

Chee Hock Keng v Chu Sheng Temple
[2015] SGHC 192

Case Number : Originating Summons 1049 of 2014
Decision Date : 23 July 2015
Tribunal/Court : High Court
Coram : Aedit Abdullah JC
Counsel Name(s) : Liow Wang Wu Joseph and Nicole Oon Siew Sien (Straits Law Practice LLC) for the plaintiff; Daniel Koh Choon Guan and Amanda Lim Jia Yan (Eldan Law LLP) for the defendant.
Parties : Chee Hock Keng — Chu Sheng Temple

Unincorporated associations and trade unions – societies

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 82 of 2015 was dismissed by the Court of Appeal on 24 May 2016. See [\[2016\] SGCA 34.](#)]

23 July 2015

Judgment reserved.

Aedit Abdullah JC:

Introduction

1 Questions of identity do not usually crop up in civil litigation cases. Plaintiffs, whether individuals or corporations, rarely have to show to the court that they are who they say they are: the disputes focus rather on their rights and obligations. Occasionally, and probably more rarely than many fiction writers might think, there may be a claim by a long lost descendant on a deceased's estate or a prodigal son returning to put his siblings' noses out of joint. But by and large, there is no argument about who the parties say they are. In the present case, though, this issue needed to be confronted: was the Plaintiff really who it said it was? I dismissed the Plaintiff's application largely because I found to the contrary.

2 The Plaintiff, which is a registered society, claimed that it was a member of the Defendant, which is a confederation of temples that also had individual members. The Plaintiff argued that its representatives were unlawfully expelled from the Defendant and sought a number of declarations and orders, most of which related to property, access to premises, and its status. The Plaintiff additionally included a prayer for damages to be assessed. It had also previously sought an interlocutory injunction.

Background

3 The Defendant was formed in 1978. The formation of the Defendant appears to have been the result of the relocation of three temples from their previous premises. The three temples were the Chee Hock Keng temple, the Hwa Tong Hoo temple, and the Lim Chuan Giam temple. The Plaintiff contended that it is one and the same as this Chee Hock Keng temple. The Defendant alleged otherwise.

4 As a result of the relocation, the three temples were put under the Defendant, and were

treated under the Defendant's constitution ("the Defendant's Constitution") as member temples of the Defendant. I will refer to the three member temples as "the sub-temples". The sub-temples retained their respective names. Each of them was, and still is, located within the Defendant's premises in Ang Mo Kio. The three sub-temples share a common altar table.

5 For several decades, the arrangements seem to have worked without any major incident. However, in 2014, a dispute arose. The Plaintiff was registered as a society on 23 June 2014. The Plaintiff's assertion is that this was done to protect itself and as a matter of good practice. This registration of the Plaintiff appeared to have sparked concerns within the Defendant. Subsequently in August 2014, the Defendant's management committee became concerned about the withdrawal of money from a bank account that was referred to as the Chu Sheng Temple-CHK Sub-committee Bank Account, which appears to have been for the use of the Chee Hock Keng sub-temple. An extraordinary general meeting of the Defendant was held on 5 October 2014 ("the 5 October EGM") to discuss a few issues, including the registration of the Plaintiff. However, matters were not resolved during the meeting. Instead, 15 members of the Defendant were expelled and removed from posts in the Defendant and the sub-committee of the Chee Hock Keng sub-temple. A new Chee Hock Keng sub-committee was subsequently constituted by the Defendant on or around 28 October 2014.

6 In essence, the Defendant's position before me was that the Plaintiff and those behind the Plaintiff were purporting to wrest the identity of the Chee Hock Keng sub-temple. The Plaintiff, on the other hand, said it was indeed the Chee Hock Keng sub-temple.

7 On 10 November 2014, the Plaintiff filed an application seeking the following reliefs:

- (a) a declaration that the expulsion by the Defendant of the Plaintiff's representatives during the 5 October EGM was *ultra vires*;
- (b) an order restraining the Defendant from preventing the Plaintiff from having reasonable access and use of the temple premises to maintain and preserve the altar and religious paraphernalia;
- (c) an order restraining the Defendant from preventing the Plaintiff from having reasonable access and use of the common areas of the temple premises to worship its Deities;
- (d) a declaration that the Defendant's extraordinary general meeting held on 28 October 2014 and the resolutions passed were *ultra vires* the Defendant's Constitution for failing to give notice to the Plaintiff or the Plaintiff's representatives;
- (e) a declaration that the Plaintiff has the sole authority to appoint and/or remove its representatives from the management committee of the Defendant; and
- (f) a declaration that the Defendant's trustees hold a one-third undivided share of the leasehold of the property on trust for the Plaintiff.

8 I also heard the Plaintiff's application for an interim injunction to restrain the Defendant from interfering with the Plaintiff's rites at the temple on a specific day of worship for the Plaintiff's deity, as well as for related orders to allow the Plaintiff access and use of the premises. I dismissed the application. I note, however, that even though I dismissed the application, the parties eventually worked together and achieved a compromise allowing the worship of the deity to proceed without incident.

