IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 244

Originating Summons No 156 of 2016
(Summons No 740 of 2016)

Between

Tan Boon Hai

… *Plaintiff*

And

(1) Tan Kia Kok
(2) The Hainan Tan Clan Association

… *Defendants*

GROUNDS OF DECISION

[Unincorporated Associations and Trade Unions] — [Friendly Societies] — [Disputes]

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v
Tan Kia Kok and another

[2016] SGHC 244

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28 October 2016

Kannan Ramesh JC:

Introduction

1 The Hainan Tan Clan Association ("the Clan") was set up in 1935. The Clan's Constitution ("the Constitution") declares that it was established to pay tribute to ancestors, emphasise education among clan members' families, organise charitable activities, inculcate the Chinese culture and maintain good traditions, foster kinship among clan members and work towards their welfare. During the course of the Management Council's ("the MC") term of office in 2014/2015, certain disputes erupted between the members. It seemed reasonably apparent to me that the source of the dispute was over control of the Clan. The plaintiff, Tan Boon Hai ("the plaintiff"), and the first defendant, Tan Kia Kok ("the first defendant"), represented separate factions each

jostling for supremacy, engendering acrimony in the process. Such acrimony unfortunately spilled over into the courts.

2 In Originating Summons No 156 of 2016 ("OS 156"), the plaintiff sought reliefs for alleged breaches of the Constitution arising from the 2014/2015 MC's improper admission of 166 new members to the Clan and the conduct of the elections for the 2016/2017 MC ("the elections"), which followed the Clan's annual general meeting ("the AGM") held on 27 December 2015. In High Court Summons No 740 of 2016 ("SUM 740"), the plaintiff sought, *inter alia*, an order restraining the Clan from allowing the newly-elected 2016/2017 MC to carry out the powers and duties of its office, and an order restraining the Clan from allowing the 2016/2017 MC to be sworn into office.

3 The first defendant was the Clan's president while the second defendant was the Clan (collectively "the defendants"). After hearing the parties, I dismissed OS 156 and SUM 740 *in toto*, with costs to the defendants. As the plaintiff has appealed, I set out my full grounds below.

The facts

The parties

4 The plaintiff was a member of the 2014/2015 MC. He was the president of the MC for the terms 2008/2009 and 2010/2011. Insofar as the factional disputes were concerned, he was aligned with one Dr Tan Han Kwang ("Dr Tan"), who was president of the MC for the terms 2004/2005, 2006/2007, and 2012/2013. As Dr Tan was the president of the 2012/2013 MC, he was an ex-officio member of the 2014/2015 MC as the Immediate Past President ("IPP"), as was constitutionally provided for.

5 The first defendant was the president of the 2014/2015 MC. During the elections on 27 December 2015, he was returned to office as president of the 2016/2017 MC, *ie*, the current MC. The plaintiff and Dr Tan, not being elected as MC members at the elections, are not part of the current MC. As mentioned above, the plaintiff and the first defendant were in effect part of two separate factions in the Clan jostling for control, with the plaintiff being, at the material time, in the minority faction and the first defendant belonging to the majority faction.

6 At the core, the plaintiff sought for the court to declare that the elections were null and void. To persuade the court that such a declaration should be made, the plaintiff alleged, *inter alia*, that the new members who voted in the elections were admitted into the Clan through unconstitutional means, and that the manner in which the elections was convened was also unconstitutional.

The new membership admission process

7 The plaintiff submitted that the defendants had, in breach of the Constitution, subverted the membership admission process. According to him, membership applications were scrutinised by "all members of the Clan" until 2014. Back then, application forms – which included photocopies of the applicants' identity cards and photographs – were put up on the Clan's notice board for 14 days. During this period, members would gather to "assess their new brethren to see if they had met the necessary criteria for membership". Any member who harboured objections in regard to any applicant could raise the matter to the secretariat; the member could also verify the personal particulars of the applicant over the phone. Thereafter, the applications would

be tabled at the next MC meeting for the MC to "consider each application individually".

8 However, the plaintiff said that in early 2015, the secretariat stopped posting the application forms on the notice board. Replacing them was a list of names and "bare details" of the applicants. Thereafter, these lists were tabled at the next MC meeting and the MC would consider the approval of the applications on the basis of the lists alone. At an MC meeting on 10 April 2015, a second change to the admission process took place. It was announced that a panel would conduct preliminary verification interviews for all applicants ("the panel"). Only applicants who had been verified by the panel would be included on the list of names to be posted on the notice board. The panel comprised the first defendant, the treasurer and the secretary-general. The plaintiff alleged that all three members of the panel belonged to the majority faction led by the first defendant, and also complained that the adoption of the panel was not put to a vote before the MC.

9 According to the minutes of that MC meeting, it was decided that:

> 6.4 From now onwards – the new applicants should be verified through interviews, *in order to prove that they comply with the article of association, the member must be a Hainan Tan clan relative*; and a small group would be formed by the president [*ie*, the first defendant], secretary-general and treasurer, who would be responsible for the verifications interview. *Approving the membership applications of unqualified individuals without verifications is an irresponsible behaviour.*
>
> [emphasis added]

10 The first defendant elaborated on the new admission process ("the new process") thus:

(a) New applicants would continue to fill up application forms, attach photocopies of their identity cards and submit the completed forms to the secretariat, which would file them in a "pending applications" file.

(b) The secretariat would then contact the applicants over the phone and arrange for them to attend verification interviews with one of the panel members to verify their personal particulars. The application forms would remain in the "pending applications" file until the interviews were conducted.

(c) For applicants who had been shortlisted following the verification interviews, the membership application forms and/or a list of their names and ancestral village in Hainan Island would be posted on the notice board for about 14 days. Members who wished to object to the applications could still do so through the secretariat.

(d) Thereafter, the list of applicants and objections received would be presented to the MC at the next MC meeting for the MC's approval. Only upon approval were the applicants admitted as clan members.

11 At this juncture, it is apropos to point out that the modalities of the admission process were not spelled out in the Constitution. The only constitutional requirement (subject to the applicant meeting the membership eligibility criteria) was that the MC *approved* the application (see Rule 2.1 of the Constitution (at [35] below). Therefore, as long as the MC was the body that rendered ultimate approval, it must follow that the MC could introduce changes to any pre-existing practice of membership admission. The introduction of a panel to function as a "filter" or "sieve" was precisely such a

modality which was neither prescribed nor proscribed by the Constitution at that time.

12 On 29 May 2015, the plaintiff, Dr Tan and one Mr Tan Khin Pang ("Tan KP") wrote to the first defendant to express their objection to the new process. About two weeks later, the first defendant replied to say that the new process had already been adopted; verification checks would be conducted on all applicants to ensure that the information provided was true and valid.

13 Further MC meetings took place after the MC meeting on 10 April 2015 (on 29 May 2015, 13 August 2015, 19 October 2015, 7 December 2015 and 14 December 2015). Over the course of these meetings, a total of 152 new members came to be approved by the MC. The plaintiff contended, *inter alia*, that the new process and the approval of the new members without the MC's scrutiny served to cement the first defendant's position in the run up to the elections on 27 December 2015. But I would note, in passing, here that there was no evidence that the admission exercises were conducted in a manner that was anything less than *bona fide*, or which served to prejudice the plaintiff's interests or for that matter, advance the first defendant's. While the plaintiff initially claimed that some 27 applications submitted by himself and Dr Tan were "arbitrarily rejected" by the first defendant without being surfaced to the MC, this turned out to be a baseless assertion which was tellingly, not pursued in the plaintiff's written submissions. Of these 27 applications, it is vital to note that the applicants who turned up for the verification interviews with the panel were duly approved by the MC. The applications of the remaining dozen applicants – who, for one reason or another, did not attend the verification interviews after being contacted to do so – were merely placed in the "pending applications" file (see [10(b)] above). The fact that the MC approved the new members also showed that the new process was in fact accepted by the MC,

notwithstanding the plaintiff's assertion that the adoption of the panel was not put to a vote before the MC (see [8] above).

