HCMP 496/2017

[2023] HKCFI 1392

**IN THE HIGH COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

**COURT OF FIRST INSTANCE**

**MISCELLANEOUS PROCEEDINGS NO 496 OF 2017**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

IN THE MATTER OF seeking relief under Section 57A(b)(ii) of Trustee Ordinance, Cap 29

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

BETWEEN

|  |  |
| --- | --- |
| 釋照月 | Plaintiff |
| and | |
| SECRETARY FOR JUSTICE | 1st Defendant |
| SECRETARY FOR HOME AFFAIRS | 2nd Defendant |
| AU-YEUNG SHUN MEI and POON KIT FONG, the Manageresses of MAN WA TONG (CHUK LAM SIM YUEN), acting for MAN WA TONG, all members of its managing board and its members | 3rd Defendants |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

HCA 595/2019

**IN THE HIGH COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

**COURT OF FIRST INSTANCE**

**ACTION NO 595 OF 2019**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

BETWEEN

|  |  |
| --- | --- |
| AU YEUNG SHUN MEI (歐陽順美) & POON KIT FONG (潘潔芳) the manageresses of ‘MAN WAH TONG  (曼華堂)’, a Religious Tong | Plaintiffs |
| and | |
| JAN FUNG (詹豐) | 1st Defendant |
| PONG CHUNG WAI (龐宗懷) | 2nd Defendant |
| THE SECRETARY FOR JUSTICE | 3rd Defendant |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Tried together with HCMP 496/2017 as lead action

pursuant to the Order of Hon B Chu J dated 18 June 2021)

Before: Hon B Chu J in Court

Dates of Trial: 31 August to 20 September, and 30 November 2022

Date of Judgment: 30 May 2023

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

JUDGMENT

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Table of Contents

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Page

[A. INTRODUCTION 6](#_Toc135129396)

[B. BACKGROUND 15](#_Toc135129397)

[B.1 History of the Tong/Temple 15](#_Toc135129398)

[B.2 Events leading to the present actions 30](#_Toc135129399)

[C. THE WITNESSES 31](#_Toc135129400)

[D. CATEGORIES OF THE DISPUTED ISSUES 32](#_Toc135129401)

[D.1 Category I – Locus Standi Issues 32](#_Toc135129402)

[D.2 Category II – Mismanagement of General Affairs of the Tong 33](#_Toc135129403)

[D.3 Category III – Mismanagement of Financial Affairs of the Tong 33](#_Toc135129404)

[D.4 Category IV – Qualification of the members and/or manageresses of the Tong 33](#_Toc135129405)

[D.5 Category V – Better Administration Order/BAO 34](#_Toc135129406)

[D.6 Category VI – Tong’s allegations against JP 34](#_Toc135129407)

[E. CATEGORY I - THE LOCUS STANDI ISSUES (ISSUE 1) 34](#_Toc135129408)

[E.1 The proper approach 34](#_Toc135129409)

[E.2 Whether the Tong is now estopped from raising the issues on Sik’s locus standi 37](#_Toc135129410)

[E.3 Sik’s Case 41](#_Toc135129411)

[E.4 The Tong’s case 43](#_Toc135129412)

[E.5 Relationship between the Tong/Temple and the Guan Yin Grotto 44](#_Toc135129413)

[E.6 Relationship between the Tong/Temple and the Hui Wan Memorial Hall/HWMH Limited 51](#_Toc135129414)

[E.7 Attending /hosting Buddhist events at the Temple 54](#_Toc135129415)

[E.8 Temporary Residence Arrangement for members of Guan Yin Grotto and Hui Wan Memorial Hall 57](#_Toc135129416)

[E.9 The irrevocable licence over the use of part of the Land and the right of way over the Yellow Road 58](#_Toc135129417)

[E.10 Sik being approached by Jan and other believers at the Temple 59](#_Toc135129418)

[E.11 Conclusion on Sik’s locus standi 60](#_Toc135129419)

[E.12 Whether Jan and Pong have the locus standi to sue or to seek relief under section 57A (a)(iii) of the Trustee Ordinance in the 595 Action 63](#_Toc135129420)

[F. CATEGORY II - THE MISMANAGEMENT OF GENERAL AFFAIRS (ISSUES 7, 8, 11, 13) 63](#_Toc135129421)

[F.1 The Goo Tai Deposits (Issue 11) 63](#_Toc135129422)

[F.1.1. Generally 64](#_Toc135129423)

[F.1.2. Allegations of Jan and Pong 67](#_Toc135129424)

[F.1.3. Madam Cheng’s deposit 67](#_Toc135129425)

[F.1.4. Madam Lai’s deposit 72](#_Toc135129426)

[F.1.5. Discussion 75](#_Toc135129427)

[F.2 The termination of the telephone line 2417 3605 (Issue 7) 79](#_Toc135129428)

[F.3 Whether the Tong was entitled to refuse Chai Ping and Sik from their continuous occupation of a cubicle at a building at the Temple (Issue 8) 81](#_Toc135129429)

[F.4 Blockage of the road to Fu Yung Shan (Issue 13) 88](#_Toc135129430)

[F.5 Conclusion on Category II 93](#_Toc135129431)

[G. CATEGORY III - MISMANAGMENT OF FINANCIAL AFFAIRS (ISSUES 9, 10, 12, 14) 94](#_Toc135129432)

[G.1 Whether the existing members and managers of the Tong were entitled to incorporate and operate Graciously Affection and CLSY Limited in the manner that they were operated (Issue 9) 94](#_Toc135129433)

[G.1.1. Graciously Affection 94](#_Toc135129434)

[G.1.2. Whether the Remedial Works of the Slope of Guan Yin Grotto was carried out improperly (Issue 12) 104](#_Toc135129435)

[G.1.3. Conclusion on Graciously Affection 110](#_Toc135129436)

[G.2 CLSY Limited 112](#_Toc135129437)

[G.3 Any irregularity in the use of the funds of the Tong during the suspension of the SCB Account (Issue 10) 113](#_Toc135129438)

[G.4 Whether the Tong wrongfully used the Tong’s funds to invest in securities (Issue 14) 117](#_Toc135129439)

[H. CATEGORY IV – QUALIFICATION OF THE MEMBERS AND/OR MANAGERESSES – (ISSUES 2, 4-6, AND 15) 117](#_Toc135129440)

[H.1 The Abridged Regulations 117](#_Toc135129441)

[H.2 Whether the existing members and manageresses of the Tong were/are qualified to take up their current posts (Issue 4) 120](#_Toc135129442)

[H.3 Should SHA cancel the appointment of AuYeung and Poon as manageresses of the Tong (Issue 2) 124](#_Toc135129443)

[H.4 Whether the existing members of the Tong were entitled to pass a resolution to invite the 3 Gentlemen to become members of the Tong (Issue 5) 129](#_Toc135129444)

[H.5 Whether the Two Nuns were unlawfully evicted (Issue 15) 130](#_Toc135129445)

[H.6 Whether the Abridged Regulations require any amendment (Issue 6) 134](#_Toc135129446)

[I. CATERGORY V – WHETHER THE SJ SHOULD INTERVENE AND WHETHER A BAO SHOULD BE GRANTED (ISSUE 3) 135](#_Toc135129447)

[J. CATEGORY VI - THE TONG’S ALLEGATIONS AGAINST JAN & PONG (ISSUES 17-21, 16) 137](#_Toc135129448)

[J.1 Generally 137](#_Toc135129449)

[J.2 Whether Jan had breached her duties as an assistant and an accounting clerk of the Tong in the cause of her employment (Issue 17) 138](#_Toc135129450)

[J.2.1. Whether Jan was an employee of the Tong 138](#_Toc135129451)

[J.2.2. Jan’s duties 142](#_Toc135129452)

[J.3 Whether Jan was entitled to withhold the ledgers, books and according documents from the Tong (Issue 21) 150](#_Toc135129453)

[J.4 Whether Jan and Pong had been in wrongful interference with management of the business and affairs of the Tong (Issue 20) 151](#_Toc135129454)

[J.5 Whether Pong had, in the course of working as a voluntary worker for the Tong misappropriated the ‘salary’ payable to the master of the hall’ (堂主) (Issue 18) 156](#_Toc135129455)

[J.6 Whether Pong had been in wrongful occupation of part of the Yung Chau Memorial Hall (Issue 19) 159](#_Toc135129456)

[J.7 Whether any part of the Tong’s claim was time-barred (Issue 16) 162](#_Toc135129457)

[K. ORDERS 162](#_Toc135129458)

1. INTRODUCTION

These two sets of proceedings HCMP 496 of 2017 (“**496 Action**”) and HCA 595 of 2019 (“**595 Action**”) concern an unincorporated association known as Man Wa Tong (曼華堂) (“**Tong**”), which is the registered owner of a piece of land of some 400,000 sq ft known as the Remaining Portion of Lot 1255 (Lot 1255RP) in Demarcation District 453[[1]](#footnote-1) situated on Fu Yung Shan (芙蓉山) in Tsuen Wan in the New Territories (“**Land**”).

On the Land stands a Buddhist temple called Chuk Lam Sim Yuen (竹林禪院) with affiliated buildings erected over the years and now expanded to the present complex (collectively called Chuk Lam Sim Yuen (竹林禪院) or referred to herein simply as “**Temple**”). The name Chuk Lam Sim Yuen is said to be an alias of the Tong[[2]](#footnote-2). Within the Temple complex, there stands amongst other buildings a memorial hall called 融秋和尚紀念堂 (“**Yung Chau** **Memorial Hall**”) erected in memory of the monk Sik Yung Chau 釋融秋法師 (personal name Pong Yat Dong 龐日東) (“**Yung Chau**”). According to the information in 2000s on the website of the Temple (“**Website**”) and produced by the Tong, Yung Chau was the Temple’s founder (開山祖師)[[3]](#footnote-3) (“**Founder**”).

By the time of the trial, it is no longer disputed that the Tong is a religious t’ong and holds its assets on a charitable trust. The main protagonists in the present two actions are on one side, the Tong and those said to be its current members and on the other side, a monk Sik Chiu Yuet (釋照月) (personal name 陸鑑清) (“**Sik**”) and two family members of the Founder Yung Chau.

The 4 women who are currently said to be registered members of the Tong are (i) Au-Yeung Shun Mei (歐陽順美) (“**AuYeung**”), (ii) Poon Kit Fong (潘潔芳) (“**Poon**”), (iii) Wong Mee Chun Eallen (王美珍) (“**Wong**”) and (iv) Lui Oi Ha (雷靄霞) (“**Lui**”). AuYeung and Poon are currently also the registered manageresses of the Tong (司理) under section 15 of the New Territories Ordinance, Cap 97.

Yung Chau’s family members involved in the two actions are (i) Yung Chau’s daughter in law Jan Fung (詹豐) (“**Jan**”), whose husband was Yung Chau’s eldest son Pong Kwong Wai (龐光懷) ( now deceased) and (ii) one of Yung Chau’s younger sons Pong Chung Wai (龐宗懷) (“**Pong**”) (for ease of reference, Jan and Pong may be referred to in this judgment collectively as “**JP**”). It was the Tong’s case that Jan was no more than an employee of the Tong, whereas Jan denied this and according to her, she had been involved in the management and the affairs of the Tong/Temple. These disputes will be considered later in this judgment.

As seen in an extract from the Lot Index Plan of the Lands Department (“**Lot Index** **Plan**”)[[4]](#footnote-4), Fu Yung Shan is a large area with various other religious institutions/structures in the vicinity of the Temple[[5]](#footnote-5). The evidence showed that there were originally two grottoes, one called Kwun Yam Ngam or Guan Yin Grotto (觀音巖), which lies partly on the Land and partly on neighbouring lots of the Land not owned by the Tong[[6]](#footnote-6), and the other called Miu Lin Grotto (妙蓮洞)[[7]](#footnote-7) (collectively referred to herein as “**Guan Yin Grotto**”). Guan Yin Grotto was said to be gradually built up in the mid 1950s to 1960s by the late Sik Luen Cham (釋倫參) (“**Luen Cham**”). Within the vicinity and further down the slope of the Guan Yin Grotto, there has been erected a memorial hall called Hui Wan Memorial Hall (虛雲和尚紀念堂) (“**Hui Wan Memorial Hall**”).

After the passing away of Sik Luen Cham in about 1988, a Buddhist nun called Shih Chao Jung or Sik Chiu Yung (釋照融) (“**Chao Jung**”) became the abbot of the Guan Ying Grotto (住持) (“**Abbot**”)[[8]](#footnote-8). At an open ceremony on 23 July 2017, it was announced by Chao Jung that the management of the Guan Yin Grotto had been handed over to Sik, who has since said to become the Abbot of the Guan Yin Grotto[[9]](#footnote-9). Sik is also a director of a company limited by guarantee called Hui Wan Memorial Hall Limited (虛雲和尚紀念堂有限公司) (“**HWMH Limited**”) which is operating and managing the Hui Wan Memorial Hall where Sik presently resides with his master Chai Ping (濟平法師) (“**Chai Ping**”) who is the principal monk or Abbot of the Hui Wan Memorial Hall.

The 496 Action was commenced on 6 March 2017 by Sik against the Secretary for Justice (“**SJ**”), the Secretary for Home Affairs (“**SHA**”), and the Tong respectively as the 1st, 2nd and 3rd defendants. Sik is essentially seeking a “better administration order” of the Tong under s 57A(b)(i) of the Trustee Ordinance (Cap 29) (“**BAO**”).

An issue was raised by the Tong in the early stage of the 496 Action as to whether Sik had the *locus standi* to seek a BAO and the Tong issued a summons on 25 July 2017 to strike out Sik’s originating summons in the 496 Action (“**Strikeout Summons**”). The Strikeout Summons was at that time supported by the SJ and the SHA[[10]](#footnote-10). On 6 September 2017, Lisa Wong J (“**Judge**”) handed down a decision striking out Sik’s originating summons and dismissing his claims (“**Strikeout Decision**”)[[11]](#footnote-11). Sik’s subsequent appeal was allowed by the Court of Appeal on 10 August 2018 in CACV 221/2017. The Judge’s order was set aside and the Strikeout Summons was remitted to the Judge for reconsideration (“**CA Judgment**”)[[12]](#footnote-12).

Thereafter, on 4 April 2019, the Tong commenced the 595 Action against Jan as 1st defendant and Pong as 2nd defendant, and SJ as the 3rd defendant seeking, amongst other things[[13]](#footnote-13):

1. an order of possession of that part of the Land known as the Yung Chau Memorial Hall more particularly coloured pink (“**Pink Portion**”)[[14]](#footnote-14) and mesne profits of HKD 30,000 per month since August 2017, against Jan and Pong jointly and severally;
2. a delivery up order against Jan for various financial documents and chops of the Tong’s, an order for account and an order for enquiry;
3. an order for a BAO of the Tong upon recommendation or consultation of SJ in the latter’s capacity as protector of all public trust.

In the 595 Action, the Tong obtained summary judgment on 1 December 2020, for amongst other things, recovery of possession of the Pink Portion from Jan and Pong who then appealed (“**Summary Judgment Order**”)[[15]](#footnote-15). Pursuant to a decision on 20 May 2021 by Queeny Au-Yeung J, Jan’s appeal was dismissed but Pong’s appeal was allowed (“**Summary Judgment Decision**”)[[16]](#footnote-16). Pong was granted unconditional leave to defend on the alleged irrevocable licence for him to reside in the Yung Chau Memorial Hall during his life.

The two actions were ordered on 18 June 2021 to be tried together, with the 496 Action being the lead action.

JP had sought leave to appeal against the Summary Judgment Decision but was refused on 22 October 2021. Thereafter, JP had applied to this Court to amend their defence and counterclaim, which was allowed in part by this Court with reasons handed down on 26 July 2022[[17]](#footnote-17). SJ and SHA had applied for leave for their attendance at trial to be excused. As seen in a decision handed down by this Court on 27 July 2022, the Court declined to grant such leave[[18]](#footnote-18).

There have been a number of actions involving Sik/Chao Jung/JP and the Tong. More relevant to the present two actions was HCA 10388/2000 commenced by the Tong as plaintiff against Chao Jung and other persons in occupation of the Land as defendants (“**10388 Action**”). In the 10388 Action, the Tong had sought a declaration that Chao Jung and others had been in occupation of that part of the Land taken up by the Guan Yin Grotto with the licence of the Tong which had been terminated and the Tong sought an order for vacant possession against Chao Jung. Chao Jung opposed the action and counterclaimed that she was entitled to the disputed portions of the Land by adverse possession/proprietary estoppel and also a right of way over an access road known as the “yellow road” which leads from a public round up the slope to the Guan Yin Grotto (“**Yellow Road**”)[[19]](#footnote-19).

The 10388 Action was fixed for trial in October 2006 but in the course of the trial, the Tong and Chao Jung reached a compromise and terms of their agreement were embodied in the schedule to the Tomlin order dated 27 October 2006 (“**Tomlin Order**”)[[20]](#footnote-20). Essentially, Chao Jung, as Abbot of the Guan Yin Grotto, and her designated successor after her death, was given (i) an irrevocable contractual licence by the Tong to occupy exclusively and use the “orange land” and “pink land” (defined therein) and (ii) an irrevocable right of way over the Yellow Road for her visitors and worshippers visiting the Guan Yin Temple. Further, both Chao Jung and the Tong agreed that during the entire subsisting period of the right of way the then existing road sign(s) and gate(s) in relation to the Guan Yin Grotto shall remain unchanged.