9 Following arguments on the substantive application, I posed additional questions for further arguments:

(a) If I do not accept, based on what is before me, that the Plaintiff, Chee Hock Keng, is the Chee Hock Keng Temple referred to in the Defendant's Constitution, can the final remedies sought by the Plaintiffs be granted on the basis that at least Mr Lim Kwee San and Mr Koh Kian Wan are officers of the Plaintiff and were among those expelled by the Defendant?

(b) If I cannot find that the Plaintiff, Chee Hock Keng, is the Chee Hock Keng Temple referred to in the Defendant's Constitution, can I or should I substitute Mr Lim Kwee San and Mr Koh Kian Wan as the Plaintiffs for this matter?

(c) What impact would such a substitution have on the reliefs claimed in the OS?

Mr Lim Kwee San and Mr Koh Kian Wan had deposed affidavits for the Plaintiff in the present application and the interlocutory matter.

10 In particular, it was asked if persons could and should be substituted for the Plaintiff. The Plaintiff expressly maintained that if the court was not with them that this is the temple referred to in the Constitution that the application failed, and there should be no substitution.

The Plaintiff's Case

11 The Plaintiff's case in both the summons and the originating summons was primarily that the Plaintiff was the same entity as the Chee Hock Keng sub-temple referred to in the Defendant's Constitution. The Plaintiff submitted that the sub-temples govern the Defendant through annual general meetings, in which all three sub-temples had voting rights that are to be exercised by the representatives of each sub-temple. Each sub-temple has an equal number of representatives who sit on the management committee of the Defendant. The Plaintiff maintained that the sub-temples are distinct from the individuals who are the ordinary members of the Defendant. Thus, when the Defendant purported to expel the Plaintiff's representatives at the 5 October EGM, those representatives were not expelled as ordinary members but as representatives of the Plaintiff. The consequence of the Defendant's actions was that the Plaintiff's voice was removed from the running of the Defendant. The Plaintiff therefore brought the originating summons to vindicate its rights as one of the three founding and governing members of the Defendant. It further argued that the Plaintiff cannot be expelled from the Defendant without an amendment to the Defendant's Constitution.

12 In the alternative, the Plaintiff argued that even if the members who had been expelled at the 5 October EGM were expelled as ordinary members and the expulsion was valid, the Plaintiff's representatives could not be excluded from the management committee or the annual general meetings of the sub-temples. This, the Plaintiff asserted, was because the Plaintiff had the sole right to appoint its 15 representatives to the Defendant's annual general meetings. The Defendant's Constitution did not require that the representatives of the sub-temples must also be ordinary members (*ie*, individual members in their own right) in the Defendant. A number of other points were also argued in respect of the propriety of the Defendant's actions in holding meetings concerning the expulsion of the 15 members.

13 As for the property held by the Defendant, the Plaintiff argued that it was intended that the sub-temples would retain a one-third share in the property. The Plaintiff further asserted that there was a common understanding among the sub-temples that the premises were to be shared and jointly

used.

14 In further submission, the Plaintiff also cited the case of *Khoo Jeffrey and others v Life Bible-Presbyterian Church and others* [2011] 3 SLR 500 ("*Khoo Jeffrey*") as a similar case to support its contention that the Chee Hock Keng sub-temple was a distinct entity and that the Plaintiff was indeed that same sub-temple.

15 In response to the additional questions that I posed (refer to [9] above), the Plaintiff declined substitution of some of the individual members as the plaintiff in these originating summons.

The Defendant's case

16 The Defendant argued that the procedural requirements laid down in the Defendant's Constitution have been complied with. The expulsion of the 15 members at the 5 October EGM was thus valid. The Defendant argued that at the very least, a power to expel should be implied in the Defendant's Constitution. Alternatively, it contended that a power to expel resides in the general meeting and may be exercised by a majority vote. The Defendant submitted that therefore, no breach of natural justice occurred in the course of the expulsion of the members. This, it argued, meant that the court's ambit is limited for so long as the rules of natural justice are not breached, the court would not and should not interfere even if it disagrees with the actions of the Defendant. The Defendant also argued that the general meeting held on 28 October 2014 was validly held.

17 The focus of the Defendant's submission was that the Plaintiff was a separate society from the Defendant. It was not the sub-temple under the Defendant. Additionally, the Defendant submitted that the sub-temples under the Defendant did not have separate membership. Thus, the Chee Hock Keng sub-temple was not expelled by the Defendant and remains part of the Defendant.

18 The Defendant argued that as the Plaintiff was a separate society, it had no basis to access the Defendant's property or to use or maintain the altar and religious paraphernalia. Neither did the Defendant hold a one-third undivided share of the property and the temple premises for the Plaintiff. In response to the further questions I posed to the parties, the Defendant submitted that if the court found that the Plaintiff was not the Chee Hock Keng sub-temple, their application should be dismissed. Substitution would not be warranted.

The decision

19 I found that on the evidence before me, the Plaintiff was not shown to be the sub-temple of the same name which was part of the Defendant. That being so, the Plaintiff had no standing to seek the declarations and other orders. Given the Plaintiff's stand that there should be no substitution of Mr Lim Kwee San, the president of the Plaintiff, and Mr Koh Kian Wan, the secretary of the Plaintiff, and who was a member of the Defendant, I do not pursue this issue in these grounds.