The Elections Committee

14 The Clan holds elections for a new MC every two years. In the run up to the elections, an Elections Committee ("the EC") was convened to discharge certain duties, which are stipulated in the Constitution. In particular, the composition of the EC and its duties were as follows:

> 3.4 An Election Committee shall consist of the Immediate Past President and two members who are not part of the Management Council. The Election Committee shall perform the following duties:
>
> (a) To inform the member on the opening of the nomination;
>
> (b) To verify the validity of the nomination of the candidate according to Rule 3;
>
> (c) To announce the results of the election.
>
> 3.5 The Election Committee shall notify all voting members in writing 14 days before nomination is opened. Nomination forms should be submitted to the Association Secretariat within 14 days after the Nomination has started. The list of candidates shall be sent by the Election Committee to all voting members one week before the Election.
>
> …

15 On 19 October 2015, the first defendant informed the MC that a legal advisor, Mr Tan Hee Liang of Tan See Swan & Co, was of the view that there were two possible interpretations of IPP for the purpose of constituting the EC and that the MC could decide on the interpretation it wished to adopt. On the first interpretation, the IPP was the first defendant, because the incumbent MC (*ie*, for 2014/2015) – which the first defendant was president of – would be dissolved ahead of the elections. The second interpretation was that the IPP was Dr Tan, since he was the president of the MC for 2012/2013, which

preceded the incumbent MC. The issue was put to a vote, with 20 members of the MC voting in favour of the first interpretation and five against it. The first defendant was as a result designated as the IPP and chairman of the EC. The other two members of the EC were Ms Tan Soon Wa ("Sharon") and Mr Tan Check Ping ("Tan CP"). The elections were designated to be held on 27 December 2015.

16 The first EC meeting took place on 25 October 2015, during which various timelines were set out. For example, letters were to be sent to all voting members on 15 November 2015 to inform them of the nomination dates. Advertisements were to be placed on 1 December 2015 to notify members of the annual general meeting ("AGM"), which was to take place in the morning before the elections in the afternoon.

17 In accordance with the timelines, on 15 November 2015, the first defendant issued the following notice to the Clan members ("the 15 November notice"):

> To all members,
>
> **Annual General Meeting cum Election of the 50th Council/Honorary Auditors**
>
> One, Our Annual General Meeting cum the election for the new council/honorary auditors will be held on 27th December (Sunday) this year.
>
> Two, Nominations will be accepted starting from 29th November (Sunday). Members who would like to nominate candidates can obtain the nomination forms and relevant election regulations from the Secretariat office starting today (which is 15th November). Completed nomination forms must be submitted to the Secretariat office before 5p.m. on 12th December (Saturday).
>
> Three, For members who have any proposals, please clearly state the proposal's content, reason(s), proposer and seconder's information, signed by the proposer and seconder,

> and submit to the Secretariat office before 5p.m. on 12th December.
>
> Chairperson of the Election Committee/President of the 49th Council
>
> Tan Jia Zhao
>
> 15th November 2015

The first defendant signed off on the 15 November notice in two capacities – as the chairperson of the EC *and president of the MC*. The fact that the first defendant *also* signed off as the president was significant, as it suggested to me that the 15 November notice was valid beyond all peradventure. Under Rule 4.2(a) of the Constitution, the president shall convene the AGM by the end of December. Rule 3.6 of the Constitution also states that the elections are held on the day of the AGM. Therefore, the president must necessarily be calling for the elections while acting to convene the AGM. In this regard, it is important to note that the 15 November notice was consistent with the president carrying out his duties to call for the elections as part of the process of calling for the AGM. This is evident from its title: "Annual General Meeting cum Election of the 50th Council/Honorary Auditors". This explains why the first defendant signed off as president of the MC in the 15 November notice. However, the first defendant also signed off in the capacity of the chairperson of the EC. This capacity was relevant to the EC's duty under Rules 3.4(a) and 3.5 to notify members of the opening of the nominations for the elections (see para 2 of the 15 November notice). However, I would further note that this duty of the EC to notify is purely administrative as it is entirely contingent on the president's calling of the elections in conjunction with the AGM.

18 The elections were discussed during the MC meeting on 7 December 2015. The first defendant said that the plaintiff and Dr Tan attended that MC

meeting but raised no objections to the MC's decisions on the election timelines. This did not appear to have been challenged by the plaintiff – indeed, no objections were recorded in the minutes of that MC meeting.

19 However, on 10 December 2015, the plaintiff, Dr Tan and Tan KP tabled certain proposed resolutions to the MC with a view to tabling them at the AGM ("the proposed resolutions"):

> (a) That the General Meeting re-affirms the meaning of the words "the Immediate Past President" used in Clause 3.4 of the Constitution, read together with Clause 4.12 shall mean and refers to the "President" who held office during the term preceding the current term … ;
>
> (b) That the General Meeting re-affirms the meaning of the words "Once the application is approved by the Managing Council, the applicant shall become an ordinary member", provided under Clause 2.1(a) of the Constitution shall mean and refer to the Managing Council having the exclusive power to check applications for membership and if the applicant's eligibility requirements are met to consider approving such application for membership and that such power shall not be delegated to or assumed by any panel of persons … ; and
>
> (c) That the incoming elected Managing Council to conduct a review of all the applications for membership from period April 2015 approved under the "new" scheme whereby the responsibility to check verify membership's eligibility criteria was delegated to a Panel comprising of the Incumbents President, Secretary and Treasurer and to take steps to remove from the Association's membership register

> any applicant who may have been mistakenly admitted as member although he or she may not have met the eligibility criteria … .

The first defendant claimed that the proposed resolutions prompted him to seek a second legal opinion from Mr Seah Chwee Lim of Eldan Law LLP, who was of the view that the IPP in Rule 3.4 referred to Dr Tan. This second legal opinion was therefore contrary to the first. The first defendant then decided to hold an urgent MC meeting on 14 December 2015 and that a reconstituted EC should meet immediately after the MC meeting. The agenda of the MC meeting was to (a) discuss the individual proposals of the council (*ie*, the proposed resolutions), (b) re-establish the EC and (c) examine and approve new members.

20 The first defendant said that he was unsuccessful in his attempts to contact Dr Tan to remind him of the meeting. However, shortly before the meeting, the first defendant received a letter from the plaintiff, Dr Tan and Tan KP. The three members expressed concern over the agenda items. They said that it was inappropriate to discuss the proposed resolutions at an MC meeting as these were meant to be tabled at the AGM before the entire membership. They felt that it was too late to re-appoint the EC with Dr Tan as its chairman or member unless the elections were postponed by at least two months. They also asked to be informed if postponement of the scheduled AGM was contemplated by the first defendant, and if so, for that to be put on the agenda so as to have the MC sanction the postponement to a later date to facilitate starting the election process all over again by the new or reconstituted EC. On the issue of new members, they felt that it was inappropriate for the MC to approve all the new members who had already been "admitted" via the new process, which entailed the verification of their

forms by the three-man panel. They went on to state that they would sit out the MC meeting:

> For all the above mentioned, we could have commenced legal proceedings to seek assistance from the Court to give meanings to the Constitution and to invalidate the admission of all the new members admitted by you since April 2015 under your "New Scheme" and to consider the admission of those new members whose criteria were verified by Dr Tan Hang Kwang, and whose admissions were rejected by you. We decide not to so for the interest of the Association and rather to resolve all these issues during the AGM within the Association itself as one big family.
>
> *Hence, we regret that we would not be able to take part in the deliberation of these issues at tonight Management Committee Meeting.* Therefore, we seek leave to abstain.
>
> Meanwhile, we ask that all Resolutions proposed either by us or any other member be sent out to all members within the stipulated time without any further delay.
>
> [emphasis added]

21 Hence, the agenda items were discussed at the MC meeting on 14 December 2015 in the absence of the plaintiff, Dr Tan and Tan KP. The first defendant informed those present that given the differing legal opinions, the MC should give the benefit of the doubt to the second interpretation, and reconstitute the EC by designating Dr Tan as the IPP. According to the first defendant, it was then agreed that the reconstituted EC would comprise Dr Tan as the IPP, with Sharon and one Mr Tan Jack Kwong ("Tan JK") (who replaced Tan CP as he was in China) as members of the EC. The MC also approved the appointment of a legal advisor to assist the EC in verifying that the submitted nomination forms were in order and that the nominees fulfilled the requirements of office bearers under the Constitution. During the meeting, the application forms of the 152 new members were also made available to the MC members present for their inspection. It was also made clear that any MC

member could review the forms by making a prior appointment with the secretariat.

