary proceedings focused on the 2011 MC's *reaffirmation of the Indemnity Resolution*, pursuant to which, the

Defendant made various payments to Mr Koh's lawyers. Had the 2012 AGM been concerned with the reaffirmation of the Indemnity Resolution, the entire 2011 MC would have been the subject of the amended motion, instead of only the 1st and 2nd Plaintiffs (see [12] above).

(iii) Contrary to the Plaintiffs' submissions, the *Singapore Swimming Club* decision clearly could not have been considered at the 2012 AGM. The Complaint arose after the findings of the Court of Appeal in *Singapore Swimming Club* (see [17] above), rather than *Chan Cheng Wah Bernard*.

(b) Second, the nature of the proceedings in the 2012 AGM were completely separate and distinct from the disciplinary proceedings.

(i) The 2012 AGM was a meeting for the general members to manage the Defendant's general affairs. The members were not participating in disciplinary proceedings against the 2011 MC. The 2012 AGM was not a formal or adversarial process, and no formal charges were framed or preferred against the 1st and 2nd Plaintiffs at the 2012 AGM. Indeed, the members at the 2012 AGM did not have the power to participate in disciplinary proceedings, because such proceedings had not been commenced at that time. The 2012 AGM therefore was not, and could not have been, a resolution of general members for the purposes of Rules 14(f) and 14(h) (Rule 14(h) is reproduced at [61] below).

(ii) In contrast, the Defendant's internal disciplinary process is found in Rules 13 and 14 of the Club's Rules. This is a fixed

process set out with formal charges issued against the respondents, and powers are vested in different persons or bodies to adjudicate on the charges and impose various penalties at different stages of the disciplinary proceedings. Under the disciplinary proceedings, the Plaintiffs were invited to appear before different persons or bodies to answer to the Charges, and were given the opportunity to appear in person or to be represented by their own counsel, to call their own witnesses, and to tender written submissions and any other supporting documents.

(iii) The penalties which the Disciplinary Committee may impose are specifically set out in Rule 13(g) of the Club's Rules, and none of these relate to barring of a member from election (as provided in Rule 21(a)(viii)(9)). Indeed, Rule 21(a)(viii)(9) itself distinguishes disciplinary proceedings from motions of no confidence by a general meeting of members.

(c) Third, the Plaintiffs' reliance on Rule 21(j) was misconceived, because both the 2012 AGM and the disciplinary proceedings were properly carried out pursuant to the Club's Rules. Furthermore, it was not the MC that had ordered the Plaintiffs' expulsion, but a properly constituted Disciplinary Committee (and subsequently, Appeals Board) that did so. As such, Rule 21(j) was entirely irrelevant to the commencement of the disciplinary proceedings.

43 Based on the evidence and arguments before me, I make the following three observations:

(a) First, while there is some factual overlap between the subject matter of the 2012 AGM and the disciplinary proceedings insofar as the 4th Charge is concerned, the legal issues raised are distinct, for the reasons stated in [42(a)].

(b) Second, the disciplinary proceedings were of a fundamentally different *nature* from the proceedings in the 2012 AGM. The 2012 AGM could not have been a resolution of general members under the disciplinary proceedings framework found in the Club's Rules. Indeed, I note that the Plaintiffs themselves agreed in their further submissions that the 2012 AGM was "not for the purpose of Rules 14(f) and 14(h)", and that the "purpose of Rules 14(f) and 14(h)… were not applicable in respect of the 2012 AGM matters". In the circumstances, I could not see any basis for the argument that the 2012 AGM precluded the commencement of the disciplinary process against the Plaintiffs.