20 While this specific finding was sufficient to dispose of the matter, I will address a number of the other arguments made by the parties in these grounds. I should also note that the Plaintiff had maintained at the start of the proceedings that it did not wish to proceed by way of a writ action; I left the matter there.

The standing of the Plaintiff

21 As I have stated earlier, I found that the Plaintiff lacked standing to pursue this action because it failed to establish that it was the sub-temple contemplated by the Defendant's Constitution. In

other words, it was a stranger to the Defendant and the Defendant's Constitution, and could not thus insist on a right to not be expelled, or to have an interest in the property. This finding was not on the basis, as had been argued by the Defendant that a sub-temple was not a separate and distinct entity, and was just a part of the Defendant. If this was correct, then clearly the Plaintiff would not have had standing. However, I disagreed with the Defendant and instead found that the sub-temples under the Defendant's Constitution were distinct entities. Nonetheless, the Plaintiff has failed to show that it was either the very same sub-temple referred to in the Defendant's Constitution, or at least that it comprised the same, or substantially the same, persons who constituted the sub-temple.

22 My decision on standing was reached following an analysis of the following issues:

- (a) the status of a sub-temple under the Defendant's Constitution; and
- (b) whether the Plaintiff was indeed the very same sub-temple.

The status of a sub-temple under the Defendant's Constitution

23 The Defendant's Constitution, which may not have been drafted with due reflection, is not entirely clear in its treatment of sub-temples within the Defendant. I was however satisfied that each sub-temple had a distinct identity and that the Defendant's Constitution recognises each sub-temple as having a separate existence with specific functions.

24 The Defendant argued that each sub-temple did not exist on its own. Rather, each was just a section or committee within the Defendant. On the Defendant's approach then, the reference to each sub-temple in the Defendant's Constitution was simply a short hand reference to part of the Defendant's functions, property or membership. The Plaintiff, on the other hand, maintained that the three temples that banded together in 1978 to form the Defendant kept separate identities and obligations.

25 I found that the Defendant's position did not gel with the Defendant's Constitution. Each sub-temple was and remained a distinct and separate entity, and had membership in the Defendant. This was evident in the structure of the Defendant, and the function and responsibilities of the sub-temples. Though the voting rights and membership structure had elements that might have seemed to militate against the distinct identity of the sub-temples, it was clear, on the whole, that the Defendant's Constitution envisaged that each sub-temple remain distinct. This conclusion was also more coherent and consistent with the establishment of the Defendant.

The structure of the Defendant

26 It is evident that within the Defendant's structure, each sub-temple remained distinct. Firstly, the Defendant's Constitution recognised this through the very fact that the Defendant is described as a confederation in it. Article 1 of the Defendant's Constitution reads:

The name of the confederation shall be called "The Chu Sheng Temple". The three (3) temples are:

- (1) Chee Hock Keng Temple
- (2) Hwa Tong Hoo Temple
- (3) Ling Chuan Giam Temple

The three temples mentioned in the Constitution thus include Chee Hock Keng, which the Plaintiff claimed to be. The fact that the Defendant is described in the Defendant's Constitution as a confederation seems to indicate that it was meant, at least partly, to be composed of autonomous units. This is supported by the various definitions of the term "confederation". *The Shorter Oxford English Dictionary* (Oxford University Press, 6th Edition, 2007) defines the term "confederation" as:

... **1** The action of confederating; the condition of being confederated: union (esp. of States) for mutual support or joint action; a league, an alliance. **2** A number of parties united in an alliance or league; *esp.* a body of States joined in more or less permanent union.

[emphasis in original]

On either definition, a member of a confederation remains distinct from the confederation.

27 This conclusion is reinforced as well by the definition in *Black's Law Dictionary* (Thomson Reuters, 10th Edition, 2014) which states that "confederation" means, in one sense, "[a] group of people, political parties, or organizations that have unified for political purposes or trade". The fact that the Defendant is described as a confederation should normally mean that it was composed of the three sub-temples, and each sub-temple has a separate identity and autonomy, with voting rights in the governance of the Defendant.

The function and responsibilities of the sub-temples within the Defendant

28 In addition, the sub-temples have responsibilities and functions, which are separate and distinct from those of the Defendant. Each is entrusted with duties relating to the maintenance and preservation of the respective altars and paraphernalia of worship, which are vested in each sub-temple: Article VII(6) of the Defendant's Constitution. The Defendant does not have any power over these. Each sub-temple is empowered to keep its own accounts and is not obliged to furnish an account to the Defendant's treasurer: Article VIII(9). Furthermore, under Article X, each sub-temple has its own trustees to control its individual property, though aside from the religious items mentioned in Article VII(6), there is no mention of what other individual property the sub-temples have.

29 Nothing is otherwise said in the Defendant's Constitution about the internal workings of each sub-temple. This lack of control of the internal affairs of each sub-temple indicates that each is autonomous and is left to its own devices. This probably reflects a desire to let each carry on as it did before the formation of the Defendant. The fact that the sub-temples are distinct is further reinforced by the objects of the Defendant, which are, *inter alia*, to promote the worship of deities venerated in the three temples, to promote and maintain harmony and friendship among the three temples, and the welfare and "continuous" [sic] popularity of the three temples: Article III.