22 On 15 December 2015, the secretariat emailed Dr Tan to inform him about the MC meeting which took place the previous day:

> Dear Dr Tan,
>
> Kindly be informed that the Management Council Meeting last evening (14th Dec) unanimously decided on the following:
>
> *Your goodself shall be the immediate Past President (IPP)* and
>
> The Election Committee[e] (EC) be reconstituted and consists members as below:
>
> *Your goodself as under the constitution, IPP shall be a member of the Election Committee*;
>
> 2 other non-council members namely Ms Tan Soon Wa and Mr Tan Jack Kwong.
>
> 3. *You are invited to come to a EC meeting tomorrow (16th Dec) 11.00 am at the Association office in discharging your constitutional duties to carry out verification of the nomination forms submitted, among others*:
>
> 4. The council meeting also approved that lawyers be engaged to advise Council (election matters) and EC (verification of nomination forms) respectively
>
> 5. President KK will call you again on all the above-mentioned.
>
> [emphasis added]

Notably, Dr Tan was informed that he was the IPP in the reconstituted EC. Further, he was invited to attend an EC meeting scheduled for 16 December 2015 for that reason. The plaintiff emphasised, however, that the letter did not mention who the chairperson of the EC was. After receiving the email, Dr Tan called the first defendant to ask him just that. Dr Tan apparently called the first defendant "shortly after" receiving the email at around 4.19pm. According to the plaintiff, the first defendant told Dr Tan that Sharon was the chairperson. This statement was denied by the first defendant. I found it curious that Dr

Tan would have made this enquiry since he would be familiar with the Constitution, from which it could be easily gleaned that the IPP, *ie*, himself, would serve as the chairperson of the EC (see Rule 4.12(b) of the Constitution). Further, he would have been very much alive to this issue given that it was the source of much debate within the MC, of which he was a member. Another point of note is that the minutes of the MC meeting on 14 December 2015 recorded that Dr Tan was to be the "Chairperson of the election committee" (see [55] below). This suggested to me that the first defendant might not have made the alleged representation, and if he did, that Dr Tan would not have taken it at face value without further remonstration or assertion of his constitutional right. After all, the backdrop of events was such that tensions between the purported majority and minority factions were already stoked.

23 On 15 December 2015, Dr Tan also sent a text message to the first defendant stating: "I thank you for your suggestion to reconstitute the Election Committee. However I made my position very clear on this matter. Please refer to the letter I handed to you yesterday dated 14/12/15. …" (see [20] above). This text message was received at about 4.34pm, which was about 15 minutes after the first defendant apparently received the call from Dr Tan. Supposing that the first defendant had indeed made the statement that Sharon was the chairperson of the EC, it was again, curious that Dr Tan did not make explicit reference to that in the text message, which was sent so soon after the call.

24 On 16 December 2015, the first defendant emailed the MC members, including the plaintiff and Dr Tan, a summary of the decisions that were made at the MC meeting on 14 December 2015. He stated that the reconstituted EC would comprise Dr Tan, Sharon and Tan JK. He also stated that all MC

members could contact the secretariat to examine the application forms of the new members:

> Dear all the members of the Council
>
> The proposal of establishing new election committee is adopted at the 7th council meeting. The three committee members are doctor hanguang, the former president; Chunwa, the clan relative; Yi guang, the clan relative. In the meeting, the member forms and NRIC copies of the 152 new members who joined our association since the April of 2015 were sent to 24 council members for examination. All the council members can contact the secretariat to examine the member forms without breaching PDPA. Detailed records of the meeting would be provided later. Thanks!
>
> Jiazhao

The plaintiff did not take up the offer to inspect the application forms – he said that the process "would now be academic". He also said the exercise would be obsolete as the forms would not contain any details on the citizenship and dialect group of the applicants.

25 On 16 December 2015, the reconstituted EC met. Dr Tan declined to attend. According to the first defendant, given Dr Tan's absence, Sharon and Tan JK decided that Sharon would be the chairperson of the EC. The reconstituted EC proceeded to conduct verification of the 60 candidate nomination forms with the assistance of Mr Andrew Wu of Allister Lim & Thrumurgan, the lawyer appointed to assist the EC ("Mr Wu"). A dozen nomination forms were found to be irregular. Upon Mr Wu's advice, the 12 nominees, who included Dr Tan, were contacted to regularise their forms. Notably, Dr Tan turned up at the secretariat's office to do so. His form was subsequently accepted.

26 On 17 December 2015, Sharon, signing off as chairperson of the EC, sent a letter to the Clan members informing them that the 15 November notice had been ratified by the reconstituted EC:

> We refer to the letter dated 15 Nov 2015 titled "[2016/2017 Annual General Management & Election]".
>
> Please be informed that the Election Committee has been re-constituted to comprise Dr. Tan Han Kwang, Immediate Past President, Tan Jack Kwong (NRIC XXX) and Tan Soon Wa (NRIC XXX). This re-constituted Election Committee was approved at the 7th Management Council Meeting 14 Dec 2015.
>
> The re-constituted Election Committee has ratified the above mentioned [letter] sent out on 15 Nov 2015.

The first defendant said that on 18 December 2015, the reconstituted EC sent the following information to all Clan members: the notice and agenda of the AGM dated 12 December 2015, the directions on the elections dated 15 December 2015 ("the election directions"), and the ratification notice dated 17 December 2015 (see above). While the election directions were dated 15 December 2015, the first defendant claimed that Sharon sent it to members only on 18 December 2015, after she was appointed as chairperson at the EC meeting on 16 December 2015. However, the plaintiff alleged that the election directions had been sent on 15 December 2015, suggesting that by that date, Sharon had already assumed the position of chairperson of the EC. This would be consistent with the plaintiff's allegation of what the first defendant told Dr Tan over the phone (see [22] above): For completeness, the election directions read as follows:

> **Re: 2016/2017 Annual General Management & Election**
>
> 1. The General Elections will held on 27 December 2015 from 1pm till 4pm.
>
> 2. In accordance to the Association's Constitution Clause 3.6, Members must come to the Election in person and drop the Election Card into the sealed Election Box. Members are

> required to produce their NRIC for verification and then proceed to collect the Election Card and elect their desired 29 Management Committee Members.
>
> 3. Sample of the Election Card shall be posted on the Association's Notice Board for Members to have reference. Should you have any doubts, please approach any Election Committee for clarification.
>
> 4. Please find attached particulars of all the nominated Management Committee Members for your reference.
>
> 5. As there are only 2 nominees, 2 honourable auditors need not elect.
>
> Tan Clan Association
> Election Committee Chairman
>
> Tan Soon Wa
> 15 December 2015

27 On 18 December 2015, Dr Tan sent the first defendant a letter stating that he was unable to accept his appointment as a mere "member" of the EC as the Constitution required him to be the EC chairman. Dr Tan said that if the first defendant intended him to be appointed as the EC chairman, he would require the elections to be postponed by at least two months in order for him to carry out his duties laid out in Rules 3.4 to 3.8 of the Constitution. These duties include informing the members in writing of the opening of the nomination, verifying the validity of the nomination of the candidates and the scrutinising of eligibility of all voting members. He also expressed concerns about the decision to appoint Sharon as the chairperson as she was a salaried employee of the Clan and the younger sister of the incumbent treasurer. It should be noted that even at this stage, there was no assertion by Dr Tan that the first defendant had told him during the phone call on 15 December 2015 (see [22] above) that Sharon was the chairperson of the EC. The letter did refer to a phone conversation during which the first defendant allegedly said that Sharon was the chairperson, but according to Dr Tan in that letter, that

phone call took place on *17 December 2015*. The date of the conversation referred to in the letter, 17 December 2015, differs from the date of the conversation between the first defendant and Dr Tan, which allegedly took place on 15 December 2015 (see [22] above). The difference of two days is significant. That the first defendant would have had a conversation on 17 December 2015 on Sharon's chairing of the EC was unsurprising given that at the EC meeting just the day before (*ie*, 16 December 2015), Sharon assumed the position in Dr Tan's stead because of his refusal to attend the meeting (see [25] above).