(c) Third, in view that the 2012 AGM and the disciplinary proceedings were of a completely different nature, I am unable to agree with the "double jeopardy" argument raised by the Plaintiffs. This is because "double jeopardy" cannot arise when a person is faced with different proceedings which are of a completely different nature (*eg* civil, *contra* criminal, *contra* disciplinary), even if these may arise from the same set of facts (see, *eg*, *Law Society of Singapore v Nathan Edmund* [1998] 2 SLR(R) 905). Had the censure at the 2012 AGM been the outcome of formal disciplinary proceedings, the "double jeopardy" argument may arguably have taken on a different complexion; but as matters stand, this is the *first* time that the Plaintiffs are being put through the disciplinary process in relation to the subject matter of the

Charges, and as such, the "double jeopardy" argument is not made out. In any event, I agreed with Defendant's counsel that *even if* the Plaintiffs were concerned about "double jeopardy", this is an argument that they could choose to raise in the disciplinary process. Indeed, the 2nd Plaintiff had, in her submissions to the Disciplinary Committee, raised the argument of "double jeopardy", although this was considered and eventually rejected by the Disciplinary Committee.

44 As such, I reject the second argument.

The third argument

45 The third argument (see [37(c)] above) concerned the requirements of Bye-Law 19(j).

46 The Plaintiffs raised two arguments:

(a) First, Bye-Law 19(j) had only been belatedly introduced, and even so, it had not been validly passed, because it had not previously been listed for endorsement in the relevant notice of meeting.

(b) Second, the requirement under Bye-Law 19(j), *ie*, the payment of a deposit of $15,000 for the bringing of an appeal under Rule 14(f), was both unreasonable and unnecessary.

47 Defendant's counsel argued that:

(a) First, the validity of Bye-Law 19(j) was not before the court, as the Plaintiffs have not sought to invalidate Bye-Law 19(j) in OS 598. In any event, Bye-Law 19(j) had been validly passed in accordance with

Rule 40 of the Club's Rules, which gives the MC the power to amend the Bye-Laws by circulation. There is no requirement of approval of general members.

(b) Second, the rationale for the requirement of the deposit of $15,000 had been clearly explained by the Defendant to its members. In gist, Bye-Law 19(j) was introduced to secure attendance of the aggrieved party who sought to bring an appeal under Rule 14(f). In relation to quantum, the figure of $15,000 was fixed by the relevant MC as an estimate of the expenses incurred in calling for a meeting of the general members, and the Plaintiffs are not in a position to question the quantum.

48 As a preliminary matter, the validity of Bye-Law 19(j) is not an issue that is before me; indeed, it is not even an issue raised in OS 598. However, based on the evidence before me, it does appear that Bye-Law 19(j) was validly passed. This is because it appears undisputed that the MC approved Bye-Law 19(j) on 20 April 2017, Bye-Law 19(j) was circulated to all members on 24 April 2017, and therefore took effect on 8 May 2017 (*ie,* 14 days after circulation).

49 The more important question for present purposes is whether Bye-Law 19(j) was so unreasonable or onerous that it practically precluded the bringing of an appeal under Rule 14(f). If it was truly onerous, then it may be arguable that the Plaintiffs were left with no alternative appellate recourse within the Club's Rules.

50 However, based on the evidence and arguments before me, Bye-Law 19(j) does not appear to be unreasonable or onerous. This is particularly so in

view of the number of members who must be invited to the proceedings, and the facilities to be booked for the same. Furthermore, the sum of $15,000 is refundable if the appealing party attends and stays throughout the proceedings. Therefore, if the Plaintiffs had *bona fide* appealed against the Appeals Board's decision, and attended the hearing before the general meeting of members, they would not have incurred any monetary loss at all from the operation of Bye-Law 19(j). In the circumstances, I reject the third argument.

The fourth argument

51 In relation to the fourth argument (see [37(d)] above), under the common law, there is no general duty to provide reasons (see *Ten Leu Jiun Jeanne-Marie v National University of Singapore* [2015] 5 SLR 438 at [47]). In any event, as Defendant's counsel submitted, the appeals within the internal appellate process are dealt with *de novo*. In other words, it remained open to the Plaintiffs to raise any arguments that they wish, before each successive appellate body. As such, the mere fact that grounds of decision have not been rendered did not mean that the Plaintiffs would be denied a fair hearing on appeal. I therefore reject the fourth argument.