Voting rights and membership

30 Some aspects of the voting and membership rights may be seen to point against the distinguishing of the sub-temples from the Defendant. Though the sub-temples are on occasion referred to as member temples in the Defendant's Constitution, the sub-temples do not have direct voting rights. The member temples are represented in the governance of the Defendant by representatives, who are members. Article VI (1) reads:

The supreme authority of the Confederation is vested in an Annual General Meeting of the three (3) member-temples comprising of forty-five (45) members, i.e. fifteen (15) representatives from each member-temple, to be presided over by an interim President. At least half (1/2) of the

members must be present at the Annual General Meeting for its proceedings to be valid.

31 This article contemplates that authority is exercised ultimately by 45 individual members, though each of them represents one of the three sub-temples. The article further specifies that half of the 45 members must be present to constitute a quorum at the Annual General Meeting. The governance in the Annual General Meeting thus involves individual members, though the members act as representatives of the sub-temples. The other individual members at large do not attend; *ie*, they are not part of the general meeting unless they are nominated as representatives by the sub-temples. In addition, Article VII provides for the appointment by each member-temple of seven representatives to serve in the management committee, out of which persons will be elected to serve in various offices, including as president, subject to a limit of three nominees from each sub-temple. Essentially then, the Defendant operates on the decisions and actions of individual members who represent the sub-temples. While these persons would presumably reflect the position of the respective sub-temple, it would seem that the sub-temples do not have a direct say in the running of the Defendant. It would have been thought that in a true confederation made up of autonomous or separate entities, each entity would have a vote that is exercisable by that entity. Instead, the sub-temples express their say in the Defendant's affairs through nominated individual members either through the general meetings or through the management committee. The lack of say in the running of the Defendant by the sub-temples as an entity also seems to be reinforced by Article IV, which states that membership comprises founder and ordinary members. There is no definition of a founder member. The Plaintiff took the position that this was a reference to the 3 sub-temples. But this does not gel with the Constitution's use of the term 'member', which was predominantly used in the context of individual members.

Conclusion as to the status of the sub-temples

32 While the issue of voting rights seem to point against the sub-temples being distinct entities, the other aspects of the Defendant's Constitution clearly treated the sub-temples as separate from the Defendant. Thus, I found that the sub-temples are entities with a separate existence from the Defendant. It may be that each sub-temple was itself an unincorporated association subject to a contract (and possibly not a written one at all), but at the very least, these sub-temples were not just a committee or section of the membership of the Defendant. They each had a separate identity. What the specific nature of separate existence entails seems to be left to each sub-temple to determine. The position of the other two sub-temples was not before me; I do not know whether they were each registered and whether their structure was the same as that of either the sub-temple or the Plaintiff.

33 Despite my finding that each sub-temple was distinct, this was not sufficient to show that the Plaintiff was the sub-temple, Chee Hock Keng.

Was the Plaintiff the same as the sub-temple of that name?

34 While the Plaintiff shared the same name and may have had some members who were members of the Defendant, these factors did not by themselves lead to the conclusion that the Plaintiff was the same as the sub-temple referred to in the Defendant's Constitution. What was needed was something to show the identities of the Plaintiff and the Chee Hock Keng sub-temple. Such identity can be shown in one of several ways: that the sub-temple itself somehow became the Plaintiff or that the membership of the Chee Hock Keng sub-temple and that of the Plaintiff was the same or substantially the same, and that the two carried out the same activities and work.

35 Furthermore, it was not enough for the Plaintiff to claim identity: as the Defendant denied the

Plaintiff's assertion, the Plaintiff had to establish this claim on the evidence. The affidavits supporting the Plaintiff's application did exhibit some documents, including some from the Defendant relating to what was described as the "CHK Temple Sub-Account", but these were not sufficient.

36 Since there was a dispute, it would have been best if there was evidence showing the following:

- (a) that the present membership of the Plaintiff coincided significantly with the membership of the Chee Hock Keng sub-temple (or ideally identical, barring deaths or other departures);
- (b) that the membership of the Plaintiff was engaged in similar activities to the sub-temple; and
- (c) that such membership and activities can be traced back in a line stretching back at least several years, if not to the point of the founding of the Defendant or even before.

Tracing such descent can be through adducing membership lists, minutes of meeting, accounts, annual reports, and the like. The longer the period that can be traced through such documents, the better. If documents are not available, the testimony of a number of members who have been active in the past few decades would have been useful, and depending on its quality and the credibility of the witnesses, possibly sufficient. What the Plaintiff had in the affidavits was not enough.