28 On 19 December 2015, the plaintiff, Dr Tan and Tan KP wrote to the first defendant – the letter stated that since the 152 new members were only approved at the MC meeting on 14 December 2015, they were ineligible to vote in the elections on 27 December 2015. They relied on Rule 5.3(d) of the Constitution which states: "Newly joined member must make good for all membership dues upon the approval of the Management Council and will be entitled the rights only after 14 days." On 20 December 2015, they wrote another letter to the first defendant reiterating their concerns and asking the first defendant to explain to the 152 new members that they would be eligible to vote only from 29 December 2015. The allegation that the 152 members were only approved on 14 December 2015 and therefore ineligible to vote was not pursued in submissions.

29 On 23 December 2015, Sharon sent Dr Tan an email stating that the EC would seal up the box containing the prepared voting slips on 24 December 2015, and his presence was required at 2pm that day to participate in the process. Dr Tan did not appear to have replied.

30 On 27 December 2015, the plaintiff, Dr Tan and Tan KP sent a "final letter" to the first defendant stating they had lost confidence in his leadership as he had not appointed Dr Tan as the chairman of the EC and had delegated the rights and responsibilities of the MC to verify membership applications to the three-man panel. In the same letter it was also alleged that the first defendant had refused to confirm that the 152 new members would not be attending the elections as they were not entitled to vote, and had refused to allow the admission of applicants who had been introduced and verified by them. They again called on the first defendant to adjourn the elections for two months, failing which they would withdraw their candidature. They asked for their names to be removed from the ballot papers. The three members attended the elections, intending to speak to the Clan members on their concerns. However, the plaintiff claimed that the microphones were snatched from them and switched off, such that they resorted to speaking in loud voices. Eventually, the plaintiff, Dr Tan and Tan KP felt that their requests were not accepted by the first defendant. They therefore withdrew from the elections. The new MC was formed with the first defendant returned as president for a second term. The first defendant polled 329 votes. Dr Tan, Tan KP and the plaintiff were not part of the new MC. Notwithstanding their purported withdrawal from the elections, their names were retained on the ballot papers and in the result, they received 39, 31 and 35 votes respectively.

31 The plaintiff submitted that Dr Tan should be appointed as the IPP for the new MC for 2016/2017, given that the first defendant was re-elected as president. This was disputed by the first defendant, who said that there is nothing in the Constitution prohibiting the incumbent president from also being the IPP of the newly-elected MC.

The summonses

32 In OS 156, the plaintiff sought:

(a) A declaration that the elections on 27 December 2015 was null and void;

(b) An order that the 2014/2015 MC be reconvened within 14 days of the order;

(c) An order that the 2014/2015 MC appoint an EC comprising Dr Tan as chairman of the EC and two other members who are not members of the 2014/2015 MC, with the plaintiff and the first defendant having the right to nominate one member each;

(d) An order that the 2014/2015 MC consider the membership applications introduced by Dr Tan and the plaintiff in 2015 and reconsider all the new members approved in 2015 under the new process;

(e) An order that Dr Tan be appointed the IPP for the 2016/2017 MC if the first defendant, being the president of the 2014/2015 MC, is appointed president for the 2016/2017 MC;

(f) Costs, liberty to apply and other orders as the Court deems fit.

33 In SUM 740, the plaintiff sought:

(a) An order restraining the Clan from allowing the 2016/2017 MC to carry out the powers and duties of its office;

(b) An order restraining the Clan from swearing in the 2016/2017 MC into office;

(c) The hearing of OS 156 on an expedited basis;

(d) Costs of the application to be paid by the first defendant to the plaintiff;

(e) Costs of the Clan to be paid by the first defendant, and other orders as the Court deems fit.

34 The allegations could be crystallised into two major issues: (a) whether the new members in 2015 were properly admitted into the Clan; and (b) whether there were constitutional breaches in how the elections were convened, and the effect of such breaches if any. In addition, there was the subsidiary question of whether Dr Tan should be appointed as the IPP in the new MC instead of the first defendant.

The decision

Whether the new members were properly admitted into the Clan

35 The fundamental point was that the new process of admitting Clan members was not in breach of any of the provisions in the Constitution, as I have already pointed out at [11] above. Having established that, I found that the plaintiff could not muster evidence to substantiate its allegations of impropriety in the MC's approval of the new members pursuant to the new process. The determination of whether the new process was unconstitutional turned on Rule 2.1 of the Constitution, which states:

> 2.1 Membership to the Association is divided into two categories namely: Ordinary Members, Life Members and Associate Members:

> (a) Ordinary Members: this category of membership is opened to all Hainanese Singapore Citizen with surname "[Tan]" and/or his spouse, who is 16 years old and above; of good character; law-abiding and in agreement with the Mission Statement of the Association, may on the recommendation of an existing member submit an application form together with payment of $10 entrance fee. *Once the application is approved by the Management Council*, the applicant shall become an Ordinary Members.
>
> (b) Life members: The eligibility requirement and application procedure are the same as for Ordinary Membership. *Upon approval by the Management Council* and payment of the entrance fee of $100, the applicant will become a Life Member.
> …
>
> [emphasis added]

36 The plaintiff contended that the MC's power of approval in Rule 2.1 must also mean that it has the power and/or obligation to consider applicants and the power to disapprove applicants. The creation of the panel had the effect of filtering out applicants who did not meet the administrative and qualitative criteria set out in Rule 2.1, such that those applications would not be placed before the MC. This was an unlawful restriction of the MC's power to consider all applicants under Rule 2.1. The new process was therefore *ultra vires* the Constitution.

37 I disagreed that the MC was constitutionally barred from delegating the role of verification of applicants to the three-man panel. On a plain reading of Rule 2.1 of the Constitution, the MC exercises the power of approval over an applicant's application. While an applicant must meet various criteria to qualify for admission, nothing in Rule 2.1 mandates that the evaluation of whether an applicant has met those criteria could not be undertaken by a body constituted by the MC before the MC finally determines the application. All Rule 2.1 requires is that the final approval of the application must vest in the MC. Subject to this, it seemed self-evident that it was open to the MC to set up

a panel or sub-committee to help verify the applications. It is important to note that the pre-existing process that the new process replaced was not in itself spelt out in the Constitution, such that it could be said to have been cast in stone. In other words, the MC was free to introduce a new protocol to investigate or verify applicants' particulars, as long as it was the body which gave the ultimate seal of approval to the applicants.

38 As I have mentioned, the Constitution does not prescribe a particular process of membership admission. In this regard, Rule 10.1 of the Constitution would have afforded the MC the latitude to implement a new process. Rule 10.1 states:

> 10.1 *The Management Council is empowered to exercise their own discretion to deliberate and decide on any issues in respect of which there is no applicable expressed provision within the Constitution.* The decision of the Management Council shall be final unless it is reversed at a General Meeting of members. All approved motions, resolutions or past adopted practices should be categorized, compiled & documented as an Annex to the Constitution to serve as reference for deciding on future difficult cases or issues.
>
> [emphasis added]

39 In accepting the defendants' submission that the MC was not precluded from delegating the function of verifying the applicants' particulars to a panel and to approve members based on the panel's verification findings so long as the power of approval remained with the MC, I bore in mind the fact that it is not uncommon for the management committee or council to delegate certain matters to a sub-committee, subject to its constitution. According to Jean Warburton in *Unincorporated Associations: Law and Practice* (Sweet & Maxwell, 2nd Ed, 1992) ("*Warburton*") at p 19:

> The general management of the affairs of an association is usually delegated to an elected committee. *An association may also decide to entrust particular matters, for example the*

> *admission of new members, to a separate small committee.* Whatever the type of committee, its powers will depend on the rules of the association and the interpretation of those rules and consequently the extent of the powers is a question for the court and not the committee. … *Provided that a committee remains within its powers, it is up to the members of the committee to determine their own method and procedures.*
>
> [emphasis added]

40 Besides contending that the new process breached the Constitution, the plaintiff also submitted that the approvals made pursuant to the new process were in breach of the Constitution. The plaintiff said that the "objective evidence" demonstrated that the three-man panel was in fact the body that exercised the powers of approval, such that the MC was a mere "rubber stamp". The effect of this argument was that the new members had not been properly admitted into the Clan, so they should not have been allowed to vote in the elections. The plaintiff therefore submitted that the results were tainted such that the elections should be declared null and void.