After the Tomlin Order, the Tong and the Guan Yin Grotto remained at peace over the access of the Yellow Road until March 2018 when the Tong began to place bollards and concrete blocks at a point in the first part of the Yellow Road, blocking vehicular traffic and on 6 April 2018, Chao Jung issued a summons to restrain the Tong from obstructing the road[[21]](#footnote-21). Although this summons was resolved initially before this Court on 13 April 2018 by an undertaking on the part of Tong, in December 2018, the Tong set up a boom barrier gate in the first part of the Yellow Road near the incinerator with a lock and the Tong controlled the key. This then sparked off a summons issued by Sik on 13 February 2019 seeking directions and interpretation of the terms of the relevant clause of the agreement in the Tomlin Order. In June 2019, the Tong then installed an electrical boom barrier gate and on 25 June 2019, Chao Jung took out a further summons seeking injunctive relief against the Tong. Eventually, all this resulted in a decision dated 11 March 2020 by G Lam J, as he then was, stating that the right of way does, amongst other things, include the right of vehicular access and that the Tong is obliged to keep the Yellow Road clear and free from obstruction for both pedestrian and vehicular access (“**Lam Decision**”)[[22]](#footnote-22). The Tong had lodged an appeal against the Lam Decision and was directed by the Court of Appeal to serve the notice of appeal on Sik, which the Tong had failed to do initially[[23]](#footnote-23). As at the time of the trial, so far as this Court was aware, no hearing date had been fixed for the Tong’s appeal.

Sik has acted in person throughout the present two actions and also the 10388 Action. Counsel Mr KM Chong and Ms Vivian Li appeared for the Tong in the present trial, Counsel Mr Clark Wang appeared for Jan and Pong and Counsel Mr Ken To appeared for SJ and SHA.

1. BACKGROUND

The background leading to these actions and the 10388 Action can be gleaned from the various decisions and the CA Judgment mentioned above.

* 1. History of the Tong/Temple

There is now no dispute that the Tong has been recognized by the Tsuen Wan District Office as a “t’ong” (堂) under section 15 of the New Territories Ordinance, Cap 97 for the purpose of registration of its managers to hold land[[24]](#footnote-24).

The original government records and/or registration documents of the manager/s of the Tong had been lost during the World War II. The earliest registration record for purchase of land at the Land Registry was of a registered memorial dated 20 February 1932 indicating that on that date, Yung Chau purchased Lot 178 in DD 453 in his personal name of Pong Yat Tung (龐日東)[[25]](#footnote-25). Then, as shown on a registered memorial dated 22 April 1932, Yung Chau bought another Lot 148 in DD 453 in his personal name of Pong Yat Tung[[26]](#footnote-26).

1. Thereafter, on 4 June 1932, 5 lots namely Lot Nos 1138, 1138 (1st ext), 1138 (2nd ext), and 1138 (3rd ext), 1139 in DD 453 were acquired by *Yung Chau* *as manager of the Tong*[[27]](#footnote-27). On 12 January 1935, Lot 1140 in DD 453 was purchased by *Yung Chau* *as manager for the Tong*[[28]](#footnote-28). On 20 June 1938, 5 further lots, namely Lots 141, 142, 145, 146 and 147 were purchased by the Tong through its then two manageresses Mau Fat (茂法) (also known as Ng Mau Fat (伍茂法) (“**Mau Fat**”) and Mau Wan (茂雲)) (also known as Sik Fuen Wai (釋寬慧) or Cheung Mau-Wan) (“**Mau Wan**”)[[29]](#footnote-29).
2. On 15 July 1949, Mau Wan was reported to have resigned from being a manageress of the Tong on account of her old age and that Yee Ting (意亭) (“**Yee Ting**”) was appointed in her place[[30]](#footnote-30). It would appear that by then, the Tong had further acquired Lots 1172, 1173 in DD 453, as seen in a “property list” registered at the then District Office, New Territories at the time of the appointment of Yee Ting[[31]](#footnote-31). On 9 September 1949, Lot 1195 in DD 473 was purchased by Mau Fat and Yee Ting as manageresses for the Tong[[32]](#footnote-32).

On 9 July 1953, the then manageresses of the Tong, Mau Fat and Yee Ting, executed a surrender of all those lots held by the Tong at the time (totalling 15), namely Lots 1138, 1138 (1st Ext), 1138 (2nd Ext), 1138(3rd Ext), 1139, 141, 142, 145, 146, 147, 1172, 1195, 1197, 1140 & 1173 in exchange for the New Grant no 3297 dated 9 July 1953 for Lot Nos 1207, 1208 and 1209 in DD453 subject to the conditions therein[[33]](#footnote-33).

Thereafter, on 22 May 1964, Yung Chau transferred the 2 Lots held by him in his personal name to the Tong by way of gift at nil consideration.

By a New Grant No 4951 registered 25 May 1971 and subject to the terms and conditions therein, the total 5 lots (namely Lots 1207, 1208, 1209 and Lots 148, 178) were then surrendered to the Government in exchange for the new lot number 1255RP, which has since remained the lot number of the Land[[34]](#footnote-34).

By 25 May 1971, the manageresses of the Tong had changed to a nun Sik Wang Kwong (釋宏光) also known as Yee Ming (意明) (“**Wang Kwong**”)[[35]](#footnote-35) in place of Yee Ting and another nun Yee Har (意霞) (“**Yee Har**”)[[36]](#footnote-36). It appeared that Yee Har was appointed to replace Mau Fat as one of the manageresses[[37]](#footnote-37). Thereafter, as seen in a registered memorial dated 5 January 1976. Yee Har was recorded to be the “retired manageress” and Poon Kam Lan (潘錦蘭) also known as Sik Kwong Yuen (釋光圓) (“**Kwong Yuen**”) was appointed to replace Yee Har as manageress. Thereafter, Wang Kwong and Kwong Yuen were the two manageresses of the Tong. They remained to be the manageresses at the time when they made their respective witness statements in the 10388 Action.

From the above history of acquisition of the various parcels of land, it would appear that the Tong had been established and was in existence latest by 4 June 1932 with its manager/s duly appointed and registered under section 15 of the New Territories Ordinance[[38]](#footnote-38). Although the initial two lots, Lot 148 and 178 were purchased in Yung Chau’s personal name, this was probably prior to the formal setting up of the Tong. It was not disputed that the two lots were purchased for the purpose of building a temple and/or for promoting Buddhism and there was no evidence that Yung Chau held any personal money/assets, other than money received from donations, for the acquisition of the two lots[[39]](#footnote-39). In any event, there was no dispute at the trial that the Land and/or other assets of the Tong were/are now held by the Tong on a charitable trust.

It was also not disputed Yung Chau was the first appointed and registered manager of the Tong, and that he was holding that position on 4 June 1932, but latest by 20 June 1938, Yung Chau was no longer a registered manager of the Tong.

From the information on the Website[[40]](#footnote-40), Yung Chau was originally from Bohai in Guangxi in Mainland China, and he became a monk at a young age. In 1924, after returning to Guangzhou upon completing his studies in Nanjing, he had helped to set up the Hua Nam Buddhist College (華南佛學院) in Guangzhou. Thereafter, Yung Chau was said to have received enlightment to seek out “blessed land” for premises to spread and promote Buddhism. In 1928 he came to Hong Kong and found the present site on Fu Yung Shan, and that Yung Chau and his disciples initially erected two or three thatched buildings and later obtained assistance in erecting a proper hall for worship called “浮屠寶殿” and two blocks for dormitories. The hall was completed in 1932, and was formally named Chuk Lam Sim Yuen. Yung Chau invited a senior monk to be its 1st Abbot and later another senior monk to succeed the 1st Abbot as the 2nd Abbot of the Temple. Yung Chau only became the 3rd Abbot of the Temple after the 2nd Abbot. According to the evidence from Tong’s side, Yung Chau was already the Abbot in 1929[[41]](#footnote-41).

The Temple was officially opened (開光) on 20 November 1932, which was prior to the outbreak of the World War II. This event was reported in those 1932 newspapers cuttings produced by Sik/JP, in which Yung Chau was referred to as the Abbot[[42]](#footnote-42). As further seen in a newspaper cutting on 24 November 1938, the Temple provided shelter for refugee children during the war years and after the war in November 1947, the Temple had set up an orphanage[[43]](#footnote-43), and later in 1955, the Temple had also planned to establish a free school for children[[44]](#footnote-44).

The Temple was formally registered as a “Chinese temple” under section 5 of the Chinese Temples Ordinance, Cap 153 on 14 January 1948.

A diagram has been prepared and produced by JP setting out the initial members of the Tong together with their successors, with Yung Chau as the head and 10 female members/disciples under him (“**Succession Diagram**”)[[45]](#footnote-45). The Succession Diagram was largely undisputed save as mentioned later in this judgment, in relation to the cancellation/dismissal of certain members, and also whether the current members and manageresses were properly appointed.

According to the witness statement filed in the 10388 Action of Wang Kwong[[46]](#footnote-46), the Temple was built by Yung Chau in 1928 with financial assistance from 6 of his female disciples, and in order to facilitate the holding of the land and/or for convenience sake, the Tong was set up with the 6 disciples as (發起人)[[47]](#footnote-47) or “subscribers”[[48]](#footnote-48) or founding members. Later 2 more female disciples were added to the Tong to make a total of 8 founding members and thereafter, another 2 female disciples were further added but they had not contributed towards the purchase price of the land and had no successors[[49]](#footnote-49). Apart from Wang Kwong, the other manageress of the Tong at that time, Kwong Yuen had also filed a witness statement in the 10388 Action[[50]](#footnote-50), explaining therein that there were originally 10 founding members of the Tong but as two of them did not appoint any successors, thereafter, the number of founding members of the Tong was all along considered to be only 8[[51]](#footnote-51).

Hence, notwithstanding the Succession Diagram showing 10 female disciples under Yung Chau and lists of members registered at the then District Office in the New Territories[[52]](#footnote-52), it was not really disputed at the trial that only 8 of the 10 female disciples underYung Chau in the Succession Diagram were considered to be founding members (“**Founding Members**”). Apart from one who was alleged by the Tong to have been married, the other 7 Founding Members were all nuns.

It was common ground that the original incorporation documents and regulations of the Tong, if they had ever existed, had been lost during the war.

There appeared to be a meeting on 5 February 1961, of 14 persons including Yung Chau, a representative from the solicitors firm Messrs C Y Kwan & Co, and members of the Tong, and it was resolved that, amongst other things, a company should be registered (incorporated) in accordance with the law to hold the Temple, and that the members would be registered as shareholders[[53]](#footnote-53) (“**1961 Meeting**”). It was further resolved on 5 June 1961 to instruct solicitor Mr Kwan to deal with this matter[[54]](#footnote-54).

It appeared from documents produced by Sik and/or JP, in about 1963, Messrs CY Kwan & Co were indeed instructed by the Tong to incorporate a company called “Chuck Lam Monastery Company Limited (竹林禪院有限公司), and that there had been Articles and Memorandum of Association prepared, and names of 11 persons , including Yung Chau’s, were set out in a list to be provided to the solicitors firm to be the directors of the company[[55]](#footnote-55). For unknown reasons, the Tong did not eventually proceed with the incorporation of the company at the time.

On 14 June 1985, the then members of the Tong agreed and endorsed a new set of regulations for the Tong (曼華堂簡章) (“**Abridged Regulations**”)[[56]](#footnote-56). The evidence showed that the Abridged Regulations were endorsed during the course of the Tong’s application for tax exemption under section 88 of the Inland Revenue Ordinance, Cap 112, as a charitable institution or trust of a public character (“**Section 88 Exemption**”), even though the current manageresses and members claimed initially that they had no knowledge of the Tong’s tax exemption. Anyway, the Tong was duly informed by the Inland Revenue Department latest by 31 October 2005 that such exemption was granted to the Tong on 5 August 2005[[57]](#footnote-57). Up to the trial, the Tong had remained a registered tax-exempt charitable organization.

Article 1 of the Abridged Regulations has set out the names of the 8 Founding Members[[58]](#footnote-58). Among them were Mau Wan, and Mau Fat. I will further consider the provisions in the Abridged Regulations later in this judgment.

According to Jan[[59]](#footnote-59), in the 1960s, on the ground floor of the east side of the front portion of the main hall of the Temple, there was the Tong’s office, a Guan Yin hall, the Abbot’s room which was for the occupation of Yung Chau and that the west side of the front portion was the dormitory for monks. The second floor and the two blocks of dormitories at the back portion of the main hall, referred to respectively as “Old East Block” and “Old West Block” and bed spaces thereat were “*sold*” to and occupied by elderly single women some of whom had worked as domestic servants, called a “媽姐” or a “姑太” (“**Goo Tai**”). According to Jan, at one stage there were hundreds of Goo Tais living there in the Temple but at present, there are only a few remaining.

Also, according to Jan, the Tong would provide temporary accommodation for any visiting monks or any Buddhist worshippers who were in need of such accommodation, namely an arrangement called 掛單 (“**Temporary Accommodation Arrangement**”).

According to the then information on the Website, in 1970, Yung Chau had paid premium to the Government for the acquisition of the site today to fulfil his wish to erect a majestic hall (大雄寶殿) on the Land (“**Main Hall**”). The foundation for the Main Hall was laid in 1975 but Yung Chau passed away on 12 August 1976. Eventually, the Main Hall was completed and officially opened only in 1982.

As gleaned from the newspapers cuttings, by 1982, more buildings had been erected on the Land resulting in a total of 4 old and new dormitories containing 180 rooms to provide accommodation for some 500 elderly worshippers/Goo Tais. It was also reported that a private incinerator was built in the Temple complex for cremation for the dead, which was said to be the only private incinerator in Hong Kong and that the ashes of the dead could be placed in the Temple for ancestral worship.

It was not really disputed that during the early period when Yung Chau was the Abbot, the Tong had been active in carrying out its charitable objects in spreading/promoting Buddhism and helping the elderly and the poor, as stated in the Abridged Regulations[[60]](#footnote-60), and as seen in various newspapers cuttings.

It was also not disputed that Yung Chau was registered as the first manager of the Tong. As seen earlier in the registered memorials with Land Registry, Yung Chau was the sole manager of the Tong latest by 4 June 1932. It was the Tong’s case that Yung Chau’s registration was cancelled by the Secretary for Chinese Affairs latest by 20 June 1938 by reason of his affair with a young nun Cheung Yuet Kam (張月琴), and that Yung Chau had 5 children by Madam Cheung[[61]](#footnote-61), Jan’s husband Pong Kwong Wai and Pong being two of the sons[[62]](#footnote-62).

It was JP’s case that Yung Chau, at the entreaties of his father, agreed to produce heirs for the Pong family and that was why he had an intimate relationship with Madam Cheung, whom JP denied was a nun. It was JP’s case that Yung Chau decided to resign as the first manager of the Tong to devote his time to being the Abbot of the Temple and upon his resignation, his registration as a manager of the Tong was cancelled by the Secretary for Chinese Affairs.

Jan and her husband Pong Kwong Wai met and married in Taiwan, and they moved to Hong Kong in 1964. Although they were working as teachers in Hong Kong, they often visited the Temple and became involved with the affairs of the Temple assisting Yung Chau.

According to Jan, after Yung Chau resigned as the first manager of the Tong, he continued to be responsible for the management of the Tong and the Temple together with the members of the Tong until his death in 1976 and that it was only after his death in 1976 that, the management of the Tong was handed over to the then 2 manageresses (Wang Kwong and Kwong Yuen)[[63]](#footnote-63). The evidence of Kwong Yuen in her witness statement in the 10388 Action was that for all matters of the Temple, *including* *succession and any problems concerning the land*, Yung Chau would hold a meeting with the Founding Members and the two manageresses to discuss before making a decision[[64]](#footnote-64).

What is clear is that Kwong Yuen’s above evidence showed that Yung Chau never left the Temple and resided in the Temple complex until his death, and he was active in the management of the Tong’s affairs, and was well respected contrary to the Tong’s present pleaded case that Yung Chau and Madam Cheung Yuet Kam were ostracized and left the Tong upon the cancellation of his registration as a manager[[65]](#footnote-65).

After the death of Yung Chau, the Yung Chau Memorial Hall was erected on the Land in his memory by the Tong and it was opened officially and publicly in about July/August 1991. There was a newspaper cutting reporting that “… 該院弟子為紀念融秋老和尚開山創業之功勞，特策劃為其籌建紀念堂一座，以誌永念 今已大功告成 亦為佛門留下一次勝地”[[66]](#footnote-66).

According to the Succession Diagram, Kwong Yuen passed away on 27 June 2014 and Wang Kwong passed away on 10 January 2015. However, it appeared that Wang Kwong and Kwong Yuen had retired earlier in the course of the 10388 Action and were replaced by AuYeung and Poon as manageresses respectively in 2003 and 2007[[67]](#footnote-67). According to a memorial dated 24 June 2003[[68]](#footnote-68), AuYeung was registered as the appointed manageress of the Tong under section 15 of the New Territories Ordinance in place of Wang Kwong and according to a memorial dated 5 July 2007, Poon was registered as the new statutory manageress of the Tong under section 15 of the New Territories Ordinance on 5 July 2007 in place of Kwong Yuen[[69]](#footnote-69). AuYeung and Poon remained the manageresses of the Tong at the trial.

