

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 155

Originating Summons 1169 of 2016

Between

(1) LING DIUNG KWONG

... Plaintiff

And

(1) BO TIEN TEMPLE

(2) CHENG AI BAK

(3) TEO KOK BOON

(4) CHUA TECK BENG

(5) CHONG KOK KEONG

(6) KONG MENG SIN

... Defendants

GROUNDS OF DECISION

[Unincorporated Associations and Trade Unions] — [Meetings]
[Unincorporated Associations and Trade Unions] — [Membership] —
[Termination]

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Ling Diung Kwong
v
Bo Tien Temple and others

[2017] SGHC 155

High Court — Originating Summons 1169 of 2016
George Wei J
30, 31 March 2017

10 July 2017

George Wei J:

Introduction

1 The plaintiff commenced proceedings seeking a declaration that two decisions taken to terminate his positions as trustee and member of the Bo Tien Temple respectively were null and void. The plaintiff also sought an injunction to restrain the defendants from enforcing the wrongful termination of his trusteeship and membership, and aggravated damages for such wrongful termination. After hearing the parties' arguments, I dismissed the plaintiff's claim and found in favour of the defendants. The plaintiff being dissatisfied has filed an appeal. These are the grounds of my decision.

Facts

The parties

2 The plaintiff is Ling Diung Kwong (“the Plaintiff”). He was a long-standing member and trustee of the 1st defendant, the Bo Tien Temple, which is a society registered under the Societies Act (Cap 311, 2014 Rev Ed). It was established sometime in the early 1970s.¹

3 The 2nd to 6th defendants (“the Defendants”) are members of the Management Committee (“MC”) of the Bo Tien Temple. The names of the 2nd to 6th defendants and their respective positions within the MC are as follows:

- (a) 2nd defendant: Cheng Ai Bak, President;
- (b) 3rd defendant: Teo Kok Boon, Vice President;
- (c) 4th defendant: Chua Teck Beng, Secretary;
- (d) 5th defendant: Chong Kok Keong, Assistant Secretary;
- (e) 6th defendant: Kong Meng Sin, Advisor.

4 The Plaintiff claims he was a “founding member” of Bo Tien Temple and that he was anointed as “head” of the temple in 1970 by its temple saint, Lord Bo Tien.² The Defendants maintain that the Plaintiff was neither a founding member nor the head of the Bo Tien Temple, but acknowledge that the Plaintiff was a “pioneer” member.³ It is also undisputed that the Plaintiff previously served as President of the Bo Tien Temple MC for almost 25 years.⁴

¹ Plaintiff’s affidavit dated 11 November 2016, para 13.

² Plaintiff’s affidavit dated 11 November 2016, para 6.

³ 4th defendant’s affidavit dated 13 February 2017, paras 33-34; affirmed by the 3rd–

Relevant terms of the Bo Tien Temple Constitution

5 The Bo Tien Temple is governed by rules set out in a document entitled the “Bo Tien Temple Constitution” (“BTT Constitution”). As regards the MC’s powers to terminate a member’s membership and the procedure for doing this, the relevant terms of the BTT Constitution are as follows:

8a. The Management Committee shall have the authority to terminate the membership of any members, if it is of the opinion that such member acts detrimental to the interests of the Temple. Provided that before the [M]anagement Committee takes any decision for the expulsion of a member, it shall:

i. Inform the member concerned that it is considering his expulsion, with such particulars as may be necessary to disclose the basic reason therefore and invite the member concerned, within a period of not less than seven days from the date of the notice to be specified in the notice, to give the Management Committee any written explanation he may wish to offer and to inform the Management Committee if he wishes to be heard orally.

ii. Allow the time specified in the notice to lapse and shall give the member concerned reasonable opportunity to be heard if he/she so desire (*sic*) and shall give due consideration to any explanation he may make and evidence he may call.

8b. Proceedings before the Management Committee shall be as informal as possible and consistently with fairness, all decisions as to the procedure shall be at the discretion of the Management Committee.

8c. The Management Committee may receive any evidence which it considers relevant to the matter, whether oral or written, and whether or not it would be admissible in a court of law. The Management Committee shall not be bound by the rules of evidence and shall act in such manner as it think (*sic*) just and expedient.

8d. The decision of the Management Committee shall be by simple majority of the members present and voting. The President shall have a second or casting vote in the event of

6th defendants in their respective affidavits.

⁴ Plaintiff’s affidavit dated 11 November 2016, para 11.

equal votes. Provided always that the voting at any such meeting shall be by secret ballot.

6 With regard to the circumstances under which a trustee of Bo Tien Temple may be removed, and the procedure by which this is to be done, the following are the relevant terms of the BTT Constitution:

19d. Save as otherwise herein provided, trustees shall be appointed at a [G]eneral [M]eeting of the Temple and they shall hold office for as long as required subject to the right of any trustee to resign his office by giving at least 14 days (*sic*) notice to the Management Committee.

...

19f. If a trustee is believed to be guilty of conduct rendering it undesirable that the (*sic*) continues as a trustee, a General Meeting may in its absolute discretion to remove him from his trusteeship.

...

19i. Notice of any proposal to remove a trustee from his trusteeship or to appoint a new trustee to fill a vacancy must be given in writing to the Honorary Secretary at least two weeks before the meeting at which the proposal is to be discussed. The result of such meeting shall then be notified to the Registrar of Societies and the Commissioner of Charities.

7 Finally, it is also worth noting the following terms of the BTT Constitution relating to the powers of the General Meeting and the procedures by which such power is to be exercised:

17a. The management of the Temple is vested in a [G]eneral [M]eeting of the members presided over by the President. At least one quarter of the total membership of the Temple must be present at a general meeting to constitute a quorum. Proxies shall not be constituted as part of the quorum.

17b. In the event of there being no quorum, the proposed meeting shall be adjourned for half an hour and thereafter those present shall be deemed to constitute a quorum, but such adjourned meeting shall have no power to alter, amend or make additions to the Constitution and rules made thereunder to review any rules, decisions or resolutions made or passed by the Management Committee.

...

17f. Unless otherwise stated in this Constitution, voting by proxy shall be allowed at all General Meetings.

...

17j. The decision of a [G]eneral [M]eeting shall be by simple majority of the members present and voting save as otherwise herein provided. The Chairman shall have a second casting vote in the event of equal votes.

Tensions between the parties

8 The present proceedings were preceded by a history of acrimony between the Plaintiff and the Defendants which included an earlier attempt to remove the Plaintiff (as trustee and member) which had also resulted in litigation. As early as 2006, the Plaintiff had clashed publicly with the 4th and 6th defendants at the Bo Tien Temple’s 36th Annual General Meeting (“AGM”) over the Plaintiff’s allegations that the 4th defendant had manipulated certain AGM minutes.⁵ The Plaintiff and the 4th defendant gave differing accounts of how the incident came about.⁶ Irrespective of whose account is more accurate, it was clear that there have been tensions between the Plaintiff and the 4th and 6th defendants for quite some time.

9 In written and oral submissions, the parties did not delve into the details of the various disagreements between the Plaintiff and the Defendants over the years. Indeed it was not necessary for them to do so for the purposes of arguing the issues before me. However, it is worth mentioning three incidents which the Defendants eventually relied on as the basis of the Plaintiff’s removal as trustee and member of Bo Tien Temple:

⁵ Plaintiff’s affidavit dated 15 March 2017, Exhibit LDK-8, p 67.