The fifth argument

52 In relation to the fifth argument (see [37(e)] above), there is absolutely no evidence before me to suggest that the meeting of general members would not be conducted properly, or that the Plaintiffs would be unfairly treated. Indeed, I note parenthetically and for completeness that the Plaintiffs have themselves, albeit in a slightly different context, earlier advocated that the general members should be the final arbiter on disciplinary matters.[2] They also

appeared perfectly contented to proceed on the basis of the censure meted out at the 2012 AGM, which was by way of a motion passed by the meeting of general members.

53 In any event, *even if* the Plaintiffs were concerned about whether they would have a fair hearing before the meeting of general members, this is a matter that they can always raise subsequently, *after* completing the internal appellate process.

54 In the circumstances, I reject the fifth argument.

The sixth argument

55 In relation to the sixth argument (see [37(f)] above), the Plaintiffs originally had until 15 June 2017 (*ie,* 21 days after the issuance of the Appeals Board's decision on 25 May 2017) to lodge their appeal, if any, against the Appeals Board's decision. However, the Plaintiffs chose not to do so, and to file OS 598 on 31 May 2017 instead.

56 Although the timeline for bringing an appeal under Rule 14(f) has already lapsed, Mr Poon has taken the position on affidavit that the Defendant was prepared to allow the Plaintiffs to lodge their appeal under Rule 14(f) within 21 days from the date of an order made in the present application.

57 I recognise that Defendant's counsel did not cite any provision empowering the Defendant to reactivate the appeal timeline in Rule 14(f). However, I do not think that the Plaintiffs should be permitted to rely on a

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[2] Paragraphs 83 and 84 of the 1st Affidavit of Teo Lee Leng (31 May 2017).

position that they have unilaterally and deliberately put themselves in (*ie*, allowing the time for appeal under Rule 14(f) to lapse), so as to buttress their argument that they are now precluded from appealing under Rule 14(f). Indeed, if such an approach is permitted, then any member may exhaust the internal appellate process by simply refusing to pursue any appeal, and then proceed to bring his grievance directly to court on the basis that he has no alternative remedy. Such an approach would fly in the face of the disciplinary process and appellate mechanism envisaged under the Club's Rules, and indeed, render them nugatory. In the circumstances, I reject the sixth argument.

Conclusion on Issue 1

58 Having considered and rejected each of the six arguments advanced by the Plaintiffs, I am of the view that OS 598 should be stayed in favour of the internal appellate process provided for in Rule 14(f). I would note for completeness that the Plaintiffs did not proffer any evidence that their rights would be irremediably prejudiced in the event that a stay is granted. As the Defendant has confirmed, the Plaintiffs will be given 21 days from the date of this order to bring an appeal under Rule 14(f) (see [56] above); and in the event that the Plaintiffs are aggrieved with the decision of the general members, they may seek further recourse in accordance with Rule 45 (see [62] below).

Issue 2: Whether stay to be granted in favour of the stipulated dispute resolution process

59 The second issue is whether OS 598 should be further stayed in favour of the dispute resolution process stipulated in the Club's Rules.

60 In this regard, Rule 45 sets out a tiered dispute resolution clause, which requires the Plaintiffs to first endeavour to resolve the dispute by way of mediation, before proceeding to court. Rule 45 provides as follows:

> **RULE 45 DISPUTE RESOLUTION CLAUSE**
>
> 1) In the event of any dispute arising amongst members and all disputes, controversies, or differences arising out of or in connection with their membership of the Club and/or the Rules and Bye-Laws of the Club as contained herein, the parties shall attempt to resolve the matter within the Club and if it cannot be settled through direct discussions or mediation through a third party appointed by the Management Committee or in the event of any dispute(s) between members and the Club which was addressed at a duly convened Extraordinary General Meeting, all members of the Club agree to *first endeavor to settle the dispute in an amicable manner by mediation administered by the Singapore Mediation Centre for resolution in accordance with the Mediation Procedure, or its equivalent, at the time being in force.*
>
> 2) *Thereafter*, any unresolved dispute among members, controversy or claim arising out of or relating to the Rules and Bye-Laws of the Club as contained herein, or breach thereof, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules"), or its equivalent, at the time being in force, which rules are deemed to be incorporated by reference in this clause *or they may bring the matter to a court of law for determination.*
>
> [emphasis added]