As for the members of the Tong, Lui and Wong purportedly became members of the Tong in 2003 together with a nun called Wong Suet Mui (王雪梅) also known as Sik Tung Ding (釋通定) (“**Tung Ding**”). Thereafter, another nun Wong Mei Yee (黃美儀) also known as Sik Tung Wai (釋通慧) or Sik Ben Jian (釋本堅) (“**Ben Jian**”)[[70]](#footnote-70) became a member of the Tong in 2011. Hence, in 2011, there were a total of 6 members of the Tong, 4 non-ordained members including the two manageresses AuYeung and Poon, and 2 nuns, Tung Ding and Ben Jian (collectively “**Two Nuns**”).

It was not disputed that at that time the Abbot of the Temple was a monk Sik Yee Chiu (意昭) (“**Yee Chiu**”), who appeared to be appointed as Abbot after 27 November 1989 when the former Liao Zhi (了知大和尚) (“**Liao Zhi**”) completed his term as Abbot[[71]](#footnote-71). According to the information of the then Website of the Tong, Yee Chiu became a monk in 1941 and was formally ordained in 1944, and he was once a follower or disciple of the highly respected monk Master Hui Wan (or Xu Yun) at the Nam Wah Temple. Yee Chiu later came to Hong Kong and initially joined another temple in Shatin but subsequently became Abbot of the Temple[[72]](#footnote-72).

It was Jan’s allegation that in about 2015, a Mainland monk Sik Gor Hang (釋果恒) (“**Gor Hang**”) and a large number of Mainland monks appeared in the Temple. Gor Hang initially came to Hong Kong from the Mainland with a visitor’s permit and that he had to be removed as he was in breach of his conditions for stay. It appeared from various newspapers cuttings which contained alleged interviews with Jan and her daughters, Gor Hang and the group of Mainland monks were brought in by a member of the Tong who was said to be formerly a voluntary female worker in the kitchen of the Temple and who had befriended Yee Chiu, the then Abbot of the Temple. It was said that the female kitchen worker had allowed Gor Hang and Mainland monks to reside in the Temple and had supported Gor Hang to succeed Yee Chiu to become the Abbot of the Temple[[73]](#footnote-73). Anyway, Gor Hang eventually obtained his residence permit and came to reside in the Temple complex.

On 30 August 2016, Gor Hang was appointed the Principal Monk (首席和尚)[[74]](#footnote-74). Thereafer, there appeared to be discord in the Tong/Temple and conflict had arisen between those who supported Gor Hang on one side and JP’s camp (including the Two Nuns) on the other side.

* 1. Events leading to the present actions

On 26 December 2016 (or November 2016), according to Sik, he and his principal Chai Ping were provided by the Tong through Jan with a room to reside due to the old age and poor health of Chai Ping under the Temporary Accommodation Arrangement until Chai Ping’s health improved. However, in early 2017, Sik and Chai Ping were evicted from their room in the Temple. On the other hand, according to the Tong, Jan had no authority to allow Sik and Chai Ping to occupy the room. This matter will be considered further later in this Judgment.

According to the Tong, in January 2017, JP had arranged without the consent of the Tong a team of martial art practitioners at the Temple and they had threatened Gor Hang with physical violence. On 10 February 2017, there was an urgent notice posted up by the Tong announcing Gor Hang was intended by Yee Chiu to become the Principal Monk and Abbot of the Temple[[75]](#footnote-75). On 6 March 2017, Sik issued the 496 Action. The conflict between the two camps deepened with various incidents and allegations made against each other including an incident in August 2017. Suffice to say at this stage, on 30 October 2017, AuYeung, Poon, Wong and Lui passed a resolution for 3 gentleman (“**3 Gentlemen**”) to be invited and approved to become members of the Tong. This resolution was objected to by the Two Nuns. As the Two Nuns were signatories of the Tong’s bank account at the Shanghai Commercial Bank (“**SCB Account**”), they alerted the bank (“**SCB**”) of the dispute between members. As a result, the SCB Account was suspended on 7 November 2017. Thereafter the Two Nuns were removed as members of the Tong on 20 December 2017 and Jan was also dismissed from her duties at the Tong/Temple on the same day. However, according to the Tong, Jan refused to deliver up the Tong’s financial documents and the Tong’s Chops (as defined later).

The above conflict and disputes subsequently led to the commencement of the 595 Action by the Tong on 4 April 2019.

1. THE WITNESSES

There were a total of 11 witnesses who gave oral evidence during the trial.

In the 496 Action, apart from giving oral evidence himself at the trial, Sik had called 4 other witnesses to support his case, namely (i) Chao Jung, (ii) Jan, (iii) Li Pak Pui (李伯培), and (iv) Ng Pui Chu (吳珮珠).

On the Tong’s side, the present 4 members of the Tong including the manageresses, namely (i) AuYeung, (ii) Poon, (iii) Wong and (iv) Lui all attended trial to give evidence for the Tong in both the 496 Action and the 595 Action. They called no other witnesses.

Jan attended the trial to give evidence as a witness for Sik in the 496 Action and also as the 1st defendant in the 595 Action, whereas Pong gave evidence as 2nd defendant in the 595 Action. They had also called Chao Jung and another witness Tang Mui Mui (鄧妹妹) as defence witnesses in the 595 Action.

SJ and SHA did not call any witnesses to give evidence on their behalf during the trial.

1. CATEGORIES OF THE DISPUTED ISSUES

There were a total of 21 issues in the agreed Consolidated Scott Schedule (“**Scott Schedule**”), which I will roughly group into the following 6 categories, referred to herein respectively as Category I to VI:

* 1. Category I – Locus Standi Issues

This is Issue 1 in the Scott Schedule, which is whether in the 496 Aciton Sik had the *locus standi* to sue or to seek relief under section 57A (a)(iii) of the Trustee Ordinance, Cap 29/Order 120 rule 3 of the Rules of the High Court (RHC)[[76]](#footnote-76).

There is also an issue as to whether in the 595 Action, Jan and Pong had the *locus standi* to seek relief under section 57A (a)(iii) of the Trustee Ordinance[[77]](#footnote-77).

* 1. Category II – Mismanagement of General Affairs of the Tong

Category II consists of Issues 7, 8, 11 and 13 in the Scott Schedule and whether there had been mismanagement of general affairs of the Tong on the part of its manageresses and/or members[[78]](#footnote-78).

* 1. Category III – Mismanagement of Financial Affairs of the Tong

Category III consists of Issues 9, 10 and 14 in the Scott Schedule and whether there had been mismanagement of financial affairs of the Tong on the part of its manageresses and/or members[[79]](#footnote-79). I will also consider Issue 12 in the Scott Schedule concerning the slope remedial works as part of Issue 9 which concerns one of Wong’s private companies as seen later.

* 1. Category IV – Qualification of the members and/or manageresses of the Tong

Category IV consists of Issues 2, 4-6, 15 in the Scott Schedule and whether the current members and manageresses of the Tong were properly appointed and qualified to take up their current posts by virtue of the requirement of the Abridged Regulations and/or otherwise[[80]](#footnote-80).

* 1. Category V – Better Administration Order/BAO

1. Category V consists of Issue 3 in the Scott Schedule and whether SJ should intervene as *parens patriae* in these actions[[81]](#footnote-81), and whether a BAO should be made.
   1. Category VI – Tong’s allegations against JP

Category VI consists of Issues 17-21 in the Scott Schedule and whether the Tong’s allegations against Jan and Pong were founded[[82]](#footnote-82), and also Issue 16 in the Scott Schedule as to whether any part of the Tong’s claim relating to matters occurred prior to 4 April 2013 was time-barred[[83]](#footnote-83).

1. CATEGORY I - THE LOCUS STANDI ISSUES (ISSUE 1)
   1. The proper approach

Section 57A(a)(iii) of the Trustee Ordinance provides as follows:-

“ Without prejudice to the generality of sections 56 and 57, the court may provide such relief, make such order, or give such direction, as it thinks just relating to a charitable trust upon an application made to it-

(a) by-

(i) 2 or more persons who have the consent in writing of the Secretary for Justice to make the application;

(ii) the Secretary for Justice; or

(iii) all or any one or more of the trustees or persons administering the trust, or persons claiming to administer the trust, or persons otherwise interested in the trust; and

(b) either-

(i) complaining of a breach of the trust or supposed breach of the trust; or

(ii) for the purposes of the better administration of the trust.”

In the CA Judgment, the Court of Appeal had considered the provisions in the UK statutory provisions, namely the Charities Act 1960, the subsequent amendments in the Charities Act 1992 and reforms under the Charities Act 2006, and later the Charities (Protection and Social Investment) Act 2016 and observed that Hong Kong did not have any charities legislation compared with the English statutory regime. It was pointed out by the Court of Appeal that the Consultation Paper and Report of the Law Reform Commission on Charities (published in December 2013) highlighted some of the problems and recommended amongst other things the long term goal of the setting up of a charity commission in Hong Kong, and that the recommendations in the report had not yet been implemented at all.

The Court of Appeal then came to the view that the proper approach in the application of section 57A(a)(iii) is that the Court must not construe the expression “*persons otherwise interested in the trust*” in section 57A(a)(iii) narrowly[[84]](#footnote-84).

As summarised in the CA Judgment, “… *an applicant should have an interest in securing the due administration of a trust materially greater than, or different from, that possessed by ordinary members of the public. In short, the requirement is to prevent charities from being vexed by busy bodies.*”[[85]](#footnote-85) It was further said that the interest in question needed not be a legal interest or duty, *but the applicant must be able to pinpoint some greater interest than those of ordinary members of the public in the due administration of the trust*[[86]](#footnote-86).

The Court of Appeal considered that certain aspects of Sik’s case had not been sufficiently considered by the Judge and that Sik should place the necessary evidence of these other aspects of his case before the court including the evidence on he being approached by some worshippers for assistance[[87]](#footnote-87).

1. As mentioned earlier, Sik’s appeal was allowed and the Strikeout Summons was remitted to the Judge for reconsideration and for directions on filing of future evidence[[88]](#footnote-88).
   1. Whether the Tong is now estopped from raising the issues on Sik’s locus standi

After the CA Judgment, on 10 September 2018, Sik issued a summons to strike out the Tong’s Strikeout Summons, to amend his own originating summons in the 496 Action, and further for leave to file new evidence in support of his originating summons. The “new” evidence sought to be relied on by Sik in support of his application for the BAO was set out in Sik’s affirmations filed on 10 September 2018 and on 24 September 2018. The summons was eventually fixed before Mr Justice Louis Chan on 15 January 2019.

Shortly before the hearing, the Tong issued a summons to withdraw the Strikeout Summons and further sought directions for the originating summons to continue as if the action was commenced by writ. At the hearing on 15 January 2019, Mr Justice Louis Chan ordered that the Strikeout Summons be withdrawn. He further gave directions for the 496 Action to continue as if commenced by writ and other directions for filing of pleadings[[89]](#footnote-89). Later in the defence filed by the Tong, it raised again the issue that Sik had no locus to seek a BAO[[90]](#footnote-90).

Even though the SJ (and SHA) had supported the Tong in its Strikeout Summons, in the present trial, they no longer supported the Tong’s challenge as to Sik’s *locus*. Counsel for SJ and SHA, Mr To, had referred this Court to the legal principles in relation to a challenge on *locus standi* of a plaintiff set out by the Court of Appeal in the *Liquidation Committee of Foshan Hongda Development Ltd/佛山市宏達發展公司清算組 v East Legend Investment Limited*, CACV 272, 273 of 2007 [2009] 1 HKLRD 169, namely that[[91]](#footnote-91):

“1) The challenge cannot be raised by way of defence.

2) It must be raised at the outset or when it comes to the attention of the court or of the defence in the course of the proceedings.

3) Once the issue has been raised it must be decided.

4) It would be wrong to allow the action to go on without deciding the issue of standing: this is because the defendant will not have a further chance to challenge the issue.

5) Once it is clear that the action was improperly constituted it must be brought to an end either by way of dismissal, striking out or stay.”

The circumstances in the above case were different from the present case. In the above case, the issue was whether the company 佛山市宏達發展公司 or its liquidation committee had the authority to sue. As seen from the judgment, the defendant had notice of the issue of the company’s standing at the outset of the case and had issued the striking out application and the plaintiff responded by applying to substitute the liquidation committee as the new plaintiff. The defendant then chose to abandon the striking out and allowed the liquidation committee to be substituted as the plaintiff. It was then held that in such circumstances, in the absence of other evidence, the only reasonable conclusion one might draw was that the defendant had accepted the standing of the plaintiff to sue, and this being the case, it was held by the Court of Appeal that it clearly was an abuse by the defendant to raise this issue again at the beginning of the trial in the guise of a preliminary issue when as a matter of law it could not have raised this issue by way of defence.

Mr To had also referred the Court to the judgment of A Cheung J, as the Chief Justice then was, in *Kammy Town Limited v Super Glory Corporation Limited* HCA 3524/2003, (unrep) 14.01.05.

The question in the above case was whether the plaintiff company had the authority to sue, and a master struck out the claim on lack of authority based on affirmation evidence. On appeal, A Cheung J, as he then was, held that the defendant’s objection based on lack of authority could not be summarily disposed of on affirmation evidence alone. The appeal was allowed, and the defendant’s strike out application was adjourned for trial. A Cheung J had said:-

“11. In short, a point on lack of authority must be taken by a defendant at the earliest opportunity. It should not be raised as a point of defence, for it is not a defence, and for that reason the matter should not be left for determination at trial. Furthermore, given the nature of the point, the matter should not be left to be determined at trial together with the substantive issues between the parties, the determination of which issues at trial would become a total waste of time and resources if the point on lack of authority should be upheld at the end of the day.

12. The procedure to raise the point on lack of authority is an application to strike out the plaintiff’s name under the inherent jurisdiction of the court….”

Mr Chong submitted that what was said above, in the *Kammy Town* case was only a rule of practice to ensure economic dispensation of justice, and not a rule of law, and that the issue on *locus* in section 57A(a)(iii) of the Trustee Ordinance was a fact sensitive exercise, which could not have been dealt with an affirmation evidence, and that the withdrawal of the Strikeout Summons did not preclude the Tong from maintaining its defence that Sik was not an “interested person” under section 57A (a)(iii) to seek relief for a BAO. Mr Chong had further submitted that the facts relevant for determination of whether Sik was a person interested in the trust would have to be determined by trial on a preliminary issue if the Tong were to proceed with the Strikeout Summon, and that the withdrawal was only to save costs and time as otherwise it would involve two separate trials.

In my view, what Mr Chong submitted made sense. Also, as the transcript of the hearing on 15 January 2010 was not placed before this Court, it was not clear as to whether the Tong’s application for withdrawal was on a without prejudice basis, or whether the Tong had reserved its right to raise the issue of Sik’s *locus* at trial. However, L Chan J did order the action to proceed as if begun by writ under Order 28 rule 8 of the Rules of the High Court, Cap 4A and gave directions for pleadings to be filed. There was no sufficient evidence that the Tong had accepted Sik’s *locus* to seek a BOA. As said earlier, the Tong raised the issue in its defence filed in the 496 Action, and although in Sik’s reply filed on 29 June 2019, he had referred to the CA Judgment and pointed out that the Tong had voluntarily abandoned its Strikeout Summons and that the matters relied on by the Tong were not valid, he did not issue any summons to strike out the relevant part of the Tong’s defence in relation to the *locus* issue, nor did he seek any directions from the Court in relation to whether the issue on his *locus* should continue to be a “live issue” at the trial. In fact, according to the list of issues in the Timetabling Questionnaire filed by the Tong on 22 April 2021, the 1st issue was stated to be Sik’s *locus standi*.

Thus, Sik was fully aware since about 29 June 2019 (the filing date of the Tong’s defence) that the issue had been pleaded in the defence by the Tong in the 496 Action and was to be a live issue at trial.

I agree with Mr Chong that in the present case, whether Sik was/is an interested person is a fact sensitive issue. I accept the Tong’s explanation that the withdrawal of the Strikeout Summons was to save costs and time. Unlike the *Foshan Hongda* case, there was no sufficient evidence that the Tong had abandoned this issue before L Chan J and/or had accepted Sik had the standing to seek a BAO. In light of all above said, I have come to the view that the Tong was not estopped from pursing this issue at trial.

* 1. Sik’s Case

Sik’s case before the Judge had included the following:

1. He is a Buddhist monk and being a Buddhist monk, he belongs to a “small identifiable class which the charity was designed to benefit”;
2. a room had been arranged for him and Chai Ping at the Temple in late 2016, for the convenience of Chai Ping and for Sik to take care of Chai Ping;
3. the Temple had invited Sik and Chai Ping to provide their opinion as “consultants” on Gor Hang whose identity and ability was questioned by many followers of the Temple;
4. Sik had hosted a Buddhist event at the Temple in February 2017;
5. Sik had become the 3rd Abbot of the Guan Ying Grotto, in succession to Chao Jung, on 23 July 2017 and that he relied on the irrevocable licence and right of way agreed by the Tong in the Tomlin Order.

As said by the Court of Appeal, Sik’s case was not confined to the above specific interests individually, but rather his contention was that, based on the relationship of the Temple and the other Buddhist institutions on Fu Yung Shan in the past, Sik, being the Abbot of the Guan Yin Grotto and the disciple/successor of Chai Ping of the Hui Wan Memorial Hall had/has an interest in the due administration of the charitable trust, and that the specific matters were merely instances where the close relationship were manifested[[92]](#footnote-92). Further, in the course of the appeal, Sik also mentioned that some worshippers at the Temple had gone to him to complain about the affairs at the Temple. Later, in his affirmations of 10 and 24 September 2018, Sik further elaborated on the relationship between Guan Yin Grotto, Hui Wan Memorial Hall and the Tong and the Tong’s breach of the Abridged Regulations and mismanagement of its general and financial affairs.