⁶ Plaintiff’s affidavit dated 11 November 2016, para 16; 4th defendant’s affidavit dated 13 February 2017, para 38.

(a) Sometime in 2004, the Plaintiff entered the temple premises and removed certain flags known as “Ngor Ya” flags despite having been told by the MC not to do so.⁷

(b) Sometime in 2004, when a Mr David Tay (also known as Tay Choon Hock) (“Tay”) assumed the position of President of the MC, the Plaintiff allegedly called him a “puppet”.⁸ I note, however, that the Plaintiff denies this.⁹ I will refer to this as the “Name-calling Incident.”

(c) In March 2011, the Plaintiff sent the MC an email attaching a copy of a draft book (“the Draft Book”). In the email, the Plaintiff stated that he intended to publish the Draft Book.¹⁰ Excerpts of this Draft Book were included in a letter from the 2nd defendant to the Plaintiff, which the Plaintiff annexed to his affidavit dated 11 November 2016.¹¹ I will not go into the details of these excerpts. It suffices to say that they were generally critical of several members of Bo Tien Temple, including the 2nd, 4th and 6th defendants, and that they cast these members in an unfavourable light. The excerpts also raised factual allegations against various individuals, including an assertion that the 4th defendant had committed an act “criminal in nature”.¹² Although the Plaintiff had expressed that he was determined to publish the Draft Book in several letters to the MC,¹³ it seems that the Draft Book was eventually not

⁷ 4th defendant’s affidavit dated 13 February 2017, para 28(f)(i); Plaintiff’s affidavit dated 11 November 2016, pp 286 and 288.

⁸ Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-19, p 180.

⁹ Plaintiff’s affidavit dated 11 November 2016, para 69.

¹⁰ Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-29, p 273.

¹¹ Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-5, pp 104–111.

¹² Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-5, p 109.

¹³ 4th defendant’s affidavit dated 13 February 2017, para 75.

published.¹⁴ The 4th defendant claims that “the prevailing sentiment of majority of [Bo Tien Temple] members is that the [D]raft [B]ook’s contents are defamatory and inaccurate”.¹⁵

OS 998/2014 and past attempts to terminate the plaintiff’s trusteeship and membership

10 In the present proceedings, the Plaintiff sought to invalidate decisions to terminate his trusteeship and membership which were taken on 9 May 2015 and 3 July 2015 respectively. As mentioned above, prior to these decisions, the members of the MC (including some of the Defendants herein) had made earlier attempts to remove the Plaintiff as trustee and member of Bo Tien Temple in 2012 and 2013. Those attempts were the subject of an earlier set of proceedings, OS 998/2014.

11 OS 998/2014 was the Plaintiff’s suit against the 1st, 2nd and 4th defendants herein, as well as Tay. The Plaintiff sought a declaration that the following decisions were invalid:¹⁶

(a) A decision by the then MC made at a Committee Meeting held on 22 March 2012 to terminate the Plaintiff’s membership (“the 2012 membership termination decision”);

(b) A decision by the General Meeting of Bo Tien Temple made at the 42nd AGM held on 24 March 2012 to remove the Plaintiff from the

¹⁴ Oral Judgment of Steven Chong J in OS 998/2014 in Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-1, p 71.

¹⁵ 4th defendant’s affidavit dated 13 February 2017, para 136.

¹⁶ Oral Judgment of Steven Chong J in OS 998/2014 in Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-1, pp 67–80, para 2.

Board of Trustees of Bo Tien Temple (“the 2012 trusteeship termination decision”).

12 OS 998/2014 was heard by Steven Chong J (as he then was), who delivered his decision in an Oral Judgment on 2 April 2015 (“the Oral Judgment”). He held that both the 2012 membership termination decision and the 2012 trusteeship termination decision were invalid.¹⁷ Given the close links between OS 998/2014 and the present proceedings, it is worth setting out Chong J’s findings in considerable detail.

13 Chong J held that the 2012 membership termination decision was invalid for the following reasons:

(a) First, the decision was *ultra vires* the BTT Constitution. The MC had failed to comply with Article 8(a) of the BTT Constitution which requires the MC to give a member “such particulars as may be necessary to disclose the basic reason” for his proposed expulsion” (see [5] above). Prior to the meeting on 22 March 2012, Tay had only written the Plaintiff a letter stating that the MC was considering terminating his membership, and which alluded to “the incidents and correspondences [the Plaintiff had] raised between both [the Plaintiff and Tay] and the organisation”.¹⁸ However, the letter did not contain sufficient particulars to comply with Article 8(a). Chong J further rejected the defendants’ argument that the Plaintiff was already fully aware of the reasons for the proposed termination of his membership. He noted that there were eight incidents which formed the basis of the Plaintiff’s proposed expulsion,

¹⁷ Oral Judgment of Steven Chong J in OS 998/2014 in Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-1, pp 67–80, para 3.

¹⁸ Oral Judgment of Steven Chong J in OS 998/2014 in Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-1, pp 67–80, para 8.

including “the so-called ‘Ngor Ya’ incident of 2004” and the Plaintiff’s intended publication of the Draft Book (see [9] above). Since these incidents spanned a long period of nearly 8 years, the Plaintiff could not have known which of the events in the intervening period were being considered as a basis for his expulsion. Further, many of these incidents had taken place a long time ago, with no action being taken against the Plaintiff. Given the lapse of time, the Plaintiff could not be expected to know that those incidents would form the subject matter of disciplinary action against him.¹⁹ In any event, the MC could not dispense with its duty of particularisation under Article 8(a) just because it believed the member concerned knew of the reasons for his proposed expulsion.²⁰

(b) Secondly, there had been a breach of the Plaintiff’s right to a fair hearing. Natural justice demanded that the Plaintiff had to be given (a) adequate notice of the allegations made against him; and (b) a fair opportunity to be heard. For the reasons summarised in [12(a)] above, Chong J was of the view that the Plaintiff did not have adequate notice of the allegations against him and did not know the case he had to meet.²¹ He also rejected the defendants’ arguments that the Plaintiff could not complain of being denied a fair hearing because he had chosen not to attend the MC meeting on 22 March 2012. Crucially, the Plaintiff would not have been adequately equipped to defend himself even if he had elected to attend.²²

¹⁹ Oral Judgment of Steven Chong J in OS 998/2014 in Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-1, pp 67–80, para 12.

²⁰ Oral Judgment of Steven Chong J in OS 998/2014 in Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-1, pp 67–80, para 13.

²¹ Oral Judgment of Steven Chong J in OS 998/2014 in Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-1, pp 67–80, para 15.