41 This was a contrived argument. One would have expected that an allegation that had its roots in "objective evidence" ought to be bedded to a substantial body of such evidence. However, despite the plaintiff's many assertions, there was no such evidence before me. As a preliminary point, the plaintiff appeared to have fallen into error in submitting that 166 applicants were approved for membership admission through the verification work of the panel. While a total of 166 new members were approved throughout 2015, the new process was introduced only during the MC meeting on 10 April 2015. Following this meeting, further MC meetings took place on 29 May 2015, 13 August 2015, 19 October 2015, 7 December 2015 and 14 December 2015, over which meetings a total of 152 new members came to be approved by the MC pursuant to the new process.

42 The plaintiff claimed that the application forms and copies of the applicants' identity cards were not put before the MC when approval was sought for the applicants. However, it did seem that the MC was provided with sufficient information to assess the applicants' eligibility. Prior to and at the various MC meetings, a list of applicants with their personal particulars such as name, age, gender, introducer and district of ancestral origin in Hainan Island (which is indicative of the applicant's Hainanese descent) were provided to the MC for consideration before the applicants were approved.

43 The plaintiff further argued that even if the lists were a suitable substitute for the "relevant documentary evidence" required for the MC to make its determinations, the lists did not indicate if an applicant was Singaporean, which was a requirement in Rule 2.1 of the Constitution. However, this assumed, wrongly as I found, that the panel was not allowed to conduct the verification checks. The citizenship of the applicants would already have been examined by the panel, and the plaintiff was unable to point to any evidence that the panel was derelict in this respect. The plaintiff charged that the basis of the MC's determination that an applicant was Singaporean was wholly based on the assumption that the panel was "100% correct", but there was no evidence to show that the panel had acted improperly in doing its work, or that the MC failed to apply its mind to approving the applicants surfaced by the panel. While the plaintiff alleged that the MC's "blind reliance" on the panel's representations could be seen from the fact that one of the new members turned out not to be Singaporean, this was an isolated incident and surely could not, without more, form the basis of a generalised conclusion that the MC did not apply its mind. During the elections, the secretary, while helping to verify the members, found that one "Michelle Tan" – one of the 152 members approved under the new process –

had a blue identity card. However, subsequent checks confirmed that the other new members were indeed Singaporeans. I thus accepted that this was an administrative oversight. This was not an unreasonable conclusion given that there were 152 applicants under consideration. Further, it could not be supposed that no such lapse would have occurred even if it had been the MC which was verifying every single application instead of the panel doing so. In any event, nothing specifically turned on the incorrect admission as the secretary, as noted earlier, diligently spotted the error. Also, I should point out that nothing untoward was alleged as regards the admission of this particular member.

44 It is pertinent to note that the plaintiff had every opportunity to satisfy himself on the details of the new members. He chose not to do so. In the first defendant's email dated 16 December 2015 (see [24] above), he informed the MC that the application forms and the photocopies of identity cards of all new members approved by the MC since April 2015 had been made available to all MC members who attended the MC meeting on 14 December 2015. The plaintiff and Dr Tan failed to attend this meeting. Even then, as the first defendant went on to state in the same email, any MC member could still contact the secretariat for an appointment to review the said forms and photocopies. As the first defendant pointed out, if the plaintiff suspected that the new members did not satisfy the various requirements set out in Rule 2.1, that would have been the best opportunity for him to find out if his suspicions were well-founded. Having failed to do so, the plaintiff could make only bald allegations of unconstitutionality in the membership admissions. The fact that the first defendant was prepared to allow the plaintiff to satisfy himself on the verification process also put paid to any allegation that there was any improper agenda on his part.

45 The plaintiff also submitted that because the application forms and copies of the identity cards were *not* put up on the Clan's notice board for at least two weeks, the Clan members were unable to supply relevant input to assist the MC in determining if the applicants had met the "qualitative criteria" in Rule 2.1 (*eg*, that the applicant was in agreement with the mission statement of the Clan). The plaintiff said that this was exacerbated by the fact that the list that was put up on the notice board was not the same list that was placed before the MC for approval. At the MC meeting on 13 August 2015, the plaintiff pointed out that six of the 58 applicants surfaced for approval had not been part of the list of applicants on the notice board. The plaintiff submitted that the first defendant's assertions of privacy concerns did not justify the withholding of relevant information from the MC when such information was being used to decide whether to approve an applicant's membership. These arguments ran into very much the same problems which I have outlined earlier. In particular, the modalities of putting up of application forms and copies of the identity cards on the notice board for at least two weeks were not practices which were enshrined in the Constitution, such that the MC was obliged to carry on with the old process forever. It was also unmeritorious for the plaintiff to allege that there had been some withholding or cover-up of applicants' information when he had every chance to satisfy himself on the details of the new members.

46 Further, there was no support for the plaintiff's allegation that the MC had abdicated its role of approving the applicants to the panel. The plaintiff alleged that the panel had already decided on the membership of the applicants, such that the approval by the MC was "perfunctory at best". Among other things, the plaintiff drew my attention to the fact that membership numbers had already been assigned to the applicants on the lists

provided to the MC. But such allegations left too much to be inferred and could by no means be persuasive. The defendants had a reasonable explanation for the pre-assignment of membership numbers on the lists tendered before the MC – this was an administrative move and was for ease of reference. The pre-assignment of membership numbers did not *ipso facto* mean that the applicant had already been approved. If any applicant was not approved, the pre-assigned number could simply be assigned to a future applicant.

47 On the basis that the new process did not breach the Constitution, and that the new members were validly approved pursuant to the new process, it followed that they were fully entitled to vote at the elections. Upon approval however, the member is entitled to voting rights only after 14 days (see Rule 5.3(d) of the Constitution). In this regard, all 152 members except for one had been approved with more than 14 days to spare. The exception was one Tan Tong, whose membership approval came only on 14 December 2015. The defendants explained that due to an administrative mistake, Tan Tong's application was not submitted for approval until the MC meeting on 14 December 2015. The defendants candidly admitted that they were unable to ascertain if Tan Tong voted in the elections. But reviewing the election results, Tan Tong's vote, even if cast, would not have affected the overall results of the elections. In the round, this error was *de minimis*. As such, I found no basis to conclude that the election results were so tainted that the elections should be declared null and void.

Whether the convening of the elections was in breach of the Constitution

48 I found that the new members were eligible to vote during the elections. However, the plaintiff submitted that the process by which the

elections came to be held was in breach of the Constitution. Among other things, the EC had been improperly constituted and was not empowered to issue the 15 November notice (see [17] above). Therefore, the directions therein were null and void and flowing from that, the elections were also null and void.

49 As I have alluded to above, it is important to appreciate the true nature of the 15 November notice (see [17] above). The 15 November notice was in effect a notice announcing the calling of the AGM and the elections. It was far more than just a notice informing of and inviting nominations pursuant to Rules 3.4(a) and 3.5 of the Constitution. In arguing that the wrongfully constituted EC was not empowered to issue the 15 November notice, the plaintiff's underlying assumption was that the EC was the body that was empowered to call for the AGM and the elections, which was the main concern of the 15 November notice. But this ignored the fact that under Rule 4.2 of the Constitution, it is the president's duty to convene the AGM *by the end of December*. Since Rule 3.6 of the Constitution requires the elections to be held on the same day as the AGM, the president is also calling for the elections when he calls for the AGM. In this context, the 15 November notice, being a notice concerning the "*Annual General Meeting cum Election of the 50th Council/Honorary Auditors*", could not be said to have been invalidly issued. This was because while the first defendant signed off as chairperson of the EC, he also signed off as the president of the 49th Council.