* 1. The Tong’s case

The Tong case on Sik’s *locus standi* was set out in the 1st schedule of its Amended Defence in the 496 Action[[93]](#footnote-93). The Tong’s allegations included the following:

1. Sik had at no time been a member or a person involved in the management of the business and/or affairs or the Tong or the Temple;
2. Neither the Guan Yin Grotto nor the HWMH Limited was or is related to the Tong/the Temple and at no time had they shared common membership or management;
3. The only things in common between the Tong and the Temple on one part and the Guan Yin Grotto and HWMH Limited were/are that they both exist for the advancement of Buddhism and they are situated at Fu Yung Shan;
4. Since its founding in the 1920s, neither the Tong nor the Temple has had any intercourse with the Guan Yin Grotto or the HWMH Limited;
5. If it should be found that Sik was the Abbot of the Guan Yin Grotto or of Hui Wan Memorial Hall, which was denied by the Tong, there was no relationship between (a) their internal management and that of the Tong/the Temple; or (b) members of these organizations;
6. The “interest” of Sik and in the internal management of the Tong and the Temple was/is no more than a nosy bystander in the street;
7. Further, or in the alternatively, the proceedings were instituted *mala fide* and that in instituting the proceedings herein, Sik acts as the servant or agent and/or in collusion with Jan, Pong and persons having ulterior motive, inclusive of Sik, with a view to usurping the role and function of the Tong, the Temple, and members of the Tong;
8. Sik is a vexatious litigant with ulterior motive;
9. Sik was not and has never been the Abbot or the person entrusted with the management of and in the Guan Yin Grotto and/or the Hui Wan Memorial Hall/HWMH Limited.
   1. Relationship between the Tong/Temple and the Guan Yin Grotto

As said earlier and seen on the Lot Index Plan, there are various other Buddhist establishments/institutions on Fu Yung Shan in the vicinity of the Temple. Chao Jung attended trial to give evidence on behalf of Sik. She was the disciple of Luen Cham, the founder of the Guan Yin Grotto. According to Chao Jung, (i) Guan Yin Grotto was originally a natural grotto on Fu Yung Shan and there had been historical record of the existence of the grotto as early as in 1908; (ii) after Yung Chau moved to Hong Kong, he established the Temple with the assistance of Mau Wan and they purchased various lots of land on Fu Yung Shan and that they had gifted lots to other Buddhists who came to Hong Kong during the war; (iii) under the leadership of Yung Chau and Mau Wan, there were various temples constructed on the Fu Yung Shan; (iv) Luen Cham established the Guan Yin Grotto in 1955, and all along, the relationship between the Yung Chau and Luen Cham was very close and friendly, and that some of the lots on the Land were provided by Yung Chau for the use of Luen Cham, and that Yung Chau had even suggested gifting the Temple to Luen Cham in the early 1970s.

Chao Jung had also said that in the early 1960s, Yung Chau, jointly with Luen Cham, had obtained government support for supply of cement, and Yung Chau had arranged for a road to be constructed from the Temple direct to the Guan Yin Grotto[[94]](#footnote-94). It was also Chao Jung’s evidence that after Yung Chau passed away, Luen Cham became the most respected Buddhist monk on Fu Yung Shan and that everyone at the Temple would pay respect to Luen Cham and would come to the Guan Yin Grotto to seek his guidance on all major matters and that one of the then manageresses of the Temple, Wang Kwong, and Jan had always sent the best vegetarian food to Luen Cham.

Although Chao Jung only moved to Hong Kong to follow Luen Cham at Guan Yin Grotto in 1980, and some part of Chao Jung’s above evidence was hearsay, a large part of her evidence was not really disputed by Wang Kwong in his witness statement in the 10388 Action.

Wang Kwong was a disciple of of Mau Wan, who was one of the 8 Founding Members. As seen in the Wang Kwong’s witness statement in the 10388 Action, her then evidence was:

1. In 1955, Luen Cham was residing in the two grottoes behind the Temple (ie Miu Lin Grotto and the Guan Yin Grotto) and that Wang Kwong had heard Yung Chau mentioning to other worshippers at the Temple that Yung Chau had orally agreed to Luen Cham practising Buddhism at the two grottoes until his death, although Wang Kwong did not hear of Yung Chau agreeing to gift the Temple to Luen Cham.
2. Wang Kwong met Chao Jung in 1983 after the Main Hall was officially opened, and although she did not know when Chao Jung went to Guan Yin Grotto to reside and to follow and serve Luen Cham, Wang Kwong was aware that Chao Jung was the disciple of Luen Cham and that she was already residing in the Guan Yin Grotto at that time.
3. Luen Cham was hospitalised due to ill health and although Wang Kwong could not recall when, after being discharged from hospital, Luen Cham was allowed to stay and rest in a guest room at the Temple for about two months before Luen Cham decided to return to Guan Ying Grotto.
4. When Luen Cham passed away in about 1988, he was cremated at the Temple and that Wang Kwong had met Chao Jung on a number of occasions at Buddhist ceremonies held in memory of Luen Cham.
5. Chao Jung had no home in Hong Kong and that she might need to return to Taiwan, and that Wang Kwong, in her capacity as a manageress of the Temple, had comforted Chao Jung, and told her to continue to practise Buddhism at the Guan Yin Grotto and that if she ever had to leave Guan Yin Grotto due to the expansion of the Temple, Chao Jung would be allowed to reside at the Temple[[95]](#footnote-95).
6. According to Wang Kwong, from about late 1989/early 1990s[[96]](#footnote-96), she would visit the Guan Yin Grotto to pray to Guan Yin about 3 or 4 times in a year until about late 1990s when she was suffering from pain in her foot/leg[[97]](#footnote-97).
7. After Mau Wan passed away, Luen Cham had told Wang Kwong that he had requested Mau Wan to sell him the parcel of land next to the Guan Yin Grotto known as Lot No 1202 in DD453 (“**Lot 1202**”), and although this was refused by Mau Wan, Mau Wan had told Luen Cham that Luen Cham could continue to occupy or use Lot 1202. According to Wang Kwong, Lot 1202 was held in the name of Mau Wan and that in 1971, Mau Wan had transferred Lot 1202 to the names of Wang Kwong and 3 other persons, and later in 1996, Lot 1202 was transferred to the name of Wang Kwong and her disciple[[98]](#footnote-98). According to Wang Kwong, Chao Yung had in 1999 and 2000 gone to the Temple again to request Wang Kwong to sell Lot 1202 to her but this was declined by Wang Kwong.
8. Wang Kwong said she left Hong Kong and went to the United States for 7 or 8 years and during that period, as she was not in Hong Kong, she did not know that Chao Jung had occupied part of Lot 1202. However, Wang Kwong had said, as they were all Buddhist nuns, and even though Chao Jung had occupied land held in the name of Wang Kwong, as the land did not really belong to Wang Kwong and Wang Kwong had no particular use for the land and Chao Jung was occupying it for religious purpose, Wang Kwong said she continued to allow Chao Jung to occupy part of Lot 1202, where the toilet and kitchen of the Guan Yin Grotto were situated.
9. Also according to Wang Kwong, there was a small road to the right of the Yung Chau Memorial Hall, and that although the Temple had considered installing a fence around the Yung Chau Memorial Hall, this would mean closing off the road leading to the Guan Ying Grotto, and the Temple decided not to and instead the Temple appointed a construction company to widen and extend the small road and to add a flight of steps, so that pedestrians could walk round the Yung Chau Memorial Hall to go up to the Guan Yin Grotto. Iron hand rails were also added to both sides of the steps for convenience to pedestrians.
10. Further according to Wang Kwong, all along, as everyone was a Buddhist, the Temple and Chao Jung had been at peace until about July 2000, when the Temple noticed that Chao Jung had cordoned off a large piece of the Land with an iron wire fence, which then sparked off the 10388 Action.

Thus, even on Wang Kwong’s evidence, Luen Cham had set up the Guan Yin Grotto since 1955, and the Tong/Temple had a close relationship with Luen Cham and later Chao Jung. Although Wang Kwong denied that Yung Chau had ever suggested giving the Temple to Luen Cham, Chao Jung’s evidence in other respects about the close relationship between the Temple and the Guan Yin Grotto was not really challenged by Wang Kwong. It was not disputed that when Luen Cham was not well, he was allowed to occupy a room at the Temple temporarily for about two months so that he did not need to go up and down the steps to Guan Yin Grotto. There was also no dispute that the access road from the right of the Yung Chau Memorial Hall leading to the Guan Yin Grotto was built and widened by a construction company appointed by the Tong and paid for by the Tong.

There was also a newspaper report in the then Wah Kiu Yat Pao, of the “Ground Breaking Ceremony” in 1971 hosted by Yung Chau and/or the Temple for the commencement of the construction of the Main Hall, and that respected senior monks from Buddhist temples on various mountains had attended the ceremony among whom were Luen Cham, as well as the Liao Zhi who was with the Dong Pu Tuo Temple (東普陀寺) at the time[[99]](#footnote-99) and Wing Sing (永惺大師), Chairman of the Pu Ti Academic Association (菩提學會) (“**Wing Sing**”)[[100]](#footnote-100).

Having considered all the evidence, I accept Chao Jung’s evidence and find that there had been a good and close relationship between the Tong/Temple and the Guan Yin Grotto, and had remained so in March 2017 when the 496 Action was commenced. There was no sufficient evidence to indicate that such relationship had been affected by the 10388 Action and in any event, after the Tomlin Order, the Tong/Temple and the Guan Yin Grotto were at peace until bollards and concrete blocks were placed by the Tong on the Yellow Road, as mentioned earlier, in March 2018.

There was/is also a close relationship between Chao Jung and Sik who was Chao Jung’s designated successor. Chao Jung’s evidence and Sik’s evidence was that, after the commencement of the 496 Action, at an open ceremony on 23 July 2017, Chao Jung had handed over the management of the Guan Yin Grotto to Sik and Sik was appointed the Abbot of Guan Yin Grotto. Even though the Tong had disputed this, there was no sufficient evidence to contradict Chao Jung’s and Sik’s evidence and I find Sik has since 23 July 2017 become the Abbot of Guan Yin Grotto, and in any event, Sik has an interest in seeing the Tong being properly administered and to ensure that the agreement in the Tomlin Order (as set out earlier) would be complied with.

* 1. Relationship between the Tong/Temple and the Hui Wan Memorial Hall/HWMH Limited

According to Sik, the Hui Wan Memorial Hall was founded by one of the Tong’s Founding Members and former manageresses Mau Wan, also known as Sik Fuen Wai (寛慧) in memory of the monk Master Hui Wan (or Xu Yun) (虛雲大師)[[101]](#footnote-101). According to the Succession Diagram, Mau Wan passed away on 28 October 1965.

Sik’s evidence in his witness statement was that Mau Wan had made substantial contribution on Fu Yung Shan. Further, from about 1963, the Abbots and monks of the Temple had joined HWMH Limited as directors[[102]](#footnote-102). According to the annual returns of HWMH Limited produced by Sik, as at 4 January 1964, Mau Wan (Fuen Wai) was a director and further as at 9 October 1975, Wang Kwong was a director and as at 15 December 1999, Yee Chiu was a director.

The Tong had produced copies of annual returns of HWMH Limited for 2015 and 2016[[103]](#footnote-103) and appeared to challenge Sik’s above evidence at trial and to dispute that the Tong had any connection with Hui Wan Memorial Hall and/or HWML Limited. As at 31 December 2015, the company secretary was one Lau Chun Fui (劉振奎), or Sik Kuan Yun釋寛運, or Fuen Wan (“**Kuan Yun**”). Kuan Yun was also one of the directors and his address was stated to be at the Western Monastery (西方寺), Sam Dip Tam, Tsuen Wan. It would appear that Kuan Yun was/is the Abbot of Western Monastery[[104]](#footnote-104).

There was a total of 14 directors of HWMH Limited as at 31 December 2015, including Chai Ping and Sik. There was one director Ng Fai Ki (吳輝麒) who gave his address to be at Fu Yung Shan, same as that of Chai Ping. Ng Fai Ki appears to be the same person as Sik Kwong Ming (釋光明) (“**Kwong Ming**”) who as seen later was the person who lent his personal bank account to the Tong for use when the SCB Account was suspended and who according to AuYeung was the Usher of the Tong. Sik and another director Ma Kwan both gave their addresses to be at Hui Wan Memorial Hall. Insofar as I can make out, there were 4 other monks/nuns who were directors, namely (i) Sik Chi Wai of Po Lin Manoastery, (ii) Wing Sing, (iii) Sik Yin Chi, and (iv) Sik Yuen Wai of Buddhist Tai Kwong Middle School. As at 31 December 2016, Wing Sing had ceased to be a director, but the other 13 directors had remained the same as the previous year.

In Wong’s witness statement of 30 September 2021 in the 496 Action, she had produced a what’s app message sent by Chai Ping to call upon “眾念堂居士義工” to attend a meeting of the HWMH Limited to oppose Kuan Yun who regarded himself as Chairman of the Board. In the what’s app message, it was stated that Hui Wan Memorial Hall was set up in 1963 by Mau Wan (and others[[105]](#footnote-105)). Wong had also said that she had attended meetings of the directors of Hui Wan Memorial Hall on behalf of Abbot Yee Chiu. Thus, although by 2015/2016, the Abbot of the Temple and/or members of the Tong were no longer directors of HWMH Limited, it appears from Wong’s own evidence that Yee Chiu had been a director of HWMH Limited.

It was Chao Jung’s evidence in her witness statement that in the 1980s, she and Wang Kwong would often visit the Kwun Tsung Temple (觀宗寺) in Fanling together and that they would also visit the 菩提學會 to meet with Wing Sing. According to Chao Jung, Wang Kwong had requested Wing Sing to erect a memorial hall in memory of her principal Mau Wan but this was declined by Wing Sing and that Wang Kwong had felt bad about not being able to erect a memorial hall for her principal Mau Wan, as Mau Wan had made substantial contributions, not only in the construction of the Temple but had also instigated the construction of Hui Wan Memorial Hall next to the Temple[[106]](#footnote-106).

Chao Jung was not cross examined over this part of her evidence. There was also no sufficient evidence from the Tong’s witnesses to contradict the above evidence of Sik and Chao Jung. Having considered all the evidence, I am prepared to accept the evidence of Sik and Chao Jung, that Hui Wan Memorial Hall was constructed at the instigation of Mau Wan, who was one of the Founding Members of the Tong and one of its former manageresses. Mau Wan was also one of the disciples of Yung Chau. Mau Wan, Wang Kwong, and Yee Chiu had all been directors of HWMH Limited and it was not disputed that Yee Chiu was a disciple/follower of Master Hui Wan. All the evidence showed there had been a very close and harmonious relationship between the Tong/Temple and the Hui Wan Memorial Hall/HWMH Limited, which I accept, until early 2017, when Chai Ping and Sik were evicted from their room at the Temple as described later. Being a resident monk at the Hui Wan Memorial Hall and successor to Chai Ping, Sik has an interest in the Tong being properly administered and for the Tong/Temple and Hui Wan Memorial Hall to provide mutual support to each other.

* 1. Attending /hosting Buddhist events at the Temple

It was Sik’s evidence that he was a member of the committee organising a Buddhist ceremony held at the Temple on 9 February 2017 in memory of Yung Chau’s birthday to which Chai Ping and other guests were invited including a monk Sik Hang Yee (釋恆懿) from a temple in Shenzhen (“**Hang Yee**”)[[107]](#footnote-107). However, according to the Tong, there was no such committee at the Temple and that the ceremony was a “private event” organised by the offsprings of Yung Chau without the Tong’s knowledge or authority. The Tong had produced a calendar of Buddhist events organised by the Temple for 2017 which did not include that ceremony. Sik had explained that it was the practice of the Temple that every year there would be a ceremony to celebrate the birth and death anniversaries of a former Abbot and that Sik had consulted Liao Zhi (a former Abbot of the Temple) that as Yung Chau’s 100th birthday had past, whether there was still any need to hold the ceremony, but Liao Zhi had advised him to consult Chai Ping. Thus according to Sik, he consulted his principal Chai Ping who advised on holding the ceremony and that Sik had also consulted Poon before joining the committee to organise the ceremony.

Poon’s written evidence was that Jan did not inform the Tong in relation to the holding of this large ceremony on 9 February 2017 which was attended by reporters, councillors, Justices of Peace and that it was only on the day of the ceremony that Poon and the other members of the Tong found out, and that on that day, Jan had also brought along Hang Yee said to be the successor and disciple of Yee Chiu and whom Jan declared would be the Abbot of the Temple. Hang Yee was later authorised to attend a meeting of the Tong members on 14 February 2017 and Hang Yee was further authorized by Jan to call for management meetings and represent her in the meeting as from 18 March 2017.[[108]](#footnote-108).

Jan had produced a newspaper cutting dated 12 February 2017 in Ta Kung Pao reporting on the ceremony and that Poon had appeared in the group photograph in the cutting[[109]](#footnote-109). As Sik had pointed out, if Poon did not know about the ceremony, she could not have attended the event. Under cross examination, Poon admitted that she did attend the ceremony out of her respect for Yung Chau and that photographs were taken at the ceremony. She then went on to say the same evening, Jan and her daughter went to her home and had asked her to sign a paper that Hang Yee was the disciple of Yee Chiu and that Jan and her daughter were trying to set her up and she was very upset at them.