37 The affidavits filed for the Plaintiff implicitly assumed or referred to the continuity of the Plaintiff with the sub-temple. However, these affidavits did not ultimately assist in showing that the Plaintiff was the sub-temple in question. The affidavit of Mr Koh Kian Wan recounted the establishment of the Defendant, which he says followed from an agreement by the three temples to form a society to take up an offer by the government for land at which a single place of worship could be built for the use of the three temples. The other affidavits were primarily for the application for an injunction to restrain interference with the celebrations to be conducted by the Plaintiff; these deposed to the activities of the Plaintiff and of the sub-temple. Even if their activities were the same, the issue of identity still remained and was not proven by what was deposed. Had the Plaintiff been able to show that it had carried on the activities within the Defendant that were previously carried out by the sub-temple, it would have been far easier to conclude that the Plaintiff and the sub-temple were one and the same. Thus, if the Plaintiff had conduct of worship of deities, was represented by members at the annual general meetings of the Defendant, or contributed funds to the Defendant *qua* the sub-temple, all of this would have been strong evidence of identity. The affidavits filed for the Plaintiff contended that the Plaintiff carried on the functions of the sub-temple, but the Defendant took issue with the Plaintiff doing so before the Plaintiff was able to carry out any worship on the grounds of the Defendant. While the Defendant's actions posed as an obstacle in the way of the Plaintiff showing the above evidence, it did not absolve the Plaintiff of the burden to show by other means that it was one and the same as the sub-temple.

38 The inadequacies of the evidence of accounts and membership lists have already been alluded to. Certainly it would not have been necessary for the Plaintiff to bring all these different types of evidence. The absence of one or several categories may not have been fatal but the Plaintiff did not produce sufficient evidence that may give rise to an inference that the Plaintiff was indeed the sub-temple.

39 What is more, in the present case, the Plaintiff did not have evidence that it was indeed composed of the very same members as the sub-temple. There was reference to 12 members of the Plaintiff who attended the 5 October EGM as voting representatives of the Plaintiff as the sub-temple.

But that does not show common membership between the two. Even if the Plaintiff was comprised of all of the 15 members recognised previously by the Defendant's constitution as representatives of the sub-temple, that would not be sufficient to show that the Plaintiff was indeed the sub-temple. These 15 members acting as representatives would only be a sub-set of the sub-temple.

40 Had the matter been converted into a writ and proceeded by way of a trial, the Plaintiff may have been able to show that it was indeed the sub-temple using various other ways. On the affidavit evidence that was actually used in the hearing of the application, this was not shown. I was willing to consider the issue of standing on the basis that at least some of the members who constituted the sub-temple at its inception could be substituted to take the place of the Plaintiff in the present application. But the Plaintiff disavowed this route. Another alternative measure would have been for the individuals, who were members of the sub-temple, to come to court to prove their membership in the sub-temple, their participation in the sub-temple's activities, and give evidence as to how the sub-temple functioned over the years. There are of course possible procedural and cost consequences for the individuals concerned if this was pursued, which may explain why the Plaintiff proceeded as it did.

41 The problem is further exacerbated by the fact that the Defendant's Constitution appears to have left it to each sub-temple to establish and manage its own internal structure. Little is mentioned in the Defendant's Constitution on the composition and governance of each sub-temple. An unincorporated entity that is not registered faces a significant hurdle in establishing continuity and succession over several decades. A corporation would have existed in perpetuity, even with multiple changes in its membership. Its personality remains unaltered throughout all the changes. A registered society does not have the same personality as a corporation, but the registration regime provides certainty over composition and identity especially through the various regulatory requirements imposed under the Societies Act (Cap 311). However, the registration of the Plaintiff in 2014 does not, by itself, show that it was the same entity that became part of the Defendant at the Defendant's formation in 1978.

42 The Plaintiff cited the case of *Khoo Jeffrey* as being strikingly similar. That case involved an issue of whether two organisations were separate and independent or whether they were subordinate in some way. In that case, the appellant, a bible college, was established and shared premises with a church, which was the respondent. Eventually after some decades of existence, the college created a new constitution and registered itself as a charity. The church eventually sought to stop the use of the premises by the college; the college in turn sought orders declaring that the funds and buildings were subject to a charitable purpose trust for both the church and the college. The trial judge found that the college did not have *locus standi* as it was a new body, and was not what was originally set up. But the Court of Appeal reversed the decision and found that the establishment of a new constitution did not create a new body.

43 Insofar as the case was cited to support the Plaintiff's proposition that the sub-temple is distinct, I do not need to discuss this issue in depth as I have determined that the Chee Hock Keng sub-temple exists as a distinct entity. Whether this is the case in any particular situation will depend on the rules and bylaws of the parties, their history, and that of the individuals who created them.

44 Returning to the issue of whether the case supports the Plaintiff's contention that it was the sub-temple, my finding is that *Khoo Jeffrey* is unable to assist the Plaintiff in this regard. What happened in *Khoo Jeffrey* was that a new constitution was adopted. What was in issue in that case was whether the adoption of a new constitution was intended to create a new entity. There was no issue or controversy in *Khoo Jeffrey* that the body *prior* to the adoption of the new constitution was the very same college whose descent could be traced to 1962. In contrast, what was in issue here

was whether the sub-temple and the Plaintiff were one and the same. For the reasons above, I found there was insufficient evidence of this.

45 Without having standing, the Plaintiff has no basis to bring this claim. It is a stranger to the constitution. Rights under the constitution, against the Defendant, can only arise in respect of a member of the Defendant.

