

Phua Kiah Mai and another v Foo Jong Peng and others
[2012] SGHC 14

Case Number : Originating Summons No 975 of 2011
Decision Date : 19 January 2012
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Hee Theng Fong and Leong Kai Yuan (RHT Law LLP) for the plaintiffs; S Magintharan and B Uthayachanran (Essex LLC) for the defendants.
Parties : Phua Kiah Mai and another — Foo Jong Peng and others

Contract

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 4 of 2012 was dismissed by the Court of Appeal on 24 May 2012. See [\[2012\] SGCA 55.](#)]

19 January 2012

Judgment reserved.

Choo Han Teck J:

1 The first plaintiff is the president of the Singapore Hainan Hwee Kuan ("the Association") and the second plaintiff is the Association's honorary secretary. They were members of the Management Committee of the Association. There were 43 members in the Management Committee and of that number, the president, the three vice-presidents and ten others form the "Executive Committee". All the defendants were members of the Management Committee.

2 On 3 August 2011 the first defendant wrote to the second plaintiff requesting a meeting of the Management Committee with the view of re-constituting the Executive Committee. The solicitors for the plaintiffs wrote in reply to say that the Management Committee had no power to re-constitute the Executive Committee. Consequently, the second defendant wrote to propose a motion that the first plaintiff be removed as president. Subsequently, a similar proposal was made to remove the second plaintiff as the honorary secretary.

3 The first defendant sent a letter to all members of the Management Committee on 12 October 2011 with a view of convening a Management Committee meeting to approve the unaudited accounts of the Association. The meeting was held on 20 October 2011 but the agenda went beyond the approval of the accounts. The plaintiffs objected, but the meeting went ahead and was attended by 28 of 48 Management Committee members. The plaintiffs were removed from their posts and the fourth and fifth defendants elected to the positions of president and honorary secretary respectively.

4 The plaintiffs thus applied by this originating summons for declarations that the Management Committee meeting of 20 October 2011 was ultra vires and that the resolutions removing the plaintiffs and election of the fourth and fifth defendants were null and void. It was not disputed that the term of office of a management committee member is two years. Mr Hee, counsel for the plaintiffs, submitted that the rules do not provide for the removal of an executive committee member other than for misconduct under rule 19 of the Rules of the Association.

5 Mr S Magintharan, counsel for the defendant, argued that although there was no express

provision for the removal of a committee member, the members of an association or club are bound by contract, and in such a case the court ought to hold that there was an implied term permitting the management committee to remove its members otherwise than by expulsion for misconduct. I do not think that this court ought to imply such a term. The appointment to the committee was for two years specifically. It was not a long term. If it could be implied that the management committee could remove the elected members before the term was up, it would be equally reasonable to imply that the members did not intend to have the membership rotated before the term was up. The latter would be the more reasonable view. Members are not likely to want to see constant election battles which could stifle the smooth running of the association. If the rules say that the members are elected to hold office for two years, then that is what they will do.

6 Both sides referred to *Datuk Phua Cheng Leong & Ors v Tan Kah Wich & Ors* [1979] 1 MLJ 253 claiming that the decision in that case supported their respective arguments. I do not think that this was helpful. The facts are different and the rules of association here differ. We would be digressing if we were to argue, as the parties there did, that the "special General Meeting" was "inferior" to the "Annual General Meeting". There is nothing to stop the defendants from passing a motion of no confidence or censure on the management committee or any specific member, but in the absence of an express provision they cannot remove the management committee members before their fixed terms are up.

7 For the reasons above the plaintiffs' applications in this Originating Summons are allowed. I need only mention in passing that ordinarily, in applications of this nature, the management committee ought to have been joined as a party. However in this case, the omission had no substantive consequence to the applications. I will hear the parties on the question of costs at a later date.

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