It was clear from Poon’s evidence at the trial that she did have knowledge of the ceremony and had attended the ceremony. In any event, as pointed out by Sik, no one from the Tong had stopped the event from taking place.

In the above said newspaper cutting of Ta Kung Pao, there was also a black and white photograph of two monks standing close to each other, whom Sik explained one was Master Hui Wan, and the other one was Yee Chiu.

Anyway, it was also Sik’s evidence that under the leadership of Chai Ping, he and Chai Ping had been invited by the Temple in 2000s to participate in the “Water and Land Ritual Ceremony” (水陸法會) (“**Ritual Ceremony**”)[[110]](#footnote-110). There was no sufficient evidence from the Tong to contradict this.

Even though the hosting of the Yung Chau birthday celebration ceremony in February 2017 could be an isolated incident, having considered the above, I accept Sik’s evidence that he and Chai Ping had attended and anticipated in other Buddhist events at the Temple. Being now Abbot of Guan Yin Grotto and successor to Chai Ping of Hui Wan Memorial Hall, both of which had had close relationship with the Temple, Sik has an interest seeing that the Tong is properly administered and that monks/nuns from neighbouring temples would continue to be at least invited to attend and/or participate in major Buddhist ceremonies at the Temple and to provide mutual support in promoting Buddhist beliefs and principles.

* 1. Temporary Residence Arrangement for members of Guan Yin Grotto and Hui Wan Memorial Hall

It was Chao Jung’s evidence that during the mid 1980s, when Luen Cham was not well, the Temple had arranged a room for Luen Cham to reside at the Temple for a period of time. During the period of time when Luen Cham was residing at the Temple, Chao Jung herself had frequently went to the Temple to look after Luen Cham.

As seen earlier, Chao Jung’s above evidence was not contradicted by Wang Kwong who had said Luen Cham was provided with a room for about two months. In fact, Wang Kwong’s evidence showed that he would have allowed Chao Jung to reside at the Temple if one day she had to leave Guan Yin Grotto. It is quite clear that in the past, the Temple had helped elderly ordained persons from neighbouring temples.

Jan confirmed that she had allowed Chai Ping who was elderly to occupy a guest room at the Temple at end of November/early December 2016 when Chai Ping was suffering from degeneration of his knees and was having difficulties in climbing up the steps to Hui Wan Memorial Hall and that Sik was allowed to stay with Chai Ping to look after him. According to Jan, this was with the knowledge and agreement of Poon, who was at the reception hall (客堂) (“**Reception Hall**”) when Sik and Chai Ping moved into the room, but in early 2017, Sik and Chai Ping were evicted when Wong and other people at the Temple changed the lock of the room.

I will come back to this issue when considering whether there had been mismanagement by the Tong in its general affairs. Suffice to say at this stage, Sik’s evidence was that he had understood that Jan was involved in the management of the Temple and that Jan had the authority to allow his principal Chai Ping and Sik himself to occupy a room at the Temple. I accept Sik’s evidence that Chai Ping and he had stayed in a room at the Temple for a short while before they were evicted. I find that Sik (and Chai Ping), a monk, from a neighbouring temple on Fu Yung Shan has an interest in the Tong to see that it is properly administered in carrying out its objects of helping the elderly and the poor and that in case of any need, an elderly or poor ordained person could or would receive assistance and/or benefit from the Tong’s charitable objects and to provide mutual support.

* 1. The irrevocable licence over the use of part of the Land and the right of way over the Yellow Road

1. As mentioned earlier, the Tong had agreed under the Tomlin Order to grant to Chao Jung and her authorised disciples and worshippers (i) an irrevocable contractual licence to occupy exclusively and use of the “orange land” and the “pink land” and (ii) an irrevocable right of way over the Yellow Road. As stated in the Lam Decision, it was not in dispute that the Yellow Road had been made available to the public for access to the Guan Yin Grotto and the dispute was over the legal basis of that access[[111]](#footnote-111).

I have accepted earlier that Sik has now been appointed the Abbot of the Guan Yin Grotto by Chao Jung, but as Chao Jung is still alive, according to the terms of the agreement in the Tomlin Order, Sik has not yet succeeded to her licence or the right of way as its legal holder[[112]](#footnote-112). However, Sik obviously had the authority of Chao Jung to enforce on her behalf the licence over the “orange land” and “pink land” and her right of way over the Yellow Road. As said earlier, Sik has an interest in seeing the Tong/being properly administered and to ensure on behalf of Chao Jung that the Tong would abide by the terms of the agreement in the Tomlin Order.

* 1. Sik being approached by Jan and other believers at the Temple

According to Sik, in February 2017, Jan had turned to his principal Chai Ping to complain about a large group of men wearing black clothes appearing at the Temple to monitor and to harass Jan and other worshippers at the Temple. It was Sik’s evidence that his principal Chai Ping had told him to help Jan and the Temple, and not to allow the Temple to be destroyed, as the relationship between the Temple and Hui Wan Memorial Hall was a long historic one and being like one family, they should help each other. Thereafter, according to Sik, more and more believers/worshippers had sought help from Sik and that it was under such circumstances that Sik then realised that there had been serious mismanagement of the affairs of the Temple[[113]](#footnote-113). The believers who had sought help from Sik included the relatives of the Goo Tais mentioned later who were trying to retrieve their monies deposited with the Tong.

There was no sufficient evidence to contradict what Sik said and I accept his evidence in this respect. Sik reads and understands English and has receive higher education than most monks and nuns and members of the Tong and/or Jan or Pong and resides in nearby Hui Wan Memorial Hall which had had a very close relationship with the Temple. It was not surprising that believers/worshippers/residents at the Temple would turn to Sik for help in their complaints against the management and administration of affairs of the Tong.

* 1. Conclusion on Sik’s locus standi

It is not disputed that Sik had never been a member or a manager of the Tong. I have earlier accepted Sik’s evidence that he is now the Abbot of Guan Yin Grotto. He is also the disciple and apparent successor to Chai Ping, the Abbot or Principal Monk of Hui Wan Memorial Hall.

I have also found that the Tong/the Temple had historically maintained a good and close relationship with the Guan Yin Grotto and also with the Hui Wan Memorial Hall and HWMH Limited. Even though they did not share common membership or management, Sik, as Abbot of Guan Yin Grotto and disciple/successor to Chai Ping of Hui Wan Memorial Hall has a genuine interest in seeing the Tong being properly administered for reasons set out earlier and further members of the Guan Yin Grotto and Hui Wan Memorial Hall will be affected by management and administration decisions of the Tong.

It appears from Wong’s witness statement that Sik wears many hats, in that he had represented HWMH Limited, the plaintiff in an action HCA 2806/2015[[114]](#footnote-114) in relation to land disputes and one of the defendants was Kam Pak Li Investments Limited (甘百利投資有限公司) (“**KPL**”). Subsequent thereto, Sik then representated KPL in another action HCMP 1454/2000, again over disputes over land[[115]](#footnote-115). Sik had been a shareholder of KPL, holding 1,000 shares on 17 March 2016 and respectively on 23 March 2016 and on 25 January 2017, he transferred 1 share to Chai Ping and on 22 April 2020, he transferred the balance of his shares to Chai Ping. He was a director but appeared to have resigned on 23 January 2017 but was re-appointed as a director on 25 July 2019 and remained a director on 9 October 2020. Sik is also a director of several charitable companies[[116]](#footnote-116). However, Sik was appointed as a director of HWMH Limited as early as 31 December 2011 and has since been residing at Hui Wan Memorial Hall. Sik was not cross-examined as to his connections with KPL and/or other companies.

Notwithstanding his many hats, I do not find that Sik is merely a busy body. Even though he, Jan and Pong are on the same side, there was no sufficient evidence that Sik was acting as the servant or agent and/or in collusion with Jan, Pong, or any persons having an ulterior motive, to apply for a BAO in order to usurp the role and function of the Tong, as alleged by the Tong. There was no sufficient evidence of *mala fide* in Sik in commencing the 496 Action, nor do I find him a vexatious litigant. There was also no sufficient evidence that he would benefit personally even though in the BAO sought by him in his amended statement of claim, he had proposed that all monks and nuns and their successors of the Tong and other Buddhists on Fu Yung Shan including himself to jointly set up a better administration plan for the charitable trust[[117]](#footnote-117). Sik is a Buddhist monk to which the Tong as a charitable trust is designed to benefit. Having considered all said above, I am satisfied Sik is someone who has an interest materially greater than that possessed by ordinary members of the public, and that Sik falls within “persons otherwise interested in the trust” in section 57A(a)(iii). I find he has the *locus standi* to sue and to seek a better administration order (BAO) for the Tong. Whether Sik is suitable to be involved or who should be involved in the plan for the Tong’s better administration is another matter for this Court to decide in the event that a BAO is granted.

* 1. Whether Jan and Pong have the locus standi to sue or to seek relief under section 57A (a)(iii) of the Trustee Ordinance in the 595 Action

Even though Jan and Pong had never been managers or members of the Tong, it was not really disputed that Jan had at the request of Kwong Yuen assisted in the management affairs of the Tong/Temple, and Pong had been looking after the Yung Chau Memorial Hall with his elder brother since the time it was officially opened. Jan, being Yung Chau’s family member, had voluntarily carried out various work for the Tong. As seen later in this judgment, Jan and Pong had been allowed to reside in the Yung Chau Memorial Hall until the commencement of the 595 Action. Prior to the discord within the Temple, the evidence showed they had been treated with respect, being senior family members of Yung Chau. In my view, they are clearly not busy bodies, and they have an interest materially greater than the ordinary members of the public in seeing that the Tong, being a religious charity set up by Yung Chau, is being properly managed and administered as a charitable trust. I find they have the *locus standi* to seek a BAO.

1. CATEGORY II - THE MISMANAGEMENT OF GENERAL AFFAIRS (ISSUES 7, 8, 11, 13)
   1. The Goo Tai Deposits (Issue 11)
      1. Generally

In her witness statement[[118]](#footnote-118), Jan had explained the background and the system and practice of the Temple of receiving and accepting monies as deposits from the Goo Tais (“**Goo Tai Deposits**”). Her evidence was[[119]](#footnote-119):

1. In late 1960s, the Temple started to construct new dormitories for elderly people but due to lack of funds, the two dormitories were only completed in late 1970s, and they were called the “New East Block” and the “New West Block”. They provided about a total of 500 bed spaces.
2. The Temple then sold those bed spaces to the Goo Tais for several tens of thousands each. Several Goo Tais would occupy one room and they would install television, telephone and air-conditioner in their room where they would live during their lifetime. They would also have all their meals at the Temple.
3. In early 1980s, there were several hundreds of Goo Tais living in the Temple.
4. The Goo Tais living in the Temple would deposit a certain amount of money with the Tong from time to time in preparation of their funeral expenses, namely the Goo Tai Deposits.
5. Initially, the Goo Tai Deposits were held in the joint names of the successors of the Temple but later an independent separate bank account was opened by the Temple at the SCB for holding the Goo Tai Deposits.
6. The Goo Tai Deposits were held by the Tong/Temple on trust for each Goo Tai who could withdraw her deposit at will either personally or through her registered relatives as recorded in the master record book of the Goo Tai Deposits called “大簿” (“**Big Book**”)
7. The Big Book was kept by AuYeung in her office at the Reception Hall;
8. Since 1989, the Tong/Temple would pay the interest to each Goo Tai for her deposit on a yearly basis;
9. After the death of a Goo Tai, the remainder of her deposit would be used for her funeral expenses and any balance would be returned to her designated relatives. There had never been any requirement of those relatives to present any proof of their beneficial interest in the Goo Tai’s estate.

In paragraph (23) of the Tong’s amended reply to the defence of Jan and Pong and defence to their counterclaim in the 595 Action[[120]](#footnote-120), the Tong had stated that the 500 bedspaces were accommodation generally for elderly Buddhist believers who made a one time donation to the Temple. Notwithstanding their pleaded case, it was not really disputed by the manageresses during the trial that the “elderly Buddhist believers” referred to the Goo Tais and that they had paid money for their respective bedspace. Further, in paragraph (23), the Tong had also admitted that these “elderly Buddhist believers” had also deposited their monies with the Tong and any remainder of deposit from an elderly resident after payment of funeral expenses would be returned to the person/s nominated by that elderly resident in accordance with her written instructions, or to the lawful executor/administrator of their respective estates.

In any event, there was no sufficient evidence during the trial to contradict Jan’s evidence over the pre 2018 arrangement of the Tong’s “selling” the bedspaces to the Goo Tais and the receipt of the Goo Tai Deposits and I accept Jan’s evidence in this respect. Further even though the Big Book was prepared by Jan, AuYeung had admitted during the trial that the Big Book was available for the inspection of the manageresses and the members of the Tong at any time. There would be a handwritten receipt issued by the Tong to the Goo Tai upon the first sum being received by the Tong, but for additional sums deposited it appeared that they were only recorded on the first receipt[[121]](#footnote-121). Some receipts were issued on the Tong’s letterhead and some without, eg to one to Madam Cheng (defined below). Also, on some receipts it was written that only the owner of the money (銀主) could withdraw the sum/s deposited.

* + 1. Allegations of Jan and Pong

It was the case of Jan and Pong that the Tong had wrongfully refused to return the deposits to at least two Goo Tais, namely Cheng Kuk (鄭菊) (“**Madam Cheng**”) and Lai Shun Ying (黎順英) (“**Madam Lai**”).

* + 1. Madam Cheng’s deposit

Madam Cheng was born in July 1928. It was not really disputed that she bought a bed space at the dormitory of the Temple and started residing there in about 2001. Madam Cheng passed away in November 2019 aged about 91.

It was the allegation of Madam Cheng and/or her family that she had deposited a total of HKD 600,000 with the Temple. In about early 2018, Madam Cheng accompanied by her son Li Pak Pui and daughter in law, their son and Jan attended the office of the Temple intending to withdraw the deposit of HKD 600,000. Madam Cheng was unsuccessful in withdrawing her deposit.

Madam Cheng had produced a Chinese handwritten receipt dated 20 May 2005 issued by the Temple for a sum of HKD 80,000 with a name chop of Poon and a signature of AuYeung thereon on behalf of the Tong/Temple[[122]](#footnote-122). There were handwritten words added thereon by Jan on 26 August 2005 of a sum of HKD 40,000, totalling HKD 120,000.

The record for Madam Cheng in the Big Book (“**Cheng Record**”)[[123]](#footnote-123) indicated that the “date of opening of account” was 20 May 2005 with “80,000” written in red and later crossed out, “120,000” written in red and later crossed out, “450,000” written in red and later crossed out, “470,000” written in red and again crossed out, and the only figure which was written in red and not crossed out was “600,000”. Under “Remarks” of the Cheng Record, words were written as follows:

1. HKD 40,000 added on 26/8/05
2. HKD 300,000 added on 22/2/08 (Nanyang 031181) cashier order
3. HKD 30,000 added on 28/9/12
4. HKD 20,000 added on 7/3/14, total HKD 470,000
5. HKD 130,000 HSBC cashier order 466215 added on 19 January 2015

The above totalled HKD 600,000. The writings/record in the Big Book was that of Jan’s. Jan and Madam Cheng’s son Li Pak Pui confirmed at the trial that Madam Cheng had deposited a total sum of HKD 600,000 with the Temple, by the various payment recorded in the Big Book although the receipt in Madam Cheng’s possession only indicated HKD 120,000.

There was a table in the Cheng Record for interests payable, which appeared to indicate interest was paid to Madam Cheng in about January each year[[124]](#footnote-124). In particular, “3,600” were paid respectively in January 2014 and January 2015, “4,920” was paid in January 2016 and that “5100” was paid on 15 January 2017. From 15 January 2007 onwards, the receipt of interests was acknowledged by someone with an “x” against the amount.

On the Cheng Record, there were details of Madam Cheng’s daughter with the daughter’s full name in Chinese and in English, her address in England and her telephone number in England. The name of Madam Cheng’s son Li Pak Pui and also daughter-in law were also written thereon, with their respective telephone numbers in Hong Kong.

The Tong denied that Madam Cheng had deposited a total of HKD 600,000, as Madam Cheng was only able to produce a receipt issued by the Tong for HKD 120,000. In particular, the Tong’s case was that there was no record of the sum of HKD130,000 paid by HSBC cashier order being credited into the Temple’s savings account for the Goo Tai Deposits since its passbook for the period of 23 December 2014 to 3 October 2015 did not reflect such a credit. It was further the Tong’s case that apart from HKD 120,000, the available bank account records of the Tong showed no further deposits of a total of HKD 480,000.

It was the evidence of Li Pak Pui that when he, his wife and their son and Jan accompanied Madam Cheng to meet AuYeung in early 2018 to retrieve the deposit of HKD 600,000, Madam Cheng was still in good health although her memory was failing. According to Mr Li, AuYeung had asked the accounts clerk Miss Chan to check the computer, and that the computer did show there was a deposit of HKD 600,000. Jan had also asked Miss Chan to bring out the Big Book, but when Miss Chan asked AuYeung, AuYeung said she did not know anything. Miss Chan then called someone in a higher position but then came back with a reply that they needed time to deal with the matter. Thereafter, despite telephone calls and visits to the Temple by Mr Li, the Temple failed to return the HKD 600,000 to Madam Cheng, and further the Temple started to deny that there was a deposit of HKD 600,000 as Madam Cheng was only able to produce a receipt for HKD 120,000.