The other issues

46 As I have dismissed the application on the basis of lack of standing, it is not strictly necessary for me to address the other issues raised. However, for completeness, I shall move on to consider some of the other issues which would have had a bearing on my decision if standing had been made out. The relevant issues are as follows:

- (a) the ownership rights and interests of a sub-temple of the Defendant;
- (b) the expulsion of a sub-temple from the Defendant; and
- (c) the expulsion of members from the Defendant.

The rights and interests of a sub-temple were material to the Plaintiff's case: if it had standing, a consequential question would be whether it had an interest in the property of the Defendant.

47 I will also deal with a few other issues at the end of these grounds, but will do so very briefly as they cover miscellaneous matters.

Ownership rights and interests of a sub-temple

48 The ownership rights over property belong to the sub-temples and the individual members. This flows from the general position at law. A society or unincorporated association does not hold property as such; its property is usually held by its trustees or its members. Ultimately, such property is held under the contract between the members: *In re Bucks Constabulary Widows' and Orphans' Fund Friendly Society (No. 2)* [1979] 1 WLR 936 ("*In re Bucks*"). Section 35 of the Societies Act deems property in registered society to be vested in the governing body of the society, unless it is otherwise vested in trustees, but this should not affect the contractual analysis that the members are the ones who actually own the property. The members are not joint owners or tenants in common – they hold the beneficial ownership of the property as a group, subject to the contract between them.

49 In the present case, the immovable property of the Defendant is vested in a board of trustees: Article X(2). Article X(2) states: "[i]f the Confederation at any time acquires any immovable property, such property shall be vested in a Board of Trustees appointed by the Management Committee and subject to a Declaration of the Trust [sic]". The Defendant's Constitution is otherwise silent as to the disposition of property. But vesting is not the same as actual beneficial ownership. Nothing in Article X ousts the general principle that the property belongs to all the members under the contract between them. Contrary to the submissions of the Plaintiff, the sub-temples do not each have a one-third undivided share of the leasehold interest held by the Defendant. The lease in question was paid for in 2008, for a 30 year period. While the sub-temples contributed to the lease in equal shares, it does not follow that they then obtained a one-third interest in the lease. The use of funds coming from the sub-temple would give rise to an accretion or addition to the property of the Defendant held by it subject to the Defendant's Constitution. In view of the silence of the Defendant's Constitution, the beneficial interest of the lease would have to be taken to be vested in all the members. If there are

any restrictions in the lease as to the holding by individuals, this would be a separate matter between the Defendant and the landlord. It would further seem that if the Defendant was dissolved, any remaining funds would, after a discharge of its liabilities, be transferred to charitable organisations. This would seem to entail that any assets held by the Defendant are to be converted to funds. However, until that point, the property remains held by the members under their contract.

50 The Plaintiff argued as well that a resulting trust arose because contributions made to the purchase of a new lease in 2008 were not intended to be a gift. I find, as argued by the Defendant, that the contribution was made to the Defendant for its use. In other words, the contribution was to the Defendant's assets, which was used by the Defendant to obtain the new lease. There was nothing to show that when the contribution was made by the sub-temple, it was anything other than an accretion to the Defendant's assets; there was certainly nothing of the nature of a declaration or reservation of interest.

Expulsion of members

51 I found that the Defendant's Constitution did not, as it stood, allow for the expulsion of members. Without an amendment to the Defendant's Constitution, no expulsion could be made even at a general meeting. The matter is not expressly provided for under the Constitution. The Defendant contended that the power to expel was either contained in Article XIII or could be implied from the article. Its position was that the power to expel its members could be exercised by the Defendant in a general meeting.

52 Article XIII, however, is not broad enough on a plain reading to encompass the power to expel. The article reads:

In the event of any question or matter arising out of any point which is not expressly provided for in the Constitution, the Committee shall have power to convene a meeting to solve the problem or to use its own discretion.

That provision appeared to be primarily geared to allow the management committee to have facilitative powers for the continued running and operation of the Defendant. The expulsion of a member is a drastic and serious action; it cannot be easily founded on a broad provision of this nature. It is also noteworthy that the title of Article XIII is "Interpretation"; while not determinative, that description further reinforces the conclusion that the article is merely facilitative and does not give any power to expel.

53 The authorities are clear that there is no general power of expulsion. This dates back at least to Jessel MR's decision in *Dawkins v Antrobus* (1881) 17 Ch D 615. In that case, a Colonel Dawkins joined the Travellers' Club in 1859. At that time, there was no rule providing for the expulsion of members. It was only in 1875 that a rule was enacted at a general meeting providing for expulsion. For immaterial reasons, this was passed again in 1877, and a revised version came into force in 1878. Colonel Dawkins committed an act considered dishonourable and was expelled in a general meeting in 1879. Jessel MR who heard the action by Colonel Dawkins against his expulsion, made a remark at the start of his judgment:

... There are two principal points raised: First, whether the rule in question under which the expulsion of Colonel *Dawkins* has taken place is or is not a rule binding on him as a member of the *Travellers' Club*. Now that does not depend on the inherent power of a club to pass a rule to expel one or more of its members; I for one am unaware of the existence of such a power, and I was surprised to hear such a proposition put forward. ...

[emphasis in original]

However, Jessel MR found that the rules of the club permitted the amendment of rules to allow for expulsion. The Court of Appeal did not take issue with Jessel MR's *dicta*.