²² Oral Judgment of Steven Chong J in OS 998/2014 in Plaintiff’s affidavit dated 11

(c) Thirdly, the decision was tainted by apparent bias. Of the five members who sat on the MC, three (the 2nd and 4th defendants herein and Tay) were interested parties. These individuals had been personally involved in the matters which formed the basis of the membership termination decision, including the “Ngor Ya” issue and the intended publication of the draft book. Given the acrimony between the Plaintiff and these three members of the MC, a reasonable and fair-minded person would have had a reasonable suspicion that a fair trial was not possible for the Plaintiff if these three members were to sit on the MC that decided on his proposed expulsion.²³

14 As for the 2012 trusteeship termination decision, Chong J found that this decision was also invalid for the following reasons:

(a) The decision was *ultra vires* the BTT Constitution. Article 19(i) of the BTT Constitution provides that notice of any proposal to remove a trustee had to be given to the Honorary Secretary at least two weeks before the meeting at which the proposal was to be discussed (see [5] above). This was not complied with.²⁴ Chong J was also unpersuaded by the defendants’ argument that even though the decision at the 42nd AGM in 2012 was “irregular”, the Plaintiff’s removal as trustee was validly passed by way of a resolution at the 43rd AGM a year later in March 2013. The BTT Constitution did not allow for defective resolutions at previous AGMs to be cured by future resolutions at later AGMs.²⁵ In any event, there was no evidence to suggest that the

November 2016, Exhibit LDK-1, pp 67–80, para 17.

²³ Oral Judgment of Steven Chong J in OS 998/2014 in Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-1, pp 67–80, paras 20–21.

²⁴ Oral Judgment of Steven Chong J in OS 998/2014 in Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-1, pp 67–80, para 25.

termination of the Plaintiff's trusteeship was considered afresh at the 43rd AGM.²⁶

(b) Secondly, the Plaintiff's right to a fair hearing had been breached. In relation to the 42nd AGM, the notice which was sent to members ahead of the 42nd AGM did not contain any indication that the removal of the Plaintiff's trusteeship would be discussed. Thus, the Plaintiff had not been given adequate notice of the charges against him and therefore chose not to attend the 42nd AGM. In relation to the 43rd AGM, the Plaintiff had been refused entry into the meeting and had thereby been physically denied a fair opportunity to be heard.²⁷

Events subsequent to the conclusion of OS 998/2014

15 Following the release of Chong J's decision in OS 998/2014 on 2 April 2015, the Plaintiff delivered a copy of the Oral Judgment to the MC on 19 April 2015. On 21 April 2015, the Plaintiff sent an email to the MC to inquire about the status of his membership in light of Chong J's findings. He also inquired when the 45th AGM would be held as he wished to include certain items in the agenda.²⁸ On 28 April 2015, the Plaintiff received a letter from the 4th defendant enclosing the agenda for the 45th AGM to be held on 9 May 2015. The matters he had asked to include had been left out of the agenda. Item 7 of the agenda was in the following terms:

²⁵ Oral Judgment of Steven Chong J in OS 998/2014 in Plaintiff's affidavit dated 11 November 2016, Exhibit LDK-1, pp 67–80, para 26.

²⁶ Oral Judgment of Steven Chong J in OS 998/2014 in Plaintiff's affidavit dated 11 November 2016, Exhibit LDK-1, pp 67–80, para 28.

²⁷ Oral Judgment of Steven Chong J in OS 998/2014 in Plaintiff's affidavit dated 11 November 2016, Exhibit LDK-1, pp 67–80, para 31.

²⁸ Plaintiff's affidavit dated 11 November 2016, para 37.

To consider the removal of Mr Ling Diung Kwong as a Trustee of the Board of Trustees of Bo Tien Temple under Article 19f of the Constitution which provides that: If a trustee is believed to be guilty of conduct rendering it undesirable that he continues as a trustee, a General Meeting may in its absolute discretion to (*sic*) remove him from his trusteeship.

16 On 29 April 2015, the Plaintiff received another letter from the 2nd defendant which stated that the management of Bo Tien Temple was reinstating the Plaintiff's position as member and trustee with immediate effect. Subsequently, however, the Plaintiff received another letter dated 5 May 2015 ("the 5 May Letter") informing him that the members of Bo Tien Temple had "expressed their intention to exercise their absolute discretion under Article 19(f) of the Bo Tien Temple Constitution to remove [the Plaintiff] as a trustee on the grounds that they believe[d] [he was] guilty of conduct which renders [him] undesirable to continue as a trustee".²⁹ The 5 May Letter went on to state that the members would be voting on the matter at the upcoming 45th AGM. The letter also set out "the specific particulars disclosing the conduct which [had] rendered [the Plaintiff] undesirable to continue as a trustee".

17 Broadly speaking, the 5 May Letter raised three issues. The first of these issues was the Plaintiff's Draft Book, which the letter described as including "many factual inaccuracies regarding many parties who are members of Bo Tien Temple", "misleading" and "hurting to some members who are totally in dismay of what [the Plaintiff had] penned". The 5 May Letter went on to set out several excerpts of the Draft Book. The second issue raised in the 5 May Letter was the Plaintiff's removal of the "Ngor Ya" flag despite repeated warnings from the management of Bo Tien Temple. The third issue was the Name-calling Incident.³⁰

²⁹ Plaintiff's affidavit dated 11 November 2016, Exhibit LDK-3, p 88.

³⁰ Plaintiff's affidavit dated 11 November 2016, Exhibit LDK-3, pp 88–94.

18 On 8 May 2015, the Plaintiff sent two emails to the 2nd and 4th defendants in which he stated that, although he would attend the 45th AGM, he would not be participating in the inquiry regarding the termination of his trusteeship because his solicitor was away from Singapore and he needed to consult his solicitor to prepare for the inquiry.³¹ That same day, the 2nd defendant replied the Plaintiff via an email which stated the following:³²

The issues to be discussed at this meeting will be factual and will deal with your conduct which you have personal knowledge of. Further, we wish to state that all specific particulars which you have previously requested for have already been given to you in our said letter to enable you to prepare and to put forth your position. As such, whether you wish to seek your own legal services, this is your prerogative for which we shall not comment.

Termination of the plaintiff's trusteeship at the 45th AGM

19 The Plaintiff attended the 45th AGM on 9 May 2015. Although the meeting was presided over by the 2nd defendant, the discussions concerning the proposed termination of the Plaintiff's trusteeship were introduced by the 4th defendant, who began by addressing the general meeting on the outcome of OS 998/2014.³³ Mid-way through the 4th defendant's speech, the Plaintiff questioned whether the 4th defendant was discussing the Draft Book and stated that he would not reply to any queries relating to the Draft Book. The Plaintiff then decided to leave the AGM at about 8.12 pm, despite the 4th defendant urging him to stay and explain himself to the members present.³⁴ Indeed the Plaintiff's own evidence is that he left the AGM despite both the 2nd and 4th defendants' attempts to persuade him to stay.³⁵

³¹ Plaintiff's affidavit dated 11 November 2016, para 37.

³² Plaintiff's affidavit dated 11 November 2016, Exhibit LDK-15, p 166.

³³ Plaintiff's affidavit dated 11 November 2016, Exhibit LDK-19, p 178.

³⁴ Plaintiff's affidavit dated 11 November 2016, Exhibit LDK-19, p 178.