It was further Mr Li’s evidence that notwithstanding the Temple’s denial, in early 2019, Madam Cheng did receive cash of HKD 5,100 as “laisees” accompanied by a receipt for the recipient to sign and return. The receipt was on the Temple’s letterhead stating that the sum of HKD 5,100 was annual interest calculated from 1 January 2018 until 31 December 2018 on a principal sum of HKD 600,000[[125]](#footnote-125). HKD 5,100 was the same amount of interest paid by the Tong to Madam Cheng on 15 January 2017, for her deposit of HKD 600,000.

After Madam Cheng passed away in November 2019, according to Mr Li, he was told by the Temple that HKD 120,000 was spent on various expenses for Madam Cheng’s funeral, but no receipts were ever provided to Mr Li for those expenses, and further the balance of HKD 480,000 had until the date of trial not yet returned to Mr Li.

Mr Li had sent a letter of complaint dated 16 May 2018 jointly with Madam Ng Pui Chu, the niece of Madam Lai (another Goo Tai referred hereinafter) to the Temple, and copied to various authorities including those at the Tsuen Wan District Office[[126]](#footnote-126). In reply, the Tong had referred to the CCTV of the meeting of Mr Li and Madam Cheng at the office of the Tong in April/May 2018 which showed that Madam Cheng and her family members were advised to seek directions from the court regarding the collection of the deposit, as during the meeting, Madam Cheng herself had expressed that she had no knowledge of the matter, and Mr Li knew that Madam Cheng was unable to recollect anything. It was the Tong’s case that Mr Li ought to have proceeded to apply for letters of administration of Madam Cheng’s estate after Madam Cheng passed away.

During the trial, in response to this, Mr Li had said that no one at the Tong/Temple had ever asked him to go and apply for letters of administration of Madam Cheng’s estate and that as he had to work, he had not applied for the same. In any event, it was not possible for the Tong to tell Mr Li at the meeting to go and apply for letters of administration, since Madam Cheng was still alive then. It was further not clear what directions from the court the Tong/Temple was advising Madam Cheng’s family during the meeting to obtain. There was also no sufficient evidence that Madam Cheng had by then become a mentally incapacitated person. Further, I find AuYeung’s explanation as to why they decided to again pay interest of HKD 5,100 based on a deposit of HKD 600,000 in early 2019 unsatisfactory and inconsistent with the Tong’s case that the amount of deposit was only HKD 120,000. What AuYeung said was when the interests were distributed by the Tong’s then accounts clerk Miss Chan to the Goo Tais, after disputing the amount of deposit, she only followed previous practice and as there was no signature on the receipt, no one from Madam Cheng’s family had in the end collected the interest any way.

* + 1. Madam Lai’s deposit

Madam Lai was born in 1923. She was never married and she had worked as a domestic servant in a wealthy family. After her retirement, in about 1991, she bought a bed space at the dormitory of the Temple, and thereafter she had lived there. In 2010, Madam Lai was admitted into a home for the aged and passed away on 30 December 2018, aged about 95 years old.

According to her record in the Big Book (“**Lai Record**”)[[127]](#footnote-127), there was a figure of “100,000” crossed out, “120,000” crossed out, and a figure of “200,000”. The record appeared to show that HKD 100,000 was first deposited at date of opening, and that HKD 20,000 was added on 25 August 2005 and HKD 80,000 was added on 8 March 2006, making a total of HKD 200,000. The record also showed there were interests paid and that 1,600 was paid on 15 January 2014, 1,600 was paid on 1 January 2015, 1640 pad on 15 January 2016, and 1,700 paid on 15 January 2017.

Under the “Relatives Information” on the Lai Record, there was name and address and telephone number of Madam Lai’s younger sister and her husband, and a niece Madam Ng Pui Chu.

It was Madam Ng’s evidence in 2018, she approached the Temple to request withdrawal of a sum of HKD 100,000 first for Madam Lai before Madam Lai’s death and that AuYeung had initially agreed and that AuYeung had said as the remaining amount was not substantial, she suggested that Madam Lai to withdraw the entire deposit all at one go. However, after two days, AuYeung telephoned Madam Ng, and told her that the deposit could only be withdrawn after death of Madam Lai. During the discussion, someone at the Tong pointed out that Madam Lai had two younger sisters, but according to Madam Ng, one of the younger sisters had passed away already, and the other younger sister was Madam Ng’s mother who was mentally incapacitated, but Madam Ng was told to provide evidence for this. Later, according to Madam Ng, a lawyer surnamed Yip had telephoned to inform her that the sum of HKD 200,000 would not be paid over to her.

Madam Ng explained that it was under the above circumstances that she approached Jan for help and was later told by Jan that Sik would help her and Mr Li and they approached Sik for help.

After Madam Lai passed away, according to the Tong, her funeral expenses totalled about HKD 73,750 and the final balance in Madam Lai’s account HKD 137, 953.50[[128]](#footnote-128). Madam Ng was then informed that for her to withdraw the sum, she would need to apply for the letters of administration. Madam Ng had made enquiries from the Probate Registry, but was told that she had to provide evidence to prove the relationship between Madam Li and her sisters, and that Madam Ng was entitled to succeed to her aunt’s estate.

Madam Ng’s evidence was that the Tong/Temple was deliberately creating obstacles for the Goo Tais’ relatives, in that notwithstanding their names appeared as relatives on the respective record of the Goo Tai in the Big Book, if such relatives were not able to prove the relationship with the relevant Goo Tai, the deposit of that Goo Tai would remain with the Temple. According to Madam Ng, as many Goo Tais were single or unmarried and were born in the Mainland over 80 or 90 years ago, it was difficult to provide proof of identity/relationship.

* + 1. Discussion

It was submitted on behalf of the Tong that the claims of Mr Li and Madam Ng, if sustainable, could find proper legal address, in that they could sue the Tong for breach of contract, and that this should not become the subject matter of section 57A of the Trustee Ordinance.

However, this is not the point. Being a religious tong and a charitable trust, the Tong’s funds should not be spent over unnecessary litigation. The two incidents illustrated that there had not been a consistent procedure for the handling of the Goo Tai Deposits and the return of such deposits and there had been mismanagement of the issue.

First, although the Tong’s savings passbook did not show any credit of the HKD 130,000 paid by HSBC cashier issued by Madam Cheng around the date of issue, on the copy of the purchase form for the cashier order from HSBC produced by Mr Li[[129]](#footnote-129), the name of the payee was hand written to be “竹林禪院”, namely the Temple and the date of purchase was 19 January 2015. There was no suggestion by the Tong that the name of the payee was not written contemporaneously. As the name of the Temple was written on the cashier order, it did not seem probable that the cashier order could have been deposited into the account of another beneficiary/payee.

Second, after the meeting between Madam Cheng, Mr Li and others with Ms Chan in 2018, the Tong/Temple could have instructed their solicitors to write to both their own bank and also HSBC, with a copy of the cashier order to make formal enquiries as to whether the cashier order had in fact been deposited and if so, into which or whose bank account. In fact, in 2021 or prior to 19 January 2022, the Tong/Temple could still have made enquiries from the banks, since banks normally keep records for 6 or 7 years, but the Tong/Temple appeared to have failed to do so. When AuYeung was asked about this, she admitted she did not check with the banks. There was no evidence that the Tong/Temple had ever carried out any such enquiries from their bank for HSBC.

Third, the fact that interests had been paid to Madam Cheng and had continued to be payable on a sum of HKD 600,000 after the visit of Madam Cheng by the Tong was inconsistent with the Tong’s case that there was no evidence that Madam Cheng had deposited HKD 600,000 with the Tong/Temple. AuYeung’s explanation in fact confirmed that the Tong’s employees merely followed past practice.

Fourth, I find that Mr Li and Madam Ng both credible witnesses. There was no sufficient evidence that Mr Li, Madam Ng and Jan were all acting in collusion over those complaints.

Fifth, there was no sufficient evidence to contradict Jan’s evidence that ever since she joined the Temple, she had only followed the Tong’s past practice of keeping records of the Goo Tai Deposits in the Big Book which were the only records of the deposits received from each of the Goo Tais. She followed the Tong’s past practice in recording the amounts, the details and the information of the relatives of the Goo Tais and the interests payable.

Sik had produced a note dated 15 Decmeber 2000[[130]](#footnote-130). The note stated that the Goo Tai Deposits (and also deposits from other monks/believers) were credited into a joint account at SCB held by Wang Kwong, Kwong Yuen and Lui Yee Kai (雷意皆) (the successor member of the Founding Member Mau Fuen (釋茂寛) who was at one time also appointed the Usher) (“**Yee Kai**”) and that interests were payable twice a year on 15th day of January and July. It was further stated in the note that the deposit was for the funeral expenses of each depositor and did not belong to the Tong and no one could withdraw the amount. It was also stated that in order to avoid any legal problems caused by complaints arising out of the death of one Goo Tai, the deposits were to be credited into the joint account, upon being chopped by the Tong’s chop.

It appears from the above note that there had been complaints before. It is clear to this Court from the evidence that the Tong’s practice of first of all receiving cash deposits from the Goo Tais and secondly, keeping the Big Book only as records of such deposits on the Tong’s side, and thirdly, not issuing proper receipts for each additional deposit of funds by each Goo Tai, fourthly failing to keep duplicate copies of receipts, and fifthly not making clear to each Goo Tai the procedure of withdrawal was clearly not satisfactory at all. There should have been safeguards put in place by the Tong for accepting the Goo Tai Deposits in cash from the beginning when the Tong decided on such an arrangement. Even though the Tong could not be criticized for requiring legal proof of the identity/entitlement of the recipient for return of the balance the deposit to any Goo Tai and/or her designated relative/recipient, if such had indeed been the Tong’s past practice and requirement, this should have been made clear to the Goo Tai at the time of her placing the deposit with the Tong and on the receipt issued by the Tong. There was no evidence provided by the Tong that this had been the Tong’s established practice or requirement.

I do not find that the Tong can now simply point their fingers at Jan and/or blame Jan, who on the Tong’s case was only employed as an accounts clerk and on Jan’s evidence, she was only following the past practice and procedure of the Tong, which was not denied by the Tong.

Anyway, as said, I find there was mismanagement over this issue and that the Tong had failed to set up a proper procedure and system in handling the receipt and/or return of the Goo Tai Deposits. It further appears that instead of trying to improve and to set up a proper procedure and system, after the complaints from Madam Cheng’s and Madam Lai’s respective family members, the Tong’s reaction was to cease providing accommodation to Goo Tais, but this does not seem to be consistent with the Tong’s charitable objectives in “Helping the Elderly and the Poor”. There are now apparently very few Goo Tais remaining in the Temple. Having said all this, I do not find that there was sufficient evidence of any “*deceptive means*” on the part of the Tong, or the Tong was “*deceiving the elder’s money*”, as alleged by Sik, Jan and Pong. Even though the Tong would no doubt have the benefit of any unreturned and/or unclaimed deposits, such should form part of the assets of the charitable trust.

* 1. The termination of the telephone line 2417 3605 (Issue 7)

The above telephone line was applied for from the Hong Kong Telephone Company (HKT) by Jan’s husband Pong Kwong Wai in his personal name and installed at the Yung Chau Memorial Hall in 1991. Pong Kwong Wai died in November 2006, and the line was transferred to Jan’s name on 15 April 2013. All along the bills were addressed by HKT to “*Miss Jan Fung Memorial Hall Cheuk Lam Temple Fu Yung Shan San Tsuen Tsuen Wan New Territories*”, and upon receipt by the Temple, they were then handed to Jan by the staff of the Temple for Jan’s payment of the charges.

According to Jan, she did not receive the bill for January 2018 and that on 17 February 2018, she discovered that the line was disconnected unilaterally by the Tong who through their then clerical staff a Miss Chan Siu Yuk had on 12 February 2018 requested HKT to terminate that line, and that Miss Chan had disclosed the name of Jan, HKID card number and account number to HKT. Jan made a report to the police and with the help of her daughter lodged a complaint with the Privacy Commissioner for Personal Data, Hong Kong that the Tong had stolen Jan’s January telephone bill, and that the Tong had without Jan’s consent applied to terminate her telephone line.

The Tong’s case was that the complaint concerned their staff Miss Chan. Further, after notice of dismissal from service on 15 December 2017[[131]](#footnote-131), Jan was not entitled to continue maintaining the said telephone line installed at the Yung Chau Memorial Hall, being one of the places of her work, and Jan was served with a notice to quit on 3 January 2018[[132]](#footnote-132).

What was not disputed was that the Privacy Commissioner had conducted investigations into the complaint by Jan and as seen in their letter dated 12 March 2019 to Jan[[133]](#footnote-133), it was stated that the Tong was found to have been in breach of certain principle/s of the “Directions” and/or provisions of The Personal Data (Privacy) Ordinance, Cap 486, and that the Privacy Commissioner had sent a letter of warning to the Tong, notwithstanding that further investigations were deemed not necessary[[134]](#footnote-134).

Irrespective of whether specific instructions had been given by the Tong to Miss Chan to disclose the personal information of Jan or not, the fact was Miss Chan being employed by the Tong, she had acted on instructions of the Tong and/or had been authorised by the Tong to contact HKT to disconnect the said telephone line, and that to achieve this, Miss Chan would have to open the envelope containing the bill addressed to Jan and to find out personal information of Jan from the Tong’s record. There was no sufficient evidence that Miss Chan was acting on her own without the authorisation of the Tong, and in my view, it was not reasonable for the Tong to now try to put the blame on their former employee Miss Chan.

The Tong also took the view that this was only a dispute between the Tong and Jan for which the latter had legal redress, and that this could not be a subject matter for an order for better administration[[135]](#footnote-135). Jan’s application for a BAO is not based on this incident alone but an accumulation of matters concerning the Tong’s administration set out in Annex 2 of JP’s amended defence and counterclaim. The Tong’s attitude in first of all blaming their staff Miss Chan and second by brushing aside the complaint would indicate that they did not seem to understand the privacy issue and there did not seem to have been any safeguards taken by them thereafter to ensure there would not be any future breach of privacy on their part. Having said this, I agree with Mr To that this issue would not have any material impact in determining whether BAO should be made.

* 1. Whether the Tong was entitled to refuse Chai Ping and Sik from their continuous occupation of a cubicle at a building at the Temple (Issue 8)

This Court has earlier found as alleged by Sik, Chao Jung, Jan and Pong that there was a good and close relationship between the Tong/Temple and the Guan Yin Grotto and between the Tong/Temple and the Hui Wan Memorial Hall and HWMH Limited.

As mentioned earlier, in November 2016/early December 2016, Jan had arranged for a guest room at the Temple for Chai Ping and Sik to stay temporarily. This arrangement was said by Sik to be similar to the Temple’s previous arrangement for Luen Cham, and that all along, the Temple and the other temples and monks on Fu Yung Shan were part of the same family sharing the same principle and spirit in Buddhism in “Helping the Elderly and the Poor (濟老助貧)”.

In early 2017, Wong and other people at the Temple changed the lock of the room occupied by Chai Ping and Sik and evicted them. Sik said at the time he was not clear about the internal disputes in the Temple and only learnt that the Temple did not welcome them.

The Tong’s case was that neither Chai Ping nor Sik was entitled to take benefit under the Buddhist custom and practice of the use/occupation of the room and to use it as their residence whether permanently or otherwise, without the consent and/or authorisation of the Tong[[136]](#footnote-136).

It was submitted on behalf of the Tong that no evidence of Chinese custom of Buddhist tradition was called by Sik and that Sik’s complaint was for his personal benefit and that of his principal Chai Ping instead of for the benefit of the Tong or that of the public at large[[137]](#footnote-137). In this respect, the Tong appeared to have missed the point. First, Sik’s case was based on the past close relationship between the Tong/Temple and the Guan Yin Grotto/Hui Wan Memorial Hall (and other monks on Fu Yung Shan) in that the Temple would help elderly and/or poor monks and being monks they should not be evicted in the manner they were, in particular an elderly monk such as Chai Ping. Second, Sik also based his case on there having been a similar past arrangement for Luen Cham. Third, more importantly, the principle of “Helping the Elderly and the Poor”, being part of the spirit of Buddhism was clearly stated in the Abridged Regulations[[138]](#footnote-138). I am not quite sure why the Tong would think expert evidence on Buddhist tradition would be necessary on this issue.

The Tong’s case was that the Tong had as early as in 1998 established an elaborate system for the Temporary Accommodation Arrangement namely that there were the following specific conditions:

1. the accommodation would be limited to a maximum of 3 days, as seen in the handwritten regulations of the Temporary Accommodation Arrangement posted up at each room (“**TAA Notice**”)[[139]](#footnote-139)
2. all visiting Buddhist monks and nuns needed to fill in an “application form (掛單申請表)” with restriction as to the number of days (“**TAA Application Form**”)[[140]](#footnote-140)

The Tong initially denied that Chai Ping or Sik had ever made any request to reside in the Temple whether in 2016 or at any other time and the neither the Tong, nor any of its members, had arranged any room for Chai Ping to reside in the Temple, and that they could not find record kept by the Temple of any accommodation arrangement for Chai Ping and/or Sik[[141]](#footnote-141). It was also the Tong’s initial evidence that it was unnecessary for Chai Ping and Sik to reside at the Temple as they were residing at the Hui Wan Memorial Hall, and that Sik had only placed 2 pieces of luggage at the Temple around 26 December 2016 but sometime later, he took them back and had no further contact with the Temple.