54 It must be noted that Jessel MR did not actually deal with a case in which a club sought to invoke an implied power to expel; what was at issue was whether the club could amend its rules to provide for expulsion. But it is implied from that that there is no inherent power to expel. While Jessel MR's views are of course entitled to great respect, given the circumstances of that decision, the position should be looked at applying first principles. The same result follows on that analysis.

55 The implication of terms in the context of the rules of an unincorporated association follows the usual principles applying to contracts: the rules are but a contract between all the members. *Foo Jong Peng and others v Phua Kiah Mai and another* [2012] 4 SLR 1267 ("*Foo Jong Peng*") is local authority for the proposition that a term empowering expulsion should not be implied on the usual test. The Defendant attempted to distinguish that case on the basis that it was concerned with the removal of office bearers. That is not a convincing distinguishing factor: just as much as the removal of an office bearer from a committee would be a matter that should be expressly provided for, so should the removal of a member completely from an unincorporated association. If anything, the removal of a member is a much more serious and drastic affair: the result of such an action would be to deprive the member of the benefits of the unincorporated association, while an office bearer would still at least enjoy his membership.

56 The Defendant also attempted to distinguish the present case from *Foo Jong Peng* on the basis that this case concerned removal at a general meeting: it was contended that the Court of Appeal in *Foo Jong Peng* recognised that the power could be exercised in a general meeting. However, it is clear that the Court of Appeal in the passage relied upon by the Defendant was simply considering various alternatives that could have been resorted to by the association there in its rules, but were not.

57 The Defendants referred to an old text, John Wertheimer, *Wertheimer's Law Relating to Clubs* (Sweet & Maxwell, 5th Edition, 1935), but the discussion relied upon is in a section concerned with a general rule about expulsion that is commonly found in clubs. This is evident by the passage before the one that is relied on by the Defendant, which starts off, "The rule as to expulsion of a member is almost invariably the same in all clubs, and is generally to the effect that ...". That discussion is also titled "General rule as to expulsion". The passage relied upon by the Defendant in turn is titled, "Proceedings under such a rule". Given that it was concerned with actual rules on expulsion, the text did not assist the Defendant.

58 Another authority relied upon by the Defendant was *McVitae and others v Unison* [1996] IRLR 33 ("*McVitae*") for the proposition that a power to expel or discipline can be implied if there are compelling reasons. However, *McVitae* was a case concerned with whether prior disciplinary proceedings could be continued after an amalgamation of the original association (a union) with other entities. Even though the instrument of amalgamation did not provide expressly for the power of the new entity to proceed for actions before amalgamation, this was implied by the court. The result is unsurprising; the context is materially different from the present case.

59 Yet another authority relied on by the Defendant was *Innes v Wylie and Others* (1844) 174 ER 800 ("*Innes*"), which was cited for the proposition that the majority at a general meeting may remove a member. A number of points go against the strength of *Innes* as an authority. Firstly, these remarks were made in the context of a summing up to the jury about an assault case against a policeman who had tried to stop the putatively expelled member from entering the club. The focus ultimately was

whether the member was given due process. The proposition such as it was in *Innes* was predicated on the fact that there was no property there in which the members had a joint interest. *Innes* predates the analysis on holding of property in various cases such as *In re Bucks* and thus the strength of the *dicta* in *Innes* is doubtful. In any event, there is a joint property interest as the members hold the property of the Defendant together, where even if on dissolution, it is to be transferred to a charity. The proper procedure would have been for the Defendant to amend its constitution.

60 Finally, while I did not find that there was any power to expel individual members, it may be further argued that given the history of the establishment of the Defendant that a sub-temple cannot be expelled. The three sub-temple were originally precursors of the Defendant, and the Defendant was established to serve the needs of these three temples. In that context then it may perhaps be arguable that sub-temple can never be expelled.

61 Based on the above, I would have been minded to rule that the expulsion was improper, had the proceedings been brought by the affected individual members as such, rather than the Plaintiff. The Plaintiff declined as well to be substituted by its members who were also clearly members of the Defendant before their purported expulsion.

Miscellaneous Issues

62 A number of other miscellaneous issues were raised.

Natural justice

63 The Defendant argued that there was no breach of natural justice on the facts. The Plaintiff alleged otherwise in affidavit but this did not really constitute a significant plank of its case, when compared with the other arguments. As the question of a possible breach of natural justice is further removed from my actual decision that there was no standing, this will be dealt with very briefly. The Defendant accepted that the expulsion of the members must be in accordance with the rules of natural justice, but contended that there was no breach of natural justice here. It submitted that adequate notice and an opportunity to be heard were given to the Plaintiff; in short, the procedure used was fair. Notice was circulated to the members on 21 September 2014. The agenda for the meeting was to consider the conduct of those affected and the appropriate penalty to be meted. Some of the members who were expelled indicated that they felt that they had done no wrong but they chose not to say anything during the meeting.