20 After the Plaintiff left, the members present at the 45th AGM continued to discuss whether he should be removed as trustee.³⁶ For present purposes, it is unnecessary for me to go into the details of what was said. Broadly speaking, the discussions centred on the purported falsity of the excerpts from the Draft Book which had been mentioned in the 5 May Letter, the “Ngor Ya” flag incident and the Name-calling incident. These issues were set out on PowerPoint slides in terms identical to those used in the 5 May Letter. The discussions continued for slightly over an hour before the 5th defendant tabled a motion to remove the Plaintiff from the Board of Trustees at about 9.29 pm. The motion was seconded by a Ms Karen Wong.³⁷ Before the members voted on this motion, however, the 4th defendant proposed that the following members should abstain from voting:

- (a) Members directly and/or indirectly related to Tay, the 2nd defendant and the 4th defendant (these were the individuals who had been named as defendants in OS 998/2014);
- (b) Members whose names were mentioned in the Draft Book and who had testified against the Plaintiff concerning the factual inaccuracies therein.

21 After the members who fell into the above categories excluded themselves, a total of 13 members were eligible to vote. Four other members were not present at the 45th AGM but had filled in proxy forms indicating how they would vote on the items on the agenda.³⁸ At 9.43pm, the 2nd defendant

³⁵ Plaintiff’s affidavit dated 11 November 2016, para 48.

³⁶ Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-19, p 180.

³⁷ Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-19, p 180.

³⁸ Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-8, pp 127–130.

announced that all 17 votes (those cast by the 13 members present as well as the four proxy votes) were in favour of terminating the Plaintiff's trusteeship.³⁹

22 The minutes reflect that the 3rd defendant had tried to locate the Plaintiff within the Temple's premises without success:

At 9.48 pm, Mr Joseph Teo informed that he was unable to locate [the plaintiff] in Bo Tien Temple. Members would like to know what Mr Ling would like to address the general assembly regarding his posting, but he could not be found...

23 The members present at the 45th AGM thus decided not to discuss the items which the Plaintiff had asked to include on the agenda, and the meeting concluded at 9.53pm.

24 On 29 May 2015, the 2nd defendant sent two separate letters to the Plaintiff. The first of these letters stated that "the members of the temple [had] exercised their absolute discretion to remove [the Plaintiff] as trustee".⁴⁰ The second letter ("the 29 May Letter") informed the Plaintiff that the MC was "of the opinion that [he had] acted in a manner which is detrimental to the interests of the temple", and that the MC intended to hold a meeting on 12 June 2015 to take a decision regarding his expulsion as a member of Bo Tien Temple. The Plaintiff was invited to attend this meeting. The 29 May Letter went on to state "the specific particulars disclosing the conduct which [had] rendered [the Plaintiff] undesirable to continue as a member to be discussed at the meeting".⁴¹ These particulars were essentially in terms identical to those mentioned in the 5 May Letter as the basis for the proposed termination of the Plaintiff's trusteeship (see [17] above).

³⁹ Plaintiff's affidavit dated 11 November 2016, Exhibit LDK-19, p 181.

⁴⁰ Plaintiff's affidavit dated 11 November 2016, Exhibit LDK-4, p 95.

⁴¹ Plaintiff's affidavit dated 11 November 2016, Exhibit LDK-5, pp 103–105.

25 On 8 June 2015, the Plaintiff responded to the 2nd defendant via a letter, in which he stated, *inter alia*, that he “did not think it [was] possible” for the meeting to go ahead on 12 June 2015 because he wanted more time to consult his lawyers and to prepare his case, and also because he had to attend a wedding dinner on that day.⁴² The second defendant replied the Plaintiff in a letter dated 17 June 2015 which stated that, in view of the fact that the Plaintiff had to attend a wedding dinner on 12 June 2015, the meeting to decide on whether he should be removed as a member of Bo Tien Temple was rescheduled to 3 July 2015.⁴³

Termination of the plaintiff’s membership

26 The Plaintiff attended the MC meeting on 3 July 2015 (“the MC Meeting”). Apart from 11 members of the MC, several other individuals attended the MC Meeting as “witnesses”. The meeting was presided over by the 3rd defendant because the 2nd defendant, who was President of the MC, was participating as a “witness”.

27 Once again, the discussions centred on the three issues identified in both the 5 May Letter and the 29 May Letter: the Plaintiff’s removal of the “Ngor Ya” flags in 2004, the Name-calling Incident, and the Draft Book (see [17] above).⁴⁴ Again, I will not go into the precise details of what was said. Based on the Plaintiff’s transcript of the audio recording of the meeting, it seems the discussions were lively in the sense that there were frequent interjections from the 3rd defendant and/or other members present at the MC Meeting while the Plaintiff was speaking and *vice versa*.

⁴² Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-21, p 208.

⁴³ Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-22, pp 209–210.

⁴⁴ Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-27, pp 218–270.

28 It can fairly be said that the Plaintiff was not given a completely unrestricted opportunity to speak, and there were instances where various individuals interrupted him and told him that he was speaking of irrelevant or outdated matters.⁴⁵ On the other hand, there were also instances where the Plaintiff refused to answer certain questions which were put to him.⁴⁶ At one point the Plaintiff indicated that he did not wish to talk about matters relating to the Draft Book because he felt that the MC Meeting was not the proper forum.⁴⁷ Despite the numerous interjections and arguments that arose in the course of the proceedings, however, I found that the Plaintiff *did* manage to state his position on the “Ngor Ya” issue,⁴⁸ the Name-calling Incident,⁴⁹ and the Draft Book.⁵⁰

29 About 42 minutes into the discussion, the Plaintiff stated that he did not wish to participate any further in the MC Meeting because he felt that it was “not a friendly discussion” and “not the right forum” for him to explain matters.⁵¹ He then left the meeting, following which the 3rd defendant announced that there would be a five-minute break.⁵²

30 When the meeting resumed, the discussions concerning the proposed termination of the Plaintiff’s membership continued in the Plaintiff’s absence. Again, the discussions centred on the purported falsity of the excerpts from the

⁴⁵ Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-27, pp 226, 239.

⁴⁶ Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-27, pp 227, 243.

⁴⁷ Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-27, pp 239–240, 242, 243.

⁴⁸ Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-27, pp 227–229.

⁴⁹ Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-27, pp 236–237.

⁵⁰ Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-27, pp 238–243.

⁵¹ Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-27, p 246.

⁵² Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-27, p 247.

Draft Book which had been mentioned in the 29 May Letter and the 5 May Letter.

31 After about 42 minutes of discussion, the 3rd defendant put the issue of whether the Plaintiff's membership should be terminated to a vote. Of the 11 members of the MC that were present, seven recused themselves from voting either because they had participated as witnesses in the inquiry or because they were related to individuals who had participated as witnesses in the inquiry.⁵³ The remaining four individuals who voted were the 3rd defendant, the 5th defendant, Ms Karen Wong, and Mr Jack Tan. They voted unanimously in favour of terminating the Plaintiff's membership.

32 On 11 August 2015, the 3rd defendant sent the Plaintiff a letter informing him that the Management Committee was "of the opinion that the grounds under Article 8a have been satisfied and that you have acted in a manner that is detrimental to the interests of the temple", and had come "to a unanimous decision to remove [him] as a member of Bo Tien Temple."⁵⁴

The parties' arguments

The Plaintiff's case

33 With regard to the decision to remove the Plaintiff as trustee of Bo Tien Temple, the Plaintiff argued that this decision was reached in breach of the rules of natural justice for the following reasons:

- (a) First, the fact that the general meeting continued to discuss the issue of whether the Plaintiff's trusteeship should be terminated in his

⁵³ 4th defendant's affidavit dated 13 February 2017, paras 88-92.