50 The only part of the 15 November notice which was relevant to the EC was para 2, which informed members of the opening of nominations and invited them to make nominations for the elections. Under Rules 3.4(a) and 3.5 of the Constitution, the EC has the role of communicating this information. This was why the first defendant also signed off on the 15 November notice as

the chairperson of the EC. However, the constitution of the EC was irrelevant to the communication of this information, which is essentially an administrative function. Under Rules 3.4(a) and 3.5, once the elections are called, the EC has no discretion in terms of its duties to inform Clan members of the opening of nominations and provide them with notice 14 days before the opening of the nominations. Therefore, whether the EC was wrongly constituted should in and of itself not undermine the validity of the election process. Leaving aside for the moment the question of whether the EC was in fact wrongly constituted at the time of the 15 November notice, the EC duly informed the Clan members of the dates of the elections, the opening of the nominations and the submission of the nomination forms. The members were duly informed in writing 14 days before the opening of the nominations on 29 November 2015, in accordance with Rule 3.5. Even if Dr Tan had joined the EC from the very beginning, the EC would have done exactly what it did while the first defendant was the chairperson of the EC between 19 October 2015 and 14 December 2015. This is because, as I have observed, the task of the EC during that period was primarily administrative, which means that it made no substantive difference whether the relevant portion of the 15 November notice had been issued by the EC as originally or subsequently constituted. Seen in this light, the fact that the EC was wrongly constituted would never have the effect of undermining the validity of the AGM and the elections, which were properly called by the first defendant through the 15 November notice in his capacity as the president of the MC.

51 That being said, I did find that the constitution of the EC, as initially formed during the MC meeting on 19 October 2015 with the first defendant as the IPP, was incorrect. The IPP for the purposes of the EC should have been Dr Tan, who was the IPP of the incumbent MC (*ie*, 2014/2015). This would

have been clear from a reading of Rules 3.4 and 4.12(b) of the Constitution. The former rule states that an EC must consist of the IPP and two members who are not part of the MC. While Rule 3.4 does not define who the IPP would be for the purposes of the EC, Rule 4.12(b) lays out the duties of the IPP *of the incumbent MC*, and this rule states that the IPP serves as the chairman of the EC and chairs the election meeting.

52 The IPP referred to in Rule 4.12(b) could refer only to Dr Tan, who was the IPP of the 2014/2015 MC. Given that Dr Tan was obliged under Rule 4.12(b) to serve as the chairman of the EC and chair the election meeting, the IPP in Rule 3.4 must necessarily refer to him as well. If the IPP in Rule 3.4 were to refer to the president of the incumbent MC, Rule 3.4 would simply have stated thus. Rule 4.9, which lists the duties of the existing president, would also have included the duty to serve as the chairman of the EC and chair the election meeting. In this regard, the defendants' argument that there were two possible interpretations of Rules 3.4 and 4.12 of the Constitution was with respect, misguided. The reasoning that since the EC was convened to oversee the elections for the incoming MC, the present MC would be dissolved such that the first defendant was the IPP for the purpose of constituting the EC, was based on a misreading of the Constitution.

53 But while the original constitution of the EC was wrong, this was subsequently redressed when the MC recognised that Dr Tan should be the IPP in the EC at the MC meeting on 14 December 2015. Until that time, the only constitutional duty that the EC had discharged was to inform the Clan members of the opening of the nominations (see Rules 3.4(a) and 3.5 of the Constitution and para 2 of the 15 November notice at [17] above). As I have just explained (see [49]–[50] above), it is incorrect to say that the 15 November notice was bad or irregular just because the initial constitution of

the EC was wrong, such that the directions therein were null and void. In other words, the initial wrongful constitution of the EC was at the highest, a technical breach.

54 In any event, the 15 November notice was subsequently ratified by the reconstituted EC – on 17 December 2015, Sharon, signing off as chairperson of the EC, sent the ratification notice informing Clan members that the 15 November notice had been ratified by the reconstituted EC (see [26] above). According to the ratification notice, Dr Tan, Tan JK and Sharon were members of the reconstituted EC. The ratification was done pursuant to the advice of Mr Wu, the solicitor engaged by the Clan. In his legal opinion, Mr Wu was of the view that the 15 November notice was valid and should stand. However, he said that it was advisable for the EC to ratify the letter as the EC was reconstituted after the letter was sent.

55 As mentioned above, while the EC was wrongfully constituted at the beginning, this was remedied when the MC convened a meeting on 14 December 2015 in response to the plaintiff's proposed resolutions. However, the plaintiff, Dr Tan and Tan KP boycotted the said MC meeting. Notwithstanding their absence, the MC decided that Dr Tan should be designated as the IPP. The reconstituted EC was to comprise Dr Tan, Sharon and Tan JK, according to the minutes from that meeting, which state:

> …
>
> The council committee approved the re-establishment of the (50th Council) election committee 2016/2017, the members were as follows:
>
> Chairperson of the election committee – Dr Tan Han Guang (ex president)
>
> Members of the election committee: clan relative Tan Chua Wa … clan relative Tan Yi Guang …

> Their duties were: to examine whether or not the candidate selection form was qualified; to verify whether or not the candidates were qualified members; to announce the election results. …

Notwithstanding the minutes of the meeting, the plaintiff contended that no contemporaneous documents reflected Dr Tan's appointment as chairperson of the EC during the MC meeting. Essentially, the plaintiff's bone of contention was that even if Dr Tan was recognised as a member of the reconstituted EC on 14 December 2015, he was not recognised as the chairperson. Instead, Sharon was. It will be recalled that the plaintiff alleged that the first defendant told Dr Tan over the phone on 15 December 2015 that the chairperson of the reconstituted EC was Sharon. As I have discussed (see [22] above), this argument was a non-starter as the Constitution is clarion clear that only the IPP could serve as the chairperson of the EC (see Rule 4.12(b)).

56 Indeed, whether Dr Tan was in fact informed that Sharon would chair the EC could not in and of itself found a breach of the Constitution. Whether Dr Tan could assume the role of chairperson of the EC did not depend on what the first defendant said or did not say – the designation of the IPP as chairperson of the EC is enshrined in the Constitution such that once Dr Tan was identified as the IPP in the EC, he had every right to serve as its chairperson. This fact could not have eluded Dr Tan and his associates. As the defendants submitted, since Dr Tan was regarded as the IPP and was duly notified of the same, he would be automatically cloaked with the powers and duties as chairman of the EC pursuant to Rule 4.12 of the Constitution without any further action on the part of the defendants.

57 In this regard, Dr Tan had no good reason to refuse to attend the EC meeting on 16 December 2015 despite having been invited to do so. Even if he had harboured genuine doubts, he could have easily clarified them by simply

attending the EC meeting. The desire for the elections to be postponed by at least two months was not a good reason particularly in the light of Rule 3.6 read with Rule 4.2 of the Constitution, which require the elections to be held on the same day as the AGM which must be convened by the end of December. In my view, it was Dr Tan's refusal to join the EC that resulted in what was probably the only arguable breach on the part of the defendants – the appointment of Sharon as the chairperson of the EC.