During the trial, Sik had explained that there were two types of Temporary Accommodation Arrangements at the Temple, namely (i) short term accommodation for visiting/travelling monks/nuns and (ii) longer term accommodation for a senior and highly respected monk invited to stay for a longer period whether for health reasons or otherwise. Jan’s evidence supported this, and as said earlier, according to Wang Kwong’s evidence, Luen Cham had stayed in a guest room at the Temple for about two months.

Sik was shown the minutes of a meeting of the Tong on 16th day of the 1st month in 1998, or 12 February 1998[[142]](#footnote-142) chaired by the then Abbot of the Temple Yee Chiu during which Jan was present (“**12.02.98 Minutes**”). One of the agenda items for discussion was the Temporary Accommodation Arrangement for monks/nuns which appeared to be raised by Jan, and that the decision of the members at the meeting was that the arrangement for monks would be responsible by the Usher (知客) Rui Sun (銳新) (“**Rui Sun**”) , and the arrangement for nuns would be responsible by the Usher Yee Kai and it was stated that all visiting monks/nuns needed to be registered at the Reception Hall)[[143]](#footnote-143).

Sik accepted during cross examination that the Temporary Accommodation Arrangement was for the internal management of the Temple to decide and not for a third party to decide, but he pointed out that it was Jan who had allowed Chai Ping and him to reside in the room and that they were provided with a key to the room and a key to the gate of the back door of the Temple for access to the room. Further, Poon was present when they moved in.

When pointed out by Mr Chong that Jan was not the person who was responsible for the Temporary Accommodation Arrangement of Chai Ping and Sik, Sik’s response was that the administration of the Temple was disorganised. It was Sik’s evidence that he and Chai Ping had attended the Reception Hall and that Jan had told one of the manageresses, namely Poon, about the arrangement for Chai Ping and Sik to occupy a room and that Poon had agreed to the arrangement. It was Sik’s evidence that he and Chai Ping did sign the TAA Application Form at the request of Jan but they did not fill in the number of days for stay as they were not required to do so by Jan. He had also said that the TAA Application Form was for short term stay for visiting monks/nuns, and that Jan had invited Chai Ping to stay at a room at the Temple until Chai Ping’s health had improved and theirs was not a short term stay.

According to Sik, at the time he had understood from Master Wing Sing and also Master Liao Zhi (the former Abbot of the Temple) that Jan was involved in the management of the Temple and Sik had believed that Jan had the authority to invite Chai Ping and Sik to stay in a room at the Temple.

Jan said she was aware of the TAA Application Form, but she denied having seen the TAA Notice and/or that it was posted in each of the rooms and that she was not clear who wrote the TAA Notice. Jan confirmed that Sik told her that he and Chai Ping had filled in the TAA Application Form. Further, although according to the 12.02.98 Minutes, it should be the responsibility of the Ushers who were to be in charge of the matter of the monks’ and/or nuns’ stay under the Temporary Accommodation Arrangement, but after the passing away of two Ushers Rui Sun and Yee Kai, there had been no Ushers appointed and that Kwong Yuen was in charge of such matters, Jan said she was acting pursuant to Kwong Yuen’s instructions in her role in assisting the then manageresses in management affairs.

When Poon was cross examined that she had agreed to Chai Ping and Sik occupying one of the rooms at the Temple under the Temporary Accommodation Arrangement, she did not deny seeing Sik when he went to collect the keys at the Reception Hall but Poon denied she had consented to their stay. When asked whether she had objected, her answer was evasive. She said she had no right to object, and then she said it was not for her to object, as it should be the Usher who was in charge of such matters.

However, there were no qualified Ushers appointed at the time after the dealth of Rui Sun and Yee Kai. It was the evidence of AuYeung and Wong at the trial that Kwong Ming had been appointed the Usher but he is not a nun and as set out later, he was/is not qualified to take up such office. Having considered Poon’s evasive answer, I do not find her a reliable witness. It is my finding that Poon was clearly aware of the arrangement and did not object to it at the time.

As submitted by Mr Wang, no one ever doubted that the Tong had the authority to make regulations for the Temporary Accommodation Arrangement at the Temple and/or terminate the stay of Chai Ping and Sik. The complaint was the unreasonable and abrupt manner in which Chai Ping and Sik were evicted. Chai Ping is a highly respected senior monk and was elderly at the time at the age of 88 years and was old and frail.

There was no credible explanation by the Tong as to why Chai Ping and Sik could not have been asked to leave politely or they be served a written notice. I do find the Tong’s handling of the matter was irrational and unreasonable and Sik’s complaints justified. Further, there had been no qualified persons appointed by the Tong as Ushers or any one designated by the Tong to deal with the Temporary Accommodation Arrangement and no proper system was in place at that time for such arrangement.

* 1. Blockage of the road to Fu Yung Shan (Issue 13)

In the 496 Action, Sik had in his amended statement of claim pleaded that as from middle of March 2018, the Tong had placed barriers *to block the only vehicular road for public access* to Fu Yung Shan and other public roads[[144]](#footnote-144). This was also the pleaded case of Jan and Pong in the 595 Action[[145]](#footnote-145).

Mr Chong aruged that the road referred to in the pleadings of Sik was not a public road and that the road was part of Lot 1255RP, being the Tong’s private property and that the majority part of the road was the “Emergency Vehicular Access” (“**EVA**”) and that motor vehicles were parked on both sides of the EVA. The EVA is indicated on a site location plan (“**EVA Plan**”)[[146]](#footnote-146).

There should be no misunderstanding on the part of the Tong that the road referred to by Sik was the Yellow Road referred to in the Lam Decision, which was the subject matter of the 10388 Action. As descirbed in paragraph 7 of the Lam Decision:

“The Yellow Road is an access road that leads from a public road up the slope to the [Guan Yin Grotto]….. The first part of the Yellow Road, which goes up to [Yung Chau Memorial Hall] and accounts for about three-fifths of its length, is wide enough for vehicles to come and go. There is at least one street light installed by the Highways Department there on the basis it is a road open to public…”

As further set out in the Lam Decision, the evidence was that long before the agreement in the Tomlin Order the first part of the Yellow Road was already a paved road wide enough for vehicles to travel, and that the evidence was that it was Luen Cham who caused it to be paved with stone tiles and an entrance archway for the Guan Yin Grotto to be erected there in 1959 to 1960. Thereafter, there had been further improvement works done to the road and by 1980s it had become a concrete-paved road[[147]](#footnote-147), and in 1997, when the Tong obtained building permission for the construction of its Hall of 500 Arhats, the Yellow Road served the purpose of providing vehicular run-in/run-out and space for manoeuvring of vehicles, as well as for the EVA.

From the Lot Index Plan, the EVA Plan and the evidence of Sik, the EVA runs from that part of the Yellow Road from where it is marked “Entrance” from Fu Yung Shan Road to near the water tank marked “WT” on the Lot Index Plan, which appears to be almost 2/3 of the length of the Yellow Road[[148]](#footnote-148).

Both sides had made allegations against each other, the Tong complaining that that vehicles were parked along the EVA and Sik complaining that Tong placing barriers blocking vehicular traffic in March 2018. As mentioned earlier, this led to a flare up between the Tong and the visitors to the Guan Yin Grotto and further led to an injunction taken out by Chao Jung/Sik and eventually ended with the Lam Decision.

G Lam J, as he then was, came to the conclusion that that the right of way over the Yellow Road granted under the terms of the agreement in the Tomlin Order includes both pedestrian and vehicular access which must obviously and by necessity include the right to stop vehicles on the Yellow Road in order to turn them round and to load and unload goods or passengers. The Tong was found to be obliged under the parties’ agreement in the Tomlin Order to keep the Yellow Road clear and free from obstruction for both pedestrian and vehicular access[[149]](#footnote-149). His Lordship further concluded that the right of way granted includes the right to park vehicles near the end of the vehicular section of the Yellow Road but (a) this is limited to the residents of the Guan Yin Grotto; (b) there is no right to park vehicles on any part of the Yellow Road that forms the EVA for the Hall of 500 Arhats; and (c) vehicles must not be parked such as to block the road[[150]](#footnote-150).

His Lordship was also of the view that the right of way did not necessarily prevent the Tong from installing any form of gate whatsoever across the Yellow Road and the test was whether the right of way was substantially interfered with by an obstacle placed on it but he did not dwell further on this issue as precisely what kind of gate was installed by the Tong on the Yellow Road and how it was operated and extent of its interference with the right of way were not questions placed before him[[151]](#footnote-151).

Sik in his closing submissions pointed out that the high handed manner of the Tong installing barriers was not in fact the main issue, and the main issue was that the Tong would rather incur substantial legal costs in the 10388 Action in arguing that the right of way did not include vehicular access. Further, after the Lam Decision, the Tong decided to lodge an appeal on 6 May 2020 but failed to serve their notice of appeal on Sik, and notwithstanding being directed by the Court of Appeal to do so on 28 October 2021[[152]](#footnote-152), up until the trial, according to Sik, he still had not been served.

Mr Wang submitted that the Tong was unreasonable in blocking the Yellow Road, which was the only road leading to the various Buddhist temples and institutions located on Fu Yung Shan and further the blockage was sudden and accompanied by verbal abuse and threat of violence.

What is clear is that during a period of over 11 years since the parties’ agreement in the Tomlin Order on 27 October 2006 until about March 2018, there had been peace. Even if the Tong had believed that it had reasons to install bollards and blocks, when Sik and the Tong first appeared before this Court in April 2018 over the injunction, it should have been clear to the Tong at that hearing that the crux of the dispute was in relation to the interpretation of the right of way (whether it included vehicular access) and the parties’ agreement. The Tong has always had legal representation, and instead of issuing a proper summons to seek interpretation of the parties’ agreement in the Tomlin Order, as Sik did eventually in February 2019, the Tong set up a further boom barrier and later threatened to clamp or tow away parked vehicles, which unnecessarily aggravated the disputes between the two sides. The Tong then incurred substantial legal costs in *opposing* Sik’s interpretation summons and notwithstanding the Lam Decision, as said, the Tong decided to incur further legal costs in appealing.

Poon’s evidence at the trial was that since 2021, persons going to Guan Yin Grotto had been allowed to pass through the barrier/gate. Even so, however, I am of the view that the Tong had behaved high handedly and irrationally in the past without regard to Chao Jung and her visitors, and also of other visitors and worshippers to the Guan Yin Grotto and that the Tong should have sought interpretation and clarification from the Court over the Yellow Road when the disputes first arose. The Tong’s actions could not be said to be in the interests of the charitable trust when public money was expended on unnecessary disputes and litigations.

* 1. Conclusion on Category II

Of the disputed issues, Issues 8, 11 and 13 in particular involve Tong’s management and administration of its external affairs which affect interested members of the public, such as elderly monks and nuns from nearby temples, elderly and poor Goo Tais and other worshippers/visitors using the Yellow Road. I find there has been mismanagement of such affairs and/or that the Tong has acted in an irrational manner. The Tong’s administration has been disorganised and the Tong has failed to put in place any proper or effective system and clear guidelines in the management and administration of, in particular, its external affairs in the carrying out of its charitable objects.

1. CATEGORY III - MISMANAGMENT OF FINANCIAL AFFAIRS (ISSUES 9, 10, 12, 14)
   1. Whether the existing members and managers of the Tong were entitled to incorporate and operate Graciously Affection and CLSY Limited in the manner that they were operated (Issue 9)
      1. Graciously Affection

Graciously Affection Association Limited (歡喜心慈善會有限公司) (“**Graciously Affection**”) is a private limited company set up by Wong in June 2006 and has since 10 June 2007 been a registered charity[[153]](#footnote-153).

Sik’s, Jan’s and Pong’s pleaded allegations can be summarised as follows:

1. the activities of Graciously Affection were “… tainted with seeking benefit from the Tong…”
2. double claim for disbursement to deceive the IRD in organising “religious functions”
3. Graciously Affection’s annual income whilst operating at the address of the Tong/Temple between 2006-2014 was in the region of an average of HKD749,844 but in 2014 after it ceased using the address of the Temple, the income reduced to zero;
4. by financing the costs of the slope works, Graciously Affection became the creditor of the Tong.

Sik had alleged that there was a conflict of interest on the part of the Tong to allow a private company owned by a member of the Tong, namely Wong to (i) undertake the activities of major religious events/functions; and (ii) to represent the Tong to deal with the slope works and to sign all related documents on behalf of the Tong as a result of which Wong (and/or others) or Graciously Affection could obtain financial benefit and to become a creditor of the Tong. As for Jan and Pong, they had alleged that Wong had incorporated and operated Graciously Affection and also the company CLSY Limited to siphon off assets of the Tong in their personal interest to the prejudice of the Tong.

It was Sik’s written evidence that after he commenced the 496 Action on 6 March 2017 alleging amongst other things that there was a conflict of interest of Graciously Affection using the Temple for operation, about 20 odd days later, Daily Accounts 日記賬 (defined later) of the Temple for the 3 years 2010-2012 had been stolen and that Jan had made a report to the police[[154]](#footnote-154), and that for those 3 years, Graciously Affection had enjoyed the highest income[[155]](#footnote-155). It was Sik’s allegation that Graciously Affection had allegedly made purchases for the Temple in major Buddhist functions and then claimed reimbursements from the Temple as well as booking such expenses again in the accounts of Graciously Affection[[156]](#footnote-156). As for the costs of the maintenance of the slope of the Guan Ying Grotto, the works were led and supervised by Graciously Affection and the consultancy contract for the works was signed in name of Graciously Affection but the contract for the investigation geotechnical engineering work was signed by the Tong and that Chao Jung had alleged that her signatures in the documents regarding the slope maintenance were forged.

During the trial, Wong admitted she took the Tong’s 2010-2012 Daily Accounts away from the Reception Hall without informing Jan and said she took them to her solicitors. Her explanation appeared to be that it was because Jan had refused to allow the Tong members to have access to those documents. However she also admitted she never asked Jan for those documents, and as pointed out by Sik, she took the records for those 3 years only, rather than more recent years. I find Wong’s action has raised suspicion upon herself.

Sik had produced two invoices issued by a company called Buddhist Charity Work Shop Limited, one dated 31 October 2008 and one dated 13 November 2008, for advertisement costs in relation to the opening of the Hall of 500 Arhats and/or the Ritual Ceremony[[157]](#footnote-157), which was addressed to “竹林禪院 (歡喜心慈善會有限公司)” (ie the Temple (Graciously Affection)), at the address Room 2-4, 9th floor, Wang Yip Industrial Building, which according to Wong, was the address of one of her companies manufacturing undergarments. When asked why the invoices were addressed to the “Temple (Graciously Affection)” and sent to the address of her company, Wong’s explanation was that Jan was often not in Hong Kong, and that Jan had told Wong to pay the costs first and that when Jan returned, the Temple would reimburse Wong for the total sum advanced by Wong for the Temple.

Wong had also said during the trial that this practice started from 2003, even before Graciously Affection was incorporated in 2006, and that in those days, she would personally pay first for the Buddhist events and then reimbursed by the Temple. Wong explained that she then incorporated Graciously Affection as she felt that it was not quite appropriate for her to pay personally.

There was a list of expenses for the 2008 Ritual Ceremony[[158]](#footnote-158) (“**2008 List of Expenses**”). The 2008 List of Expenses indicated that a total amount of expenses of HKD 322,382.70 was incurred by Graciously Affection but only an amount of HKD 250,689.60 was reimbursed by the Temple, and the balance of HKD 71,693.10 was said to be Wong’s donation. When Wong was asked about the reimbursements from the Temple to Graciously Affection, her answer was that she could not recall whether the reimbursement cheque from the Temple was made out to her personally or to Graciously Affection, and that she needed to check, but she said she would pay back to Graciously Affection if it had been a personal cheque. She insisted that she had received no personal financial benefit from the practice and that reimbursements for expenses paid on behalf of the Temple would not constitute financial benefit.

When asked about the reimbursements from the Temple to Graciously Affection of HKD 250,689.60 for the 2008 Ritual Ceremony was higher than the “Income” of HKD 230,000, stated to be “Donations received” in the 2008 audited financial statements of Graciously Affection[[159]](#footnote-159), or “Donations received from a director” under item 10 “Related Party Transactions” in the Notes to the financial statements[[160]](#footnote-160), at first, Wong’s explanation was that sometimes she would make purchases in Mainland by cash and there were no invoices, and thus such payments would not be reflected in the financial statements of the Temple. She later changed her evidence and said that the reimbursements from the Temple stated in the 2008 List of Expenses were only received in 2009 and should therefore be reflected as “Income” in the 2009 audited financial statements. However, the “Income” for 2009 of HKD796,137 was stated to be “Donations received”, HKD 451,086 of which being “Donations received from directors” and HKD 345,050 of which being “Donations received from related companies”[[161]](#footnote-161).

Wong’s evidence in her witness statement dated 16 October 2020 in the 595 Action in relation to Graciously Affection was that all the assets of Graciously Affection *originated* *from Wong’s personal assets, donations from her family or her companies, and there were no public donations and that Graciously Affection had not received any income from any of the Temple’s religious events.* Wong had stated her then witness statement that in fact the contact between Graciously Affection and the Temple was *only during the 2012-2013 period*, and mainly in relation to the Ritual Ceremony in 2012 and the maintenance of the dangerous slope in 2013[[162]](#footnote-162).