⁵⁴ Plaintiff's affidavit dated 11 November 2016, Exhibit LDK-6, p 112.

absence after he had left the 45th AGM was a breach of the *audi alteram partem* rule.⁵⁵ Even if the Plaintiff had elected to remain at the 45th AGM throughout the inquiry, he would not have been adequately equipped to defend himself as his solicitor was away from the country at the material time.⁵⁶

(b) Secondly, the decision was tainted by apparent bias. In the Plaintiff's written submissions this argument was based on the fact that the decision to terminate the Plaintiff's trusteeship was largely premised on the contents of the Draft Book, which the Plaintiff emphasised was only a draft which had not been published. The Plaintiff argued that the decision to "base the inquiry at the 45th AGM on facts pertaining to the draft book" was indicative of their apparent bias.⁵⁷ The Plaintiff also submitted that the fact that the MC had informed him that they would be considering removing his trusteeship a mere six days after his trusteeship and membership had been reinstated was indicative of apparent bias.⁵⁸ Finally, in oral submissions, the Plaintiff also argued that the decision to terminate his trusteeship was infected by apparent bias because the fourth defendant was "the man that was procedurally involved in the whole thing".⁵⁹ By this I understood the Plaintiff to be taking issue with the fact that the 4th defendant had presided over the discussions relating to the removal of the Plaintiff's trusteeship at the 45th AGM.

⁵⁵ Plaintiff's written submissions, para 39.

⁵⁶ Plaintiff's written submissions, para 35.

⁵⁷ Plaintiff's written submissions, paras 47–48.

⁵⁸ Plaintiff's written submissions, paras 47.

⁵⁹ Certified Transcript for 30 March 2017, p 6, lines 10–12.

34 The Plaintiff also argued that the decision to terminate the Plaintiff's trusteeship had been reached without the requisite number of votes required under Article 17(j) of the BTT Constitution. In this regard, the Plaintiff highlighted that even though 38 members were present at the 45th AGM, only 17 had voted in favour of removing the Plaintiff as a trustee.⁶⁰

35 With respect to the decision to remove the Plaintiff as a member of Bo Tien Temple, the Plaintiff argued that this decision was also tainted with apparent bias for the following reasons: First, the MC members who voted on this decision had previously voted to remove the Plaintiff as trustee at the 45th AGM.⁶¹ Secondly, the presence of the 2nd and 4th defendants at the MC Meeting was "unfair" and tainted the meeting with apparent bias.⁶²

36 Finally, the Plaintiff argued that the MC had failed to take into account "relevant considerations" in reaching its decision to terminate the Plaintiff's membership. The Plaintiff suggested that this was a breach of Article 8(b) of the BTT Constitution.⁶³ In support of this point, the Plaintiff cited several portions of the Plaintiff's transcript of the MC Meeting in which various members had told the Plaintiff that they did not want to hear his explanations.⁶⁴

The Defendants' case

37 The Defendants maintained that the Court's role in this matter was not to look into the merits of the decisions to terminate the Plaintiff's trusteeship or membership. Rather, the Court should only consider the procedural validity of

⁶⁰ Plaintiff's written submissions, paras 40-41.

⁶¹ Plaintiff's written submissions, para 35.

⁶² Plaintiff's written submissions, para 57(a).

⁶³ Plaintiff's written submissions, paras 51-52.

⁶⁴ Plaintiff's written submissions, para 53.

these decisions, and whether or not they had been reached in compliance with the BTT Constitution and the rules of natural justice.⁶⁵ On that basis, the Defendants argued that neither the decision to terminate the Plaintiff's trusteeship nor the decision to terminate the Plaintiff's membership were invalid.

38 With regard to the decision to terminate the Plaintiff's trusteeship, the Defendants argued that there had been no breach of the rules of natural justice. The Plaintiff had not been denied a right to a fair hearing. Rather, he had been given an opportunity to participate in the 45th AGM and to defend himself and to state his case, but had "consciously and deliberately" chosen not to make use of this opportunity.⁶⁶ The defendant also argued that the Plaintiff's refusal to participate in the discussions on the basis that his solicitor was abroad amounted to a "thinly veiled attempt" to build a case that he had not been fairly heard.⁶⁷ The Plaintiff knew that the discussions pertaining to the termination of his trusteeship would cover factual, and not legal, issues. Thus, there was no basis for the Plaintiff's argument that he needed to consult his lawyer in order to prepare for the 45th AGM. In summary, the Plaintiff had decided to relinquish his opportunity to be heard at the 45th AGM and could not now raise the argument that he had refused to participate because of his own "subjective position" that he needed to consult his solicitor.⁶⁸

39 The Defendants also disputed the Plaintiff's suggestion that the decision to terminate his trusteeship had been reached without the requisite number of votes. In this regard the Defendants emphasised that Article 17(j) of the BTT

⁶⁵ Defendant's written submissions, para 7.

⁶⁶ Defendant's written submissions, para 26.

⁶⁷ Defendant's written submissions, para 30.

⁶⁸ Defendant's written submissions, para 30(d).

Constitution required that a decision of the general meeting be made by “simple majority of the members present *and voting*” (emphasis added). Only 13 of the members present had been eligible to vote because 25 of the members had recused themselves from voting. Of those 13 eligible members, they had unanimously voted to remove the Plaintiff as trustee.⁶⁹

40 In relation to the decision to terminate the Plaintiff’s membership in Bo Tien Temple, the Defendants argued that there had been no breach of natural justice. First, the Plaintiff had not been deprived of an opportunity to explain himself at the MC Meeting. Many of the members had encouraged the Plaintiff to state his case. He had attempted to explain himself at some junctures, but at other junctures he had been evasive and refused to engage meaningfully with the MC.⁷⁰ Secondly, the Defendants argued that the decision to terminate the Plaintiff’s membership had not been tainted by apparent bias. The mere fact that the five MC members who voted on the issue of the Plaintiff’s membership had also voted in favour of removing him as trustee at the 45th AGM did not disqualify them from voting at the MC Meeting.⁷¹ Finally, the mere presence of the 2nd and 4th defendants at the MC Meeting did not taint the decision with apparent bias, as the 2nd and 4th defendants had recused themselves from voting.

Issues to be determined

41 Broadly speaking, the issues and sub-issues to be determined were as follows:

⁶⁹ Defendant’s written submissions, para 39.

⁷⁰ Defendant’s written submissions paras 43–44.

⁷¹ Defendant’s written submissions, para 51.

(a) Whether the decision to terminate the Plaintiff's trusteeship was invalid.

(i) Whether the decision to terminate the Plaintiff's trusteeship was reached in breach of the rules of natural justice.

(ii) Whether the decision to terminate the Plaintiff's trusteeship was *ultra vires* the BTT Constitution.

(b) Whether the decision to terminate the Plaintiff's membership was invalid.

(i) Whether the decision to terminate the Plaintiff's membership was tainted by apparent bias.

(ii) Whether the decision to terminate the Plaintiff's trusteeship was *ultra vires* the BTT Constitution.

Decision and reasons

42 As a preliminary point, in coming to my decision I was conscious of the settled position that the courts' approach to societies like the Bo Tien Temple is to leave them to manage their own affairs. In *Kay Swee Pin v Singapore Island Country Club* [2008] 2 SLR(R) 802 ("*Kay Swee Pin*"), the Court of Appeal made the following remarks at [2]:

The traditional approach of the courts to social clubs is to leave such clubs to manage their own affairs. However, where a club expels a member, it may only do so in compliance with the rules of natural justice.