58 The question here was whether, as the plaintiff argued, the appointment of Sharon as the chairperson of the EC breached the Constitution. In addressing this issue, as I observed above, I note that Sharon's appointment came *after* Dr Tan refused to attend the EC meeting on 16 December 2015 *despite* the fact that his position as chairperson was constitutionally provided for. In his absence, the EC was faced with a choice – either appoint one of the remaining two members of the EC to the position of chairperson or be plunged into a state of paralysis until Dr Tan joined the EC (on his terms), the latter of which would mean that the entire election process would be derailed. Notwithstanding the plaintiff's desire to postpone the elections by two months, the latter process was obviously not desirable given that the electoral preparations had already begun. By that time, the 15 November notice had already been issued – and there was nothing defective in the manner by which the first defendant called for the AGM and the elections (which were scheduled to take place after the AGM) through this notice. In addition, advertisements had already been taken out in the newspapers on 3 December 2015. Furthermore, it is important to recognise that had Dr Tan chosen to attend the EC meeting on 16 December 2015, he would, in the light of the Constitution, have assumed the position of chairperson such that the only constitutional breach that the plaintiff could possibly raise was the initial

constitution of the EC (and the 15 November notice issued by that EC). Since Dr Tan chose not to attend that EC meeting (he also refused to participate in the EC's sealing of the box of voting slips even after Sharon tried again to reach out to him on 23 December 2015 (see [29] above), it did not lie in his mouth to allege that the subsequent reconstitution of the EC with Sharon as the chairperson was improper, and so much so that the entire elections process should be rebooted. On one view, Dr Tan's refusal to join the EC could even be seen as a breach of his constitutional duty, and it was in any case clear to me that the plaintiff should not be relying on Dr Tan's breach to breathe life to his claims.

59 In the premises, the two remaining members of the EC, Sharon and Tan JK, decided that Sharon would be the chairperson of the EC. Given the circumstances as occasioned by Dr Tan's refusal to join the EC unless his demands were met, I was not convinced that Sharon's appointment as chairperson of the EC was necessarily a breach of the Constitution. It is true that the Constitution provides that one of the IPP's roles is to act as the chairman of the EC. However, the Constitution is silent on whether it is only the IPP that can act as the chairman of the EC in a situation where the IPP effectively chooses not to participate in the EC. It can hardly be imagined that in such a scenario, the drafters of the Constitution would have intended for the electoral process to be log jammed.

60 In such a scenario, one would have recourse to Rule 10.1 of the Constitution, which empowers *the MC* to exercise its own discretion to decide on any issues in respect of which there is no applicable express provision in the Constitution (see [38] above). The plaintiff pointed out that the reconstituted EC which operated from 16 December 2015 onwards was improperly constituted as Sharon and Tan JK were not empowered under the

Constitution to elect Sharon as the chairperson of the EC. The general power in Rule 10.1 was to be exercised by the MC. The plaintiff's point was that in appointing Sharon as chairperson, the EC members failed to inform the members of the MC before making the decision to appoint her, and this was a matter that should have been decided by the MC instead of two non-elected members. However, on the facts, the MC was clearly aware of the decision made by Sharon and Tan JK and affirmed it. In other words, the MC adopted the decision of the EC that Sharon would chair the EC in the absence of Dr Tan.

61 In reaching my landing that Sharon was validly appointed as the chairperson of the EC, I made the initial finding that Sharon was not already made the chairperson before the EC meeting on 16 December 2015. The plaintiff, in claiming that the events were orchestrated, drew my attention to the fact that the election directions (see [26] above), which were dated 15 December 2015, had Sharon signing off as the chairperson of the EC. However, I saw no reason to reject Sharon's explanation that the directions were signed only on 17 December 2015 and sent out on 18 December 2015, *ie*, after the EC meeting on 16 December 2015. The plaintiff said that this was a bare allegation, but he himself was unable to confirm if the election directions were indeed issued on 15 December 2015 or sent only on 18 December 2015. Since I had found that Sharon was validly appointed on 16 December 2015 as the chairperson, there was no reason to impugn the validity of any of the information sent out on 18 December 2015 (see [26] above).

The effect of breaches, if any, of the Constitution

62 In view of my findings that no breaches of the Constitution had been occasioned, I did not have to ground my decision on any other basis. The

interesting issue of the implications of constitutional breaches which are in substance procedural irregularities did arise for consideration. These are not infrequent occurrences and did arise, in the context of this case, as regards the constitution of the EC and the discharge of its constitutional remit. I invited and heard arguments in this regard and offer some tentative views.

63 I was of the view that, even if there was any breach occasioned by the appointment of Sharon as chairperson of the EC, that did not afford sufficient ground to set aside the results of the elections. It seemed quite apparent to me that the relevant duties of the EC as required by the Constitution had been substantively, if not fully, performed. The reconstituted EC had properly discharged the EC's duties under the Constitution, albeit as a two-member EC without the IPP. The main task that the reconstituted EC had to perform before the elections was to verify the nomination of the candidates. That was done by Sharon and Tan JK on 16 December 2015 despite Dr Tan's refusal to attend the EC meeting. The appointed solicitor, Mr Wu, assisted the reconstituted EC to verify that the submitted nomination forms were in order. There was no evidence of any wrongdoing. In fact, during the verification process, 12 forms, including Dr Tan's form, were found to be irregular. The reconstituted EC duly contacted the dozen candidates, including Dr Tan, to regularise their forms, which Dr Tan did. Notwithstanding his complaints of constitutional breaches, the plaintiff was unable to demonstrate any particular instance of irregularity, unfairness or lack of transparency such that any prejudice was occasioned. It seemed to me that the plaintiff was making much ado about really nothing in this regard. That seemed quite unsatisfactory. As I mentioned above at [58], Dr Tan's refusal to join the EC could well be viewed as a breach of his constitutional duty, the implication of this being that the plaintiff was in fact relying on the dereliction of his associate to found his case. Had Dr

Tan discharged his constitutional duty by joining the reconstituted EC, the only possible complaint would be the first defendant's initial participation in the EC as the IPP, and the allegedly wrongful issuance of the 15 November notice in that capacity. Yet Dr Tan did not do so even when Sharon attempted to reach out to him again on 23 December 2015 (see [29] above).

64 In the course of hearing the parties, I invited the parties to address me on two specific points:

(a) Whether the concept of procedural irregularity in company law has application to unincorporated associations, or a similar concept with regard to the failure to observe the terms of the Constitution in unincorporated associations; and

(b) Whether the concept of procedural irregularity in company law has the same doctrinal basis as that of the doctrine of substantial performance in contract law, and if so, would it be relevant in the current context.

65 On the question of procedural irregularity, I found that unlike the case with companies, there is no similar concept in the case of unincorporated associations. Under s 392(2) of the Companies Act (Cap 50, 2006 Rev Ed) ("the Companies Act"), a proceeding under the Companies Act is not invalidated by reason of any procedural irregularity unless the [c]ourt is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the court and therefore by order declares the proceeding to be invalid. This proposition can be traced to a statutory enactment pertaining to procedural irregularities in the context of Australian insolvency proceedings, which later came to be applied in the sphere of company law (see *Chang Benety v Tang Kin Fei* [2012] 1 SLR 274 at [35]–

[36]). As such, it has no apparent relationship to the law concerning unincorporated associations which rests on a contractual bargain encapsulated by the constitution. There is no equivalent provision for procedural irregularity in the Societies Act (Cap 311, 2014 Rev Ed), although cases such as the present serve, in my view, to illustrate the potential utility of such a provision in this realm of law. In the absence of such a provision, the question is whether there is a contractual proxy given that the relationship between clan members has a contractual underpinning.

66 It is established law that the legal basis of unincorporated associations is contractual (see Warburton at p 3). At its heart, the plaintiff's complaint as regards the EC was that it was not properly constituted and therefore not in a position to discharge the tasks that the Constitution had prescribed. There was no complaint that the EC that was constituted did not discharge those tasks in the proper manner or any prejudice or damage was suffered as a result. This was the case whether the tasks were those performed by the EC as initially constituted (with the first defendant as IPP) or by the EC as it was finally constituted (with Sharon as the chairperson). The contractual bargain under the Constitution as regards the duties of the EC was in fact performed, bar its incorrect composition. In such a situation, should the court say that the entire election process was irreparably tainted? I was not convinced that should be the case.