Preliminary Issue

61 As a preliminary issue, I sought Defendant's counsel's explanation as to how Rule 45 was to be read with Rule 14(h). The latter appeared to emphasise the *final*, *binding* and *non-appealable* nature of the decision of the general members following an appeal from the Appeals Board's decision, whereas the

former appeared to envisage that any dispute could be further brought to mediation and eventually to court. Rule 14(h) provides as follows:

> The resolution of the meeting of general members [brought pursuant to Rule 14] shall be *final* and *binding* and *no further appeal shall lie from the decision of such meeting to any Court of Law*. [emphasis added]

62 The Defendant explained, by way of a supplementary affidavit, that the dispute resolution procedure in Rule 45 was intended to apply to disputes that did not touch on the subject matter of the Charges, such as procedural matters. I found it difficult to follow this argument, which appeared to limit Rule 45 only to procedural matters. However, I note the Defendant's position that the matter at hand (relating to the expulsion of the Plaintiffs) can eventually be brought to court. This is evident from the fact that the Defendant is seeking merely to *stay* OS 598, rather than to *strike it out entirely*. The 1st prayer of the present application also makes clear that Rule 45 remains applicable *even after* a decision has been made pursuant to an appeal to the general members under Rule 14(f) (and notwithstanding Rule 14(h)). The same position has been taken in Mr Poon's affidavit dated 31 August 2017, where Mr Poon states:

> Even after compliance with Rule 14(f), if there is a dispute after the general meeting, the Plaintiffs should utilise the dispute resolution procedure set out in Rule 45 to try and resolve the matter through mediation. The Plaintiffs cannot commence court proceedings without first complying with the procedure under Rule 45…

63 In the circumstances, I do not have to concern myself with how Rules 14(h) and 45 are to be read in conjunction with each other, in view that the Defendant has taken the position that the Plaintiffs can, if they comply with the relevant Club's Rules, eventually bring the matter to court.

Parties' Arguments

64 I return now to the parties' arguments in relation to Issue 2. Defendant's counsel contended that Rule 45 had to be complied with, as members are bound by the Club's Rules (see [29] and [35] above), and Rule 45 stipulated a clear obligation to attempt mediation before proceeding in court.

65 The Plaintiffs did not contend that Rule 45 was inadequate in any way. Instead, they argued that they should not be compelled to mediate the dispute because the Defendant had decided not to mediate Suit 1115.

Analysis and Decision

66 Multi-tiered dispute resolution clauses have been upheld by courts, and proceedings have been stayed in order for the dispute resolution process to be adhered to: see, *eg*, *Cable & Wireless Plc v IBM United Kingdom Ltd* [2003] BLR 89.

67 In my view, Rule 45 is sufficiently clear and envisages that parties must go for mediation before the matter is brought to court. For completeness, the High Court had in fact previously granted a stay of a separate set of proceedings (between the Defendant and different plaintiffs, in Originating Summons No 144 of 2014) on the basis of Rule 45. The parties in that matter proceeded for mediation, and court proceedings were later reinstated. While no written grounds of decision are available for that decision, it provides a measure of endorsement for the validity of Rule 45.

68 The Plaintiffs did not proffer any good reason for their argument that they should not be required to comply with Rule 45. Whether the parties had mediated in Suit 1115 is irrelevant to the issue of whether OS 598 should be

stayed in favour of the dispute resolution process stipulated in Rule 45. In any event, Defendant's counsel pointed out that in Suit 1115, mediation did not materialise only because the 1st and 3rd Plaintiffs would not be participating in the mediation. The Plaintiffs did not dispute this account.

Conclusion on Issue 2

69 In the light of the foregoing, I am of the view that OS 598 should be further stayed in favour of the dispute resolution process provided for under Rule 45.

Conclusion

70 Having answered both issues in the affirmative, I grant an order in terms of the 1st, 2nd and 3rd prayers in the application. I will hear parties on the 4th prayer relating to costs.

Justin Yeo
Assistant Registrar

Plaintiffs in person;
Ms Chang Man Phing, Mr Aloysius Tan and Ms Dynyse Loh
(WongPartnership LLP) for the Defendant.