43 I note that the Bo Tien Temple is a religious organisation and strictly speaking not a "social club". However, I was of the view that the remarks in *Kay Swee Pin* were nevertheless applicable to the present facts. As stated by the

Court of Appeal in *Singapore Amateur Athletics Association v Haron bin Mundir* [1993] 3 SLR(R) 407 (“*Haron bin Mundir*”) at [57]:

The jurisdiction of the courts in reviewing the decisions of domestic tribunals is clearly of a limited nature. The decision of such a tribunal cannot be attacked on the ground that it is against the weight of the evidence. The function of the courts is to see that the rules of natural justice have been observed, and that the decision has been honestly arrived at. The court has no power to review the evidence for the purpose of deciding whether the tribunal came to a right conclusion.

44 It follows that my function was not to scrutinise the merits or correctness of the decisions reached by the general meeting and the MC of Bo Tien Temple. I was only concerned with whether or not these decisions had been reached in compliance with the rules of natural justice, and with the BTT Constitution.

Whether the decision to terminate the plaintiff’s trusteeship was invalid

Natural Justice

45 The Plaintiff’s claim that the decision to remove him as trustee breached the rules of natural justice was based on two points: first, there had been a breach of the *audi alteram partem* rule because the discussions concerning the termination of his trusteeship had been conducted in his absence; secondly, the decision was tainted by apparent bias (see [33] above). I will address these arguments in turn.

The alleged breach of the *audi alteram partem* rule

46 The *audi alteram partem* rule requires that the party liable to be directly affected by the outcome of the disciplinary proceedings (a) must have notice of the allegation(s) against him and (b) should be given a fair opportunity to be heard (*Kay Swee Pin* at [7]).

47 As for the first of these requirements, I was satisfied that the Plaintiff had notice of the allegations against him. He had been told that the termination of his trusteeship would be deliberated on at the 45th AGM via a letter on 28 April 2015. This was followed by the 5 May Letter (received by the Plaintiff on 6 May 2015) which set out in considerable detail the specific incidents and particulars which had allegedly “rendered [him] undesirable to continue as trustee” (see [16] above). Although the Plaintiff only received the 5 May Letter some three days before the 45th AGM, this fact must be seen in light of the history of this case, namely, that the general meeting of Bo Tien Temple had previously sought to remove the Plaintiff as trustee in 2012, which formed the basis of the dispute in OS 998/2014. Indeed Chong J had specifically noted in the Oral Judgment that the attempt to remove the Plaintiff as trustee was based in part on the “Ngor Ya” flag incident of 2004 and the Plaintiff’s intended publication of the Draft Book (see [13(a)] above). In view of this, the Plaintiff could not have been surprised by the allegations against him raised in the 5 May Letter. Thus, he had sufficient notice of the matters which would be discussed in connection with the proposed termination of his trusteeship at the 45th AGM.

48 As for the second aspect of the *audi alteram partem* rule (that the party subject to disciplinary proceedings must be given a fair opportunity to be heard), it was clear that the Plaintiff had not actually *been heard* in the course of the discussions concerning the proposed termination of his trusteeship. He had left the 45th AGM when those discussions commenced (see [19] above). The question was whether, bearing in mind that the Plaintiff had chosen to walk out of the 45th AGM, it could be said that he had been denied a fair opportunity to be heard. I was of the view that this question should be answered in the negative.

49 In this regard, I was guided by the case of *Fong Chee Keong v Professional Engineers Board, Singapore* [2016] 3 SLR 221 (“*Fong Chee Keong*”), which was cited by the Defendants.⁷² In that case, the appellant, Fong, appealed against a finding that he was guilty of a disciplinary charge by the Professional Engineers Board, Singapore (“PEB”). PEB had notified the appellant that they would conduct a disciplinary hearing on three occasions, but the appellant had postponed the hearing three times for tenuous reasons. On one occasion he had even claimed he was unable to attend because of a minor traffic accident that had actually occurred a week before the actual hearing date. The PEB finally decided to proceed with the hearing in the appellant’s absence, and found him guilty of the disciplinary charge. On appeal, the appellant argued that the PEB had denied him an opportunity to be heard. That argument was dismissed by Lee Siu Kin J, who made the following remarks (*Fong Chee Keong* at [28]):

While it is a trite rule of natural justice that no one should be condemned unheard, the right is not an unlimited one. Indeed, it was apparent from the narration of the facts above that the PEB was not only prepared to hear Fong, but had also bent over backwards to accommodate him.

...

Under these circumstances, it defies logic that the PEB would be under an obligation to postpone the matter indefinitely for someone who was seeking to evade it. Indeed, this is a case where Fong had been given every opportunity to be heard but had not made use of it. *The law requires the tribunal to give Fong an opportunity to be heard; it is up to Fong to make use of that opportunity. The court will, of course, examine the circumstances to decide whether a person has been given a reasonable opportunity to be heard*, including whether the tribunal was merely going through the motions. In the present case, however, I found that the PEB had acted with utmost reasonableness and it was Fong who had been unreasonable with his demands and deceptions.

[emphasis added]

⁷² Defendants’ written submissions, para 32.

50 I note that on the present facts, the Plaintiff has not acted dishonestly or nearly as unreasonably as the appellant in *Fong Chee Keong*. Nevertheless, the remarks of Lee J in *Fong Chee Keong* are applicable insofar as they make clear that the right to be heard is not an unlimited right, and that a body or tribunal’s obligation to give an individual a right to be heard is really an obligation to afford a *reasonable opportunity* for that individual to be heard. The individual’s right to be heard is breached, however, if the circumstances suggest that the tribunal “was merely going through the motions” (*Fong Chee Keong* at [28]).

51 On the facts, I was satisfied that the Plaintiff had been afforded a reasonable opportunity to be heard. He was fully aware that the members present at the 45th AGM would be discussing the termination of his trusteeship, but chose to leave the meeting when those discussions began. He did this despite both the 2nd and 4th defendants’ attempts to persuade him to stay to explain himself (see [19] above). Thus, like the appellant in *Fong Chee Keong*, the plaintiff had been given an opportunity to be heard, but chose not to exercise that opportunity. I was also satisfied that this was not a case where the general meeting was simply “going through the motions”. The discussions concerning the removal of the Plaintiff as trustee continued for about an hour before a vote was taken on the matter (see [20] above). I also note that at some point after the Plaintiff left the meeting, the 3rd defendant had tried to locate the Plaintiff on the premises of Bo Tien Temple because the members “[wanted] to know what [the Plaintiff] would like to address the general assembly regarding his posting (*sic*)” (see [22] above), but the Plaintiff could not be found. The minutes do not make clear whether the 3rd defendant had searched for the Plaintiff *before* or *after* the vote was taken, but what *is* clear is that those present at the 45th AGM were generally prepared to hear what the Plaintiff had to say. Accordingly, I found that the Plaintiff had been afforded a reasonable opportunity to be heard.