64 The Plaintiff alleged that there was a breach of natural justice as those seeking and effecting expulsion were the very ones aggrieved by the conduct of those to be expelled. The Defendant refuted this and argued that there was no apparent bias, and that necessity required the management committee to act as there was no other mechanism to deal with the issue. The Defendant cited that case of *Khong Kin Hoong Lawrence v Singapore Polo Club* [2014] 3 SLR 241 ("*Singapore Polo Club*") in support of its submission.

65 I accept that in the context of a club, disciplinary proceedings are sometimes necessary and if there had been any power to expel or to punish, the circumstances may require the management committee itself, or a sub-group, to determine the issue, as contemplated in *Singapore Polo Club*. In that situation, the disciplinary body must ensure that it acts with utmost propriety. I was satisfied on what was before me that there was no breach of the requirements of natural justice in the present case. Those who were expelled were given adequate notice. There was no breach of procedural fairness. As noted in *Singapore Polo Club*, a party subject to the disciplinary proceedings of a club

should be given both adequate notice and an opportunity to be heard. Had there been a power to expel, both requirements were met in the present case.

Representation by non-members

66 In the course of arguments, the Plaintiff suggested that it would not be necessary for representatives to be members of the Defendant. I am of the view that it is not possible for non-members to be representatives. This is not, as the Plaintiff argues, something that has to be specified. It flows from the membership structure put in place by the Defendant's Constitution. It has been previously noted that the Defendant's Constitution is not the most well-crafted document. But it does seem on balance to require membership as evident from how it does not contemplate any role for a person who is not also a member. Article IV deals with membership. Paragraph (1) refers to founder and ordinary members. Paragraph (2) is ungrammatical, reading, '[t]o elect 15 representatives from the three temples to form a pro-team [sic] committee to administer the property of the temple'. Paragraph (4) specifies that founder and ordinary members shall have the same rights and duties of the Confederation [sic]'. Article VI(1), which deals with management, reads:

The supreme authority of the Confederation is vested in an Annual General Meeting of the three (3) member-temples comprising of forty-five (45) members, i.e. fifteen (15) representatives from each member temple, to be presided over by an interim President.

It is clear that representatives of the member temples must be members of the Defendant. The phrase "members" in Article VI, in the context of the Defendant's Constitution, cannot be taken as meaning anything else other than members of the Defendant.

67 And similarly, trustees of property under Article X(2) would also need to be members of the Defendant: I do not see anything in the Defendant's Constitution that would allow strangers to the Defendant to act in any capacity. Given this, the natural interpretation would be that trustees must be drawn from the pool of members.

Sufficiency of conduct

68 On this point, the Defendant argued that the court should not examine the sufficiency of conduct leading to expulsion. It is argued that the court should not substitute its own judgment for that of the Defendant or its members that was made in the general meeting. It suffices in this case for me to note that whether or not that is so would depend to a great extent on the rules of the society; it may be that in the context of particular provisions that the court will need to examine whether a particular type of conduct is so bad that it calls for expulsion. That is not however the case here as the Constitution is largely silent.

Holding of EGMs

69 The Plaintiff relied on Article VII(4) to argue that there was no power to hold any extraordinary general meetings ("EGMs") other than an annual general meeting. Given that the Defendant's Constitution contemplated that the "supreme authority" of the Confederation is vested in the annual general meetings, it would be a matter of necessary implication that an EGM should be permitted where the business of the Defendant requires it. Otherwise, the Defendant may become effectively paralysed, particularly if the management committee, for whatever reason, did not feel it had the authority to act, or if an amendment of the constitution was required.

The appointment of representatives

70 It follows from my reasoning that the appointment of representatives for the annual general meetings needs to be made by the sub-temple rather than the Defendant. It would seem that this was supposed to have been done on 28 October 2014, although the Defendant referred to this as a meeting of a sub-committee rather than a sub-temple, and members of other sub-temple were present. The effect if any of this will need to be played out. But it should be left to parties with the requisite standing to consider. Based on the reasoning adopted above, the Chee Hock Keng sub-temple should appoint its representatives from those who are members of the Defendant. My decision was only that the Plaintiff was not shown to be the Chee Hock Keng sub-temple. It does not preclude a party with standing from bringing the claim.

71 However, no individual members of the Defendant appeared as parties before me. The Plaintiff took the line that it could act as these members were its representatives. I do not think this would be proper. Even if the Plaintiff's standing had made out, the representatives were members of the Defendant, and were expelled as members. Any complaint should be made by them and pursued by them. The Plaintiff has no representative capacity to act on their behalf.

Conclusion

72 The Plaintiff lacked the requisite standing. But if standing was made out, the Defendant would not have been able to expel either the Plaintiff or the individual members, as its constitution does not contemplate such a power. If such a power was desired, the constitution would have to be amended.

73 One suspects that the drafter of the Defendant's Constitution was not given much time or space to write that document. While it may have held the Defendant and its sub-temple together for several decades, the present case does perhaps show that the legal equivalent of duct tape may help deal with immediate problems and is sometimes the only practical solution when clients are baying at the door, but when the immediate storm passes, durable legal structures should be looked at, and the parties should face up to the difficult discussions that are very often needed.

74 Finally, I should note that despite the issues between them both the Plaintiff and the Defendant have acted and continue to act in a calm and deliberative way. I am also grateful to counsel for both sides in facilitating this.

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