67 In this regard, I found that an analogy might be drawn with the law on repudiatory breach arising from failure of performance. In *RDC Concrete Pte Ltd v Sato Kogyo (S) Pte Ltd and another appeal* [2007] 4 SLR(R) 413 ("*RDC Concrete*"), the Court of Appeal set out the approach to be taken in determining whether a contracting party could be discharged from its contractual obligations following a breach of a contractual term by the other

party. Of relevance here are Situations 3(a) and 3(b). The former situation states that where the term breached is ascertained to be a condition, the innocent party would be entitled to terminate the contract since it was the intention of the parties that the said term was so important that "… any breach, regardless of the actual consequences of such a breach, would entitle the innocent party to terminate the contract" (*RDC Concrete* at [97]). Under Situation 3(b), the focus is not on the nature of the term breached but on the nature and consequences of the breach. Therefore, even if a term is a warranty, if the consequences of the breach of that term are such as to deprive the innocent party of substantially the whole benefit that it was intended that the innocent party would obtain from the contract, then the innocent party would be entitled to terminate the contract (*RDC Concrete* at [107]). This is known as the *Hongkong Fir* approach, so named after the English Court of Appeal decision of *Hongkong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd* [1962] 2 QB 26.

68 As regards unincorporated associations, Warburton states (at p 78):

> From time to time, a member will become dissatisfied about the way in which the association are being run or the direction they are taking. If the rules of the association and the general law are being followed, the member's only remedies are to raise questions and put motions at the annual general meeting, to try to get sufficient members together to call a special general meeting and to endeavour to get himself elected to the committee. If there has been a breach of the rules or the general law relating to the conduct of meetings, the member can look to the court for assistance. The usual remedy is a declaration although the court may also grant an injunction to prevent further breaches. Theoretically, the court may award the member damage for breach of contract but this is highly unlikely because of the difficulties of proving loss by the individual member.

69 In the context of the Clan's constitution then, a member's right to obtain an annulment of the elections is dependent on the obligation of the MC

to convene the elections in accordance with the rules of the Constitution in the first place. As a matter of general principle, where the MC fails to properly convene, the member has a right to go to court to seek a declaration that the elections, and the results of the elections, are null and void. Here, the plaintiff was not seeking to terminate a contract but was seeking, *inter alia*, a declaration that the entire elections were null and void. However, I did not think that the breaches of the Constitution, if any, were breaches of rules that were equivalent in status to conditions. In any event, and more importantly, the consequences that were brought on by any breaches were trifling. As the defendants submitted, there was no escaping the fact that substantial performance had been carried out, such that the Clan members were not deprived of substantially the whole benefit of the provisions in the Constitution pertaining to the elections. Even if the appointment of Sharon as the chairperson of the EC was a breach of the Constitution, the EC had properly discharged all the duties that it was required to perform in relation to the elections. The elections came and went as planned, with any deviation from the rules being not so significant as to undermine the entire elections process. Therefore, there was really no cause for, *inter alia*, the elections to be declared null and void.

70 In many ways, this approach is similar to the approach in *RDC Concrete* in that the nature of the provision that has been breached and the consequences of the breach are examined. This is because the cause of action of the disgruntled member is primarily for breach of contract. Further, this approach is very similar to the philosophy that undergirds s 392(2) of the Companies Act where the primary inquiry is one of prejudice (see *eg*, *Thio Keng Poon v Thio Syn Pyn and others and another appeal* [2010] 3 SLR 143 at [58]). There is also a common resonance with the contractual doctrine of

substantial performance, which is another useful analytical tool and proxy, in the context of club law, for the concept of procedural irregularity in company law.

71 The doctrine of substantial performance can be seen as an exception to the "entire obligations" rule in contract. The "entire obligations" (or "entire contracts" rule) is well-illustrated by the following example provided by Ewan McKendrick in *Contract Law* (Palgrave Macmillan, 7th Ed, 2007) at p 435 (*"McKendrick*"): the contract between a house-owner and builder states that the payment will only be made upon satisfactory completion of the work by the builder. The obligation of the house-owner to make the payment is a dependent obligation, since he will be obliged to pay the sum only on the satisfactory completion of the building work. If the builder fails to *complete* the work, he will, as a general rule, be unable to sue for payment. The doctrine of substantial performance operates in this context by holding that where a party in breach has substantially performed his obligations under an entire contract, the innocent party must perform his obligations under that contract (usually by paying the contract price) and settle for an action for damages for any loss suffered as a result of that breach (see *McKendrick* at p 436). One of the most famous statements in relation to this doctrine comes from Denning LJ's judgment in *Hoenig v Isaacs* [1952] 2 All ER 176, where he stated (at 180):

> … the first question is whether, on the true construction of the contract, entire performance was a condition precedent to payment. It was a lump sum contract, but that does not mean that the entire performance was a condition precedent to payment. When a contract provides for a specific sum to be paid on completion of specified work, the Courts lean against a construction of the contract which would deprive the contractor of any payment at all simply because there are some defects or omissions. *The promise to complete the work is therefore construed as a term of the contract, but not as a*

> *condition. It is not every breach of that term which absolves the employer from his promise to pay the price, but only a breach which goes to the root of the contract, such as an abandonment of the work when it is only half done. Unless the breach does go to the root of the matter, the employer cannot resist payment of the price.* He must pay it and bring a cross-claim for the defects and omissions, or alternatively set them up in diminution of the price. The measure is the amount which the work is worth less by reason of the defects and omissions, and is usually calculated by the cost of making them good. …
>
> [emphasis added]

72 To transpose the doctrine to the present situation, where an improperly constituted EC had properly and completely discharged its constitutional remit in relation to the elections, and where there had been no prejudice suffered as a result, it can be said that a disgruntled member ought not to be able to vitiate the entire process as the duties enshrined in the Constitution can be said to have been substantially if not fully performed. What is "substantial performance" will of course depend on the nature of the contract and all the circumstances (*Chitty on Contracts* (Sweet & Maxwell, 32nd Ed, 2015) (at para 21-034) ("*Chitty*"). It has been said that in considering whether there was substantial performance, it is relevant to take into account both the nature of the defects and the proportion between the cost of rectifying them and the contract price (*Bolton v Mahadeva* [1972] 1 WLR 1009 at 1013, cited in *Chitty* at para 21-034). As I have found, in the present case, the relevant duties in the Constitution in relation to the elections had been substantively, if not fully, performed. Given this fact, there was no basis for me to declare that the elections were null and void, even if a breach might have been occasioned by the appointment of Sharon as the chairperson of the EC. The parallel drawn with the doctrine of substantial performance is however, subject to one caveat. On this doctrine, the focus is more on the "effects" rather than the intention of the parties. However, where the breaches of the Constitution implicate rules that are equivalent in status to conditions, the innocent member ought still to

be able to seek relief notwithstanding the existence of substantial performance. To hold otherwise would lead one to run up against the intention of the parties, which is a fundamental tenet of the law of contract – and contract is the legal basis of unincorporated associations.

Whether Dr Tan should be the IPP of the 2016/2017 MC

73 The plaintiff submitted that Dr Tan should be appointed as the IPP in the new MC as having the first defendant serve as both president and IPP would lead to a conflict of interest during the next elections. But there is nothing in the Constitution that prevents an incumbent president from also being the IPP, assuming that he or she was indeed the president during the previous two-year term. I saw no basis to imply a term to the contrary, notwithstanding the plaintiff's contention that this would result in the first defendant being both the incumbent president and the chairman of the next EC for the next elections.

74 I came to this view because of Rule 3.9 of the Constitution, which states that the tenure of the MC is for two years. The same rule prevents the same person from holding the position of president for more than two consecutive terms. Since a member can be a president for up to two consecutive terms, there is every possibility that an incumbent president who has been returned to power for a second time is also the *immediate* past president. This is the exact scenario here. That the drafters must have been alive to this practical eventuality, yet did not spell out that the president cannot be the IPP at the same time, must lead to the ineluctable conclusion that there can be situations where the newly-elected president is also the IPP, albeit only for a term due to the constitutional safeguard that the same president can serve only for a maximum of two consecutive terms.

Conclusion

75 For the foregoing reasons, I dismissed all the plaintiff's prayers in OS 156 and SUM 740. I also ordered that the plaintiff pay the Clan costs of $15,000 and reasonable disbursements. I made the costs order on the basis that the first defendant's costs were being borne by the Clan and that he did not have any cost obligations himself.

Kannan Ramesh
Judicial Commissioner

Peter Low and Jason Lee Hong Jet (Peter Low LLC) for the plaintiff;
Hee Theng Fong, Lee Hui Min and Lin Chunlong (Harry Elias Partnership LLP) for the defendants.