52 I note that the Plaintiff's stated reason for not wanting to participate in the inquiry was that he was unable to consult with his lawyer, who was abroad at the time. I thus considered whether it was reasonable for the MC and the general meeting to have proceeded with the discussions despite knowing that the Plaintiff had been unable to consult his lawyer. In this regard, I felt it was significant that, as a matter of fact, the Plaintiff knew that his trusteeship was proposed to be terminated on the basis that he was "believed to be guilty of conduct rendering it undesirable that he continues as a trustee" under Article 19d of the BTT Constitution. This had been explicitly stated as the basis for his proposed removal in the 5 May Letter (see [16] above). I agreed with the Defendants that this was primarily a factual issue and that there was no great need for the Plaintiff to consult with a lawyer. Indeed when the Plaintiff indicated his intention not to participate in the discussions via email, the 2nd defendant had *told* the Plaintiff that the meeting would deal with factual, and not legal points (see [18] above).

53 For similar reasons, I was unpersuaded by the Plaintiff's contention that even if he had remained at the 45th AGM throughout the discussions concerning his trusteeship, he would not have been adequately equipped to defend himself because his lawyer was out of the country at the time. In arguing this point, learned counsel for the Plaintiff, Mr Wijaya, relied heavily on excerpts from the Oral Judgment in which Chong J remarked that even if the Plaintiff had attended the 42nd AGM in 2012, he would not have been adequately equipped to defend himself.⁷³ Those remarks were made in an entirely different set of circumstances where the Plaintiff had not even been given notice of the particulars of the allegations against him (see [13(a)–13(b)] above). In contrast, prior to the 45th AGM, the Plaintiff had been given the full details of the specific incidents which

⁷³ Plaintiff's written submissions, paras 32–33.

formed the basis of his proposed removal as trustee. In light of this, I was unable to agree that he would not have been equipped to defend himself at the 45th AGM merely because his lawyer was out of the country at the material time.

54 I also note in passing that there is no inherent right at common law to be allowed legal representation when appearing before a domestic disciplinary tribunal (*Kok Seng Chong v Bukit Turf Club* [1992] 3 SLR(R) 722 at [58]), especially where the hearing or meeting deals with points of fact and not points of law (*R v Secretary of State for the Home Department, Ex parte Tarrant* [1985] QB 251 at 285). As I have already mentioned, whether the Plaintiff was “guilty of undesirable conduct rendering it undesirable that he continues as a trustee” was primarily a factual issue which did not raise any legal questions.

The alleged apparent bias

55 Coming to the issue of apparent bias, the applicable test in Singapore is whether a reasonable and fair minded person knowing all the relevant facts would have a reasonable suspicion or apprehension that a fair trial is not possible (see *Re Shankar Alan s/o Anant Kulkarni* [2007] 1 SLR(R) 85 at [103] and *Sim Yong Teng and another v Singapore Swimming Club* [2016] 2 SLR 489 at [62]).

56 Counsel for the Plaintiff argued that bias was apparent from (a) the fact that the decision to terminate the Plaintiff’s trusteeship was largely premised on the contents of the Draft Book, which had not been published and (b) the fact that the MC had informed the Plaintiff that his trusteeship was proposed to be terminated only six days after his trusteeship and membership had been reinstated. The suggestion appeared to be that there was some form of

prejudgment, which has been recognised as a form of apparent bias (*Kay Swee Pin* at [65]). I was not persuaded by these arguments.

57 As I have mentioned, my role was not to scrutinise the merits and/or correctness of the decision to terminate the Plaintiff's trusteeship, especially given that Article 19(d) of the BTT Constitution empowers the general meeting to remove a trustee "in its absolute discretion" (see [6] above). The fact that the decision was premised on the Plaintiff's intended publication of the Draft Book in 2011 did not, in itself, suggest any kind of bias or impartiality or any other breach of natural justice. Counsel for the Plaintiff was at pains to emphasise that the Draft Book had not been published, but I failed to see the relevance of this. The general meeting of Bo Tien Temple appears to have found it sufficient to constitute a grounds for removal that the Plaintiff had written the Draft Book *in the first place*, whether or not he had published it. It was not for this Court to judge whether that decision was correct or meritorious. Ultimately, the mere fact that the grounds for the proposed termination of the Plaintiff's trusteeship were largely premised on the contents of an unpublished Draft Book would not give a fair minded person a reasonable suspicion that a fair trial was not possible.

58 Counsel for the Plaintiff also made much of the fact that there were only six days between the reinstatement of the Plaintiff's trusteeship and the time when the MC informed the Plaintiff that the general meeting of Bo Tien Temple would be considering terminating his trusteeship at the 45th AGM. In his words, the problem was that it was "the same old issues that they were rehashing".⁷⁴ Yet, in my view, this in itself would not suggest any prejudgment or bias to a reasonable and fair minded person. It was a fact that the incidents

⁷⁴ Certified Transcript for 30 March 2017, p 10, line 14.

which formed the basis for the Plaintiff's proposed removal as trustee had happened quite some time in the past (from as early as 2004 to the latest incident in 2011). It seems that, as far as the general meeting of Bo Tien Temple were concerned, those incidents had not become less relevant considerations despite the lapse of time since they had occurred. Again, it was not for this Court to judge the merits of such a view. The members and management were fully entitled to reconsider removing the Plaintiff soon after he had been reinstated as a member on the basis of his conduct in the past. They were certainly not obligated to wait for any particular period of time to elapse, or for the Plaintiff to engage in fresh conduct rendering him "undesirable" as a trustee before they could consider whether his trusteeship should be terminated.

59 Finally, it was also argued that the decision was tainted by apparent bias by virtue of the 4th defendant's involvement in the discussions concerning the proposal to remove the Plaintiff as trustee. As I understood it, the point was that the 4th defendant had a personal interest in the matter because he had been involved in many of the incidents that were discussed as the basis for the Plaintiff's proposed removal, such as the intended publication of the Draft Book and the "Ngor Ya" flag incident.

60 I was unpersuaded by this argument. To begin with, counsel for the Plaintiff's submission that the 4th defendant was "procedurally involved in the whole thing" was something of an overstatement. The minutes of the 45th AGM reflect that the 4th defendant had spoken four times in the course of the discussions concerning the proposal to terminate the Plaintiff's trusteeship.⁷⁵ The first time he spoke, he introduced the topic by updating the general meeting on the outcome of OS 998/2014 and summarizing Chong J's findings. The

⁷⁵ Plaintiff's affidavit dated 11 November 2016, Exhibit LDK-19, pp 178-180.

second and third times the 4th defendant spoke, he did so to deny the truth of some of the allegations that were raised in the Draft Book. The fourth time the 4th defendant spoke, he reminded the members present at the general meeting that those who had an interest in the matter should recuse themselves from voting (see [20] above). As a whole, given the level of the 4th defendant's involvement in the discussions, I was not convinced that a reasonable and fair minded person would have apprehended that a fair hearing was not possible for the Plaintiff. Further, while the 4th defendant had clearly participated in the discussions, ultimately the decision was made by those who voted on the matter. The 4th defendant, in light of his personal history with the Plaintiff, had abstained from voting and engaging in that decision-making. I did not think it could be said that the decision was infected by apparent bias by dint of the 4th defendant's presence and/or participation in the 45th AGM.

61 For the above reasons, I was not convinced that the decision to terminate the Plaintiff's trusteeship had been reached in a manner that breached the rules of natural justice. There was neither a denial of the Plaintiff's right to be heard, nor any tainting of the decision by apparent bias.

Ultra Vires

62 The Plaintiff also contended that the decision to remove him as trustee was not passed with the number of votes required by Article 17(j) of the BTT Constitution. I dismissed this argument without hesitation. As highlighted by the Defendants, Article 17(j) states that the decision of the general meeting is to be exercised by simple majority of the members *present and voting*. Only 13 members were "present *and voting*" because the other members had recused themselves. Four members voted by proxy, which is explicitly permitted under Article 17(d) of the BTT Constitution (see [7] above). All 17 members voted

in favour of removing the Plaintiff as trustee. Even if the term “present and voting” were taken to exclude proxy votes, the 13 members present and voting voted unanimously in favour of removing the Plaintiff as trustee. Thus, there is no doubt that the resolution to remove the Plaintiff as trustee was validly passed in accordance with Article 17(j) of the BTT Constitution.

Whether the decision to terminate the plaintiff’s membership was invalid

The alleged apparent bias

63 I turn now to discuss the MC’s decision to terminate the Plaintiff’s membership. I reiterate once again that the applicable test is whether a reasonable and fair minded person knowing all the relevant facts would have a reasonable suspicion or apprehension that a fair trial is not possible (see *Re Shankar Alan s/o Anant Kulkarni* [2007] 1 SLR(R) 85 at [103] and *Sim Yong Teng and another v Singapore Swimming Club* [2016] 2 SLR 489 at [62]. Bearing this test in mind, I was of the view that the Plaintiff’s contentions were without merit.

64 The first reason that the Plaintiff argued that the decision to terminate his membership was tainted with apparent bias was that the MC members who voted on this decision had previously voted to remove the Plaintiff as trustee at the 45th AGM. In assessing this argument, I found that the remarks of Lord Bingham CJ in *Locabail (UK) Ltd v Bayfield Properties Ltd* [2000] QB 451 (“*Locabail*”) at [25] were instructive:

We cannot ... conceive of circumstances in which an objection could be soundly based on ... *previous judicial decisions*. ... The mere fact that a judge, earlier in the same case or in a *previous case*, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection.

[emphasis added]

65 It follows that the mere fact that the four members of the MC who voted to terminate the Plaintiff's membership had also previously voted to remove him as trustee was insufficient to raise a reasonable suspicion of bias in the mind of a reasonable and fair minded person.

66 Although the Plaintiff did not frame his argument in this manner, for the sake of completeness I also considered whether there was any apparent bias arising from the fact that the 5th defendant had made certain remarks about the Plaintiff at the 45th AGM in the discussions concerning the termination of the Plaintiff's trusteeship. The minutes record that:⁷⁶

[the 5th defendant] expressed to members that he did not have anything personal against [the plaintiff] but he personally felt that as a trustee and an old member of Bo Tien Temple, [the plaintiff] should uphold the trust that he could give to all the members. But the "draft book" written by [the plaintiff] contained many untrue events showing that he was not honest. He was also not rationale (*sic*) and logical to put pen to paper about fellow members' personal life whether they are true or not.

67 Having regard to the tone of these remarks, I was not convinced that they were sufficient to give rise to a reasonable suspicion of bias. I note that in *Locabail* at [25] Lord Bingham CJ accepted that a danger of bias might be thought to arise "if on any question at issue in the proceedings before him the judge had expressed views ... in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind". However, the 5th defendant's remarks at the 45th AGM were not in "such extreme and unbalanced terms" as to give a reasonable and fair minded person an apprehension that a fair hearing was not possible for the Plaintiff on the issue of his membership.

⁷⁶ Plaintiff's affidavit dated 11 November 2017, Exhibit LDK-19, p 180.

68 The Plaintiff also argued that the mere presence of the 2nd and 4th defendants at the MC Meeting tainted the decision to terminate his membership with apparent bias. I did not agree. Crucially, the 2nd and 4th defendants were participating in the inquiry in their capacity as witnesses. They were not there in the capacity of adjudicators who had any power to vote or decide on the termination of the Plaintiff’s membership.

The alleged breach of Article 8(b) of the BTT Constitution

69 Finally, the Plaintiff suggested that there had been a breach of Article 8(b) of the BTT Constitution because the MC had failed to take into account “relevant considerations”. I reproduce the full text of Article 8(b) for convenience:

Proceedings before the Management Committee shall be as informal as possible and consistently with fairness, all decisions as to the procedure shall be at the discretion of the Management Committee.

70 The Plaintiff argued that although the 3rd defendant allowed him to offer some explanation in respect of the issue concerning the removal of the “Ngor Ya” flag, the other members of the MC who attended the inquiry were “not of the same mind”.⁷⁷ In support of this point, the Plaintiff’s written submissions highlight several portions of the Plaintiff’s transcript of the MC Meeting in which various members had told the Plaintiff that they did not want to hear his explanations.⁷⁸

71 I was of the opinion that the Plaintiff had not made out a case for any breach of Article 8(b) of the BTT Constitution. As I have mentioned (see [28] above), I acknowledge that the Plaintiff was indeed interrupted at several

⁷⁷ Plaintiff’s written submissions, para 52.

⁷⁸ Plaintiff’s written submissions, para 53.

junctures and told by certain members that they did not wish to hear his explanations, or that he was speaking of irrelevant matters. That seemed to be a consequence of the fact that, in line with Article 8(b), the proceedings before the MC were indeed “as informal as possible”. But the mere fact that the Plaintiff had been interrupted, and/or that the Plaintiff met with resistance from some members when he wanted to state his case, did not mean that there had been a breach of the requirement in Article 8(b) that the proceedings were to be “consistently (*sic*) with fairness”. In fact, despite the arguments that arose in the course of the proceedings, the Plaintiff managed to state in considerable detail his version of the events and his position relating to the “Ngor Ya” issue.⁷⁹ He also managed to state that, with regard to the Name-calling Incident, his position was that he had never used the word “puppet”,⁸⁰ and that with regard to the Draft Book, his position was that the management should “organise something for us to discuss in a very friendly way” to address the inaccuracies within it.⁸¹ Those arguments did not find favour with the members of the MC who were deciding whether the Plaintiff should be removed as a member, but that does not in itself constitute “unfairness” in breach of Article 8(b). For completeness’ sake, and even though this specific provision was not raised in argument, I also found that there had been no breach of Article 8(a)(ii) of the BTT Constitution, which requires the MC to “give due consideration to any explanation [a member] may make” when considering his expulsion.

⁷⁹ Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-27, pp 228–230.

⁸⁰ Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-27, pp 236–237.

⁸¹ Plaintiff’s affidavit dated 11 November 2016, Exhibit LDK-27, pp 238–239.

Conclusion

72 For the foregoing reasons, I find that the decisions to terminate the Plaintiff's trusteeship at the 45th AGM and to terminate the Plaintiff's membership at the MC meeting on 3 July 2015 were both valid. I ordered the Plaintiff to pay the Defendants \$10,000 in costs plus reasonable disbursements.

George Wei
Judge

Sivanathan Wijaya Ravana (R S Wijaya & Co) for the plaintiff;
Ee Hock Hoe Adrian and Chew Yun Ping Joanne (Ramdas & Wong)
for the defendants.