What she said cannot be correct. As seen earlier from the 2008 List of Expense, Graciously Affection was already involved in the 2008 Ritual Ceremony at the Temple. In fact, the Ritual Ceremonies ceased after the Abbot Yee Chiu passed away in 2013.

Having considered her oral and written evidence, I find Wong’s answers and explanations very confusing and inconsistent in relation to how the expenses for the Ritual Ceremonies and/or other religious activities carried out at the Temple through Graciously Affection and how the reimbursements from the Temple were recorded in the books/financial statements of Graciously Affection. Even though Graciously Affection is a registered charity and exempted from tax, the fund flow in the expenses paid for and on behalf of the Temple by Graciously Affection and the reimbursements from the Temple simply did not match. There was no evidence from the auditors or accounts staff of Graciously Affection as to how the expenses and the reimbursements were recorded in the books of Graciously Affection. Although at this stage, there was no sufficient evidence of any “double claim” by Graciously Affection, as pointed out by Mr To on behalf of SJ, the non-matching of the expenses and the reimbursements has raised a concern as to whether the reimbursements from the Temple to Graciously Affection were justifiably made.

As to the registered address of Graciously Affection being that of the Temple, Wong’s evidence in her witness statement of 16 October 2020 was that the Temple being an old temple, the precedent/practice (慣例) was that it could sub-contract the religious events/functions to others, and that Wong herself was of the view that some other charitable activities could be carried out at the Temple to help the Temple “prosper” (更興旺), but then, Wong had also said it was not possible for such activities to be carried out in the name of the Temple, as all matters of the Temple were controlled by Jan, and that Jan would not agree to carry out such activities[[163]](#footnote-163).

Wong further went on to say in her then witness statement that Graciously Affection had obtained the consent of the Abbot Yee Chiu for using the address of the Temple as its registered business address, and that Jan was fully aware of this arrangement and also Pong had often co-signed on receipts for cash receipts from the Buddhist events. According to Wong’s then evidence, after Yee Chiu passed away in 2013[[164]](#footnote-164), without Yee Chiu’s leadership, Graciously Affection reduced the major religious activities, and that after learning that there was disquiet about Graciously Affection using the address of the Temple as its registered address, she decided to change the registered address to that of one of her own company’s[[165]](#footnote-165). Anyway, it was Wong’s evidence that all along Jan knew that Graciously Affection was using the Temple’s address as its own registered address.

This was denied by Jan. Jan’s evidence that she only found out when Sik told her in 2017, that Graciously Affection was using the address of the Temple as its registered address and it was carrying out its operations at the Temple’s address[[166]](#footnote-166). I find there was no sufficient evidence that Jan had known about Graciously Affection using the Temple’s address as its registered address earlier, as alleged by Wong.

The disputes between the Tong and Jan (and Pong) were reported by HK01 newpapers in May 2018. The HK01 newspaper had reported interviews with the manageresses of the Tong, AuYeung and Poon Tong’s members Wong and Lui, and also Jan’s daughter Pong Meng Ting[[167]](#footnote-167). As seen in those HK01 newspaper report, which was produced by the Tong, Jan’s daughter was complaining that the monks/nuns in the Temple in fact did not know that Wong had through Graciously Affection received sums for carrying out religious activities/functions, and that what Wong was doing was problematic[[168]](#footnote-168).

It was further stated in the above May 2018 HK01 report that the Temple had been selling niches for funeral urns in the columbarium of the Temple prior to 1 January 1990 and that if there were still unsold/unrented niches, a wavier could be applied for from the Government to continue to operate those sold niches but after 18 June 2014, no one could sell any niches unless being granted a licence, and the deadline for applying for the licences was 29 March 2018[[169]](#footnote-169). It appeared that prior to 18 June 2014, the Temple had already sold a total of 6,250 niches, and there were still a total of 8,561 niches unsold. It was reported by HK01 that the manageresses and members of the Tong decided not to apply for a licence and had given up a total of HKD 1,712,200,000 profits (@HKD 200,000 each), due to allegations that the Wong and/or the Tong was evicting all the successors of Yung Chau (Pong family) because the Tong was intending to develop the columbarium business[[170]](#footnote-170). The HK01 newspaper was only reporting what the manageresses and Jan’s daughter were saying at the time. There was no evidence of any independent verification.

Anyway, Wong admitted during trial her duties at the Tong were mainly external, namely she would be responsible for organising major Buddlist events and that prior to 2017, she was responsible for matters relating to the columbarium licence. According to Wong, in about 2014, there had already been a meeting held by the manageresses and the members and a resolution was passed not to apply for a licence to carry out the business of the columbarium. It was not clear which meeting Wong was referring to as there appeared to be no minutes of such a meeting produced and/or this Court’s attention was not drawn to any such minutes.

In any event, Wong’s evidence in her earlier witness statement that Jan would not agree to carry out those other charitable/religious activities was not consistent with Wong’s later written evidence that being an old temple, it was the practice of the Temple to arrange religious activities through a sub-contractor, nor was it consistent with Wong’s own oral evidence during the trial that (i) she had been arranging for those Buddhist events including the Ritual Ceremonies and paying for the expenses personally since 2003, and (ii) as Jan was often away from Hong Kong, it was Jan who had asked her/Graciously Affection to pay for those expenses first and to reimburse her all at one go after Jan returned.

There was no sufficient evidence that the Tong’s decision, if there had indeed been one, of not to apply for a columbarium licence had anything to do with Jan or Pong.

There was also no evidence that Jan had not agreed to carry out charitable/religious activities as alleged by Wong, nor was Jan’s agreement required. Jan was not in a position to agree or to disagree, since on Tong’s case, Jan was neither a manager nor a member of the Tong and was only employed as an accounts clerk.

During the trial, when asked why she had to incorporate Graciously Affection, Wong also came out with an odd answer, namely that she was hoping she could demonstrate to (感動) Jan through Graciously Affection on how to run a charitable company and to issue and keep receipts and invoices.

Wong’s evidence simply did not make sense, and having considered her evidence, I have to say I do not find Wong a reliable or a credible witness at all.

* + 1. Whether the Remedial Works of the Slope of Guan Yin Grotto was carried out improperly (Issue 12)

As Graciously Affection was involved in such works, I will consider Issue 12 as part of the allegations concerning Graciously Affection.

A “Dangerous Hillside Order” was issued on 25 February 2013 by the Building Authority under section 27A of the Buildings Ordinance to the owner(s) of Lot No 1255 RP in DD 453, declaring “the formed, or man-made land and earth retaining structure” (coloured red on the plan attached) was liable to become dangerous and that the owner(s) were ordered to carry out the works set out therein[[171]](#footnote-171) (“**Remedial Works**”). It was not disputed the retaining wall structure referred to in the above order concerned a hillside or a slope at the boundary of Lot No 1255 RP in DD 452 next to the Guan Yin Grotto (“**Slope**”).

According to the Tong, under the agreement in the Tomlin Order[[172]](#footnote-172), it was the contractual duty of the Guan Yin Grotto and/or Chao Jung not only to maintain the Slope but also to shoulder the costs of compliance with any government orders. It was the Tong’s case that the Dangerous Hillside Order had been posted up, and they had instructed solicitors to write to Chao Jung on 18 March 2013 indicating that the Tong would agree on a without prejudice basis to jointly appoint with Chao Jung a recognised and registered geotechnical engineer to carry out investigation[[173]](#footnote-173) and that on 23 March 2013 Chao Jung had replied to indicate that she would be appointing a geotechnical engineer for such purpose[[174]](#footnote-174).

On the other hand, it was Chao Jung’s evidence that that she never saw the Dangerous Hillside Order at the time, as it was sent to the Tong and not to Guan Yin Grotto and that there were 2 documents produced by the Tong purportedly signed by her which were in fact not signed by her, one was the reply dated 23 March 2013 above. According to Chao Jung, it was only in 2015, that she got to know Wong who then told her on the telephone about the Remedial Works and that Wong had told her not to worry about it as Wong would pay for it.

The other document which purportedly bore Chao Jung’s signature and said by her to be forged was an authorisation dated 20 August 2015 purportedly authorising Graciously Affection to appoint KT Consulting Engineers Limited (“**KT**”) to carry out ground investigation works and for Graciously Affection to pay for the 1st instalment of the costs[[175]](#footnote-175). Notwithstanding Chao Jung’s complaints, there had been no report by her to the police regarding the alleged for forgery. Whether Chao Jung had signed the authorisation or not, on her own evidence, by sometime in 2015, she had known about the Remedial Works and there was no evidence she had appointed any engineer and/or paid for such works. Graciously Affection appointed KT and the Authorized Person was one Mr Kenneth Mak and tender proposals for the ground investigation and topographical survey for the Slope were conducted by Graciously Affection for the Tong.

It would appear that eventually the “Ground Investigation Report” prepared by Mr Mak was sent to the Buildings Authority in January 2017[[176]](#footnote-176) and approval was sought for the proposals in respect of the Remedial Works for the Slope. However, the plans submitted by Mr Mak were found to be unacceptable by the Buildings Authority and disapproved for reasons set out in item 7 of a letter dated 28 July 2017 from the Building Authority[[177]](#footnote-177).

By then, as set out earlier, disputes had arisen between the Tong on one side and Jan, Pong, Sik, Chao Jung on the other.

The Letter of Consent from the Building Authority concerning the Remedial Works was eventually only issued on 4 February 2020 to Mr Kenneth Mak and Hanki Contractors (HK) & Associate Ltd (“**Hanki**”) was then appointed to carry out the Remedial Works. The Tong apparently commenced the Remedial Works at about end of March 2020, without notice to the Guan Yin Grotto or to Chao Jung. Chao Jung then called for an immediate meeting which took place on 3 April 2020, which was chaired by Sik and attended by Chao Jung, Sik, 5 worshippers at Guan Yin Grotto and a Mr Man who was a representative of Hanki[[178]](#footnote-178). The minutes were said to be recorded by Sik and a believer called Mr Tang. It appears from the minutes of that meeting that one of Chao Jung’s and Sik’s complaints was that upon completion of the Remedial Works as planned by the Tong, the width of part of the Yellow Road would be reduced by almost half and yet no one had notified Guan Yin Grotto. As a result, Sik had also complained that the rights of Guan Yin Grotto had been interfered with and unless all the conditions imposed by the Building Authority and all reasonable conditions imposed by Guan Yin Grotto had been complied with, the Remedial Works could not be commenced and that in the meantime all the costs should be borne by the Tong[[179]](#footnote-179).

Thereafter, the Tong and Guan Yin Grotto pointed fingers at each other complaining of the other being unreasonable. There was also a complaint by the Tong to Chao Jung and Sik over vehicles parked at the EVA[[180]](#footnote-180) and a complaint by the Tong to the HWMH Limited for illegally entering the Tong’s land[[181]](#footnote-181).

Although the Tong complained that Chao Jung and/or Sik had hindered the Remedial Works, the commencement of the Remedial Works by the Tong without notice to and/or without communication with Chao Jung had no doubt added to the delay in carrying out of the Remedial Works. It would appear from the evidence of Chao Jung and Sik at the trial that eventually the Government took over the Remedial Works.

Of greater concern is the reason for the involvement of Graciously Affection, it is common ground that Graciously Affection was involved in the Remedial Works and that Graciously Affection had allegedly paid a significant amount of money to retain engineers to conduct various works. However, it was not clear why Graciously Affection was involved in the first place as it had no expertise or experience in engineering or construction works. What also transpired was that as early as in 2001 the Tong had directly retained an engineering firm MAA Engineering Consultants (HK) Limited to deal with the maintenance of the slope pursuant to approval being obtained from the Building Authority and the Tong had been in direct contact with the then architects Andrew Lee King Fun & Associates as seen in a letter dated 18 June 2001[[182]](#footnote-182). The Tong had directly paid the architects HKD 125,000 on 26 July 2001[[183]](#footnote-183). In 2004, the Tong had also paid about HKD 671, 934 in relation to the retaining wall[[184]](#footnote-184). Thus the Tong was well capable in dealing with the matter directly without the involvement of Graciously Affection.

Although initially there were tender proposals sought by KT and Mr Mak for the ground investigation works, thereafter there seemed to have no further tender conducted by the Tong/Graciously Affection before Hanki was appointed. As pointed out by Mr Wang on behalf of Jan and Pong, in light of the Tong’s stance being that pursuant to the agreement in the Tomlin Order, it should be the duty of the Guan Yin Grotto to pay for the Remedial Works, there was no reason why Wong would want to shoulder all the costs of the Tong relating to the Remedial Works by way of donations to the Tong. I agree. Anyway if any donations were required for the Remedial works, it appeared they should be to Guan Yin Grotto.

The evidence about the payment of the costs relating to the Remedial Works was also extremely confusing. No documentary evidence of payment had been produced. Only a quotation was produced by the Tong. AuYeung orally stated that the Tong had paid for the Remedial Works and did not remember Graciously Affection had paid anything notwithstanding her written evidence of the breakdown of payments made by Graciously Affection. When asked, AuYeung said she could not recall. It was alleged that the breakdown could be found from the financial statements of Graciously Affection and the Tong, but no such financial statements had been provided by the Tong and that the only financial statements of the Tong of the relevant period of 2015 did not show all the alleged payments. When Wong was asked about this, Wong then said they were not booked in the financial statements of Graciously Affection because the payments were made by her personally.

* + 1. Conclusion on Graciously Affection

Yee Chiu passed away in January 2013, and by 31 December 2013, the registered address of Graciously Affection was changed to the address of Wong’s company at Wang Yip Industrial Building. It was Sik’s, Jan’s and Pong’s evidence that since then, the income of Graciously Affection had dropped. As seen in a schedule of the item “Income” in the audited financial statements of Graciously Affection, from the date of incorporation until 31 December 2018[[185]](#footnote-185), the “Income” was HKD 309,080 in 2007, HKD 230,000 in 2008, HKD 796,137 before reaching the highest figure of HKD 1,015,500 in 2010, and then HKD 531,809 in 2011, HKD 938,918 in 2012, HKD 513,150 in 2013 and then suddenly became *nil* in 2014, then HKD 75,000 in 2016, HKD 244,001 in 2017, and HKD 180,003 in 2018. As said earlier, the annual Ritual Ceremony ceased to be held after the Yee Chiu passed away in 2013. The income of Graciously Affection had clearly dropped substantially after 2013.

It was the evidence of the manageresses AuYeung and Poon that all along they knew that Graciously Affection was providing services to the Tong on a *pro bono* basis and all expenses were reported to the Tong for reimbursements.

According to Jan, Wong was initially a voluntary worker in the kitchen of the Temple and had no relationship with any members of the Tong[[186]](#footnote-186). Although according to Wong, she only received limited education up to Form 4 in Hong Kong, she is now a very successful and wealthy businesswoman owning various companies and factories holding multiple landed properties in Hong Kong.

It would thus appear that Wong would have more commercial and business experience than Jan who was a teacher before she was employed by the Tong, and in any event, Wong would clearly have more commercial and business experience than the manageresses AuYeung (of junior middle school education level) and Poon (of primary school education level) who were both farmers before joining the Tong.

Although at present before this Court, there was no sufficient evidence that Wong had benefitted personally from all those arrangements made between the Tong and Graciously Affection, or that there was any benefit derived by Graciously Affection, there had been no satisfactory explanation by the manageresses and members of the Tong or by Wong as to why religious events or activities held by the Temple and/or the Remedial Works had to be channelled and/or arranged through another person/entity as a sub-contractor, firstly since 2003 through Wong herself personally and later since 2006 through Graciously Affection. I find that the evidence of Wong, the manageresses, and Lui, namely all 4 current members of the Tong, confusing and unreliable. The non-matching of the expenses and the re-imbursements from the Tong and the accounts of Graciously Affection in my view justifiably raised concerns of the possibility of there having been being impropriety and/or mismanagement of the financial affairs of the Tong. In any event, the fact that the Tong had to go through Graciously Affection for the organisation of any religious ceremony and the carrying out of the Remedial Works demonstrated that the Tong was not capable of managing its own financial affairs.

* 1. CLSY Limited

Chuk Lam Sim Yuen Limited (竹林禪院有限公司) (“**CLSY Limited**”) was incorporated by the 4 members of the Tong on 15 February 2018 as a company limited by guarantee and a business registration certificate was obtained on 23 March 2018[[187]](#footnote-187).

AuYeung had explained that that CLSY Limited was incorporated to ensure the ongoing operation of the Tong, after the SCB Account was suspended on 7 November 2017, but as the suspension was subsequently lifted on 17 November 2018, Lui had confirmed that the company had remained unused or dormant.

As at 31 August 2021, the 4 members remained directors of the company. The audited financial statements up to 31 August 2021 indicated there had been no income since 2020 and the only expenses appeared to be business registration and audit fees.

It was the evidence from the Tong that it intended to keep CLSY Limited alive as it could become useful in future.

Mr Wang pointed out there was a gap of some 4 months between the Tong’s SCB Account was frozen until the incorporation of CLSY Limited and, no new bank account was opened by CLSY Limited. Thus, the reason which the Tong gave for incorporating this company did not seem to be a valid one. When Mr Wang put to Lui that the incorporation of this company was for it to replace the current management system of the Tong, which meant a further step towards the Tong to entirely abandon or the Abridged Regulations, Lui did not really deny this.

Whether this was the Tong’s intention or not, there was no sufficient evidence that the incorporation of this company was any mismanagement of the affairs of the Tong, whether financial or otherwise.

* 1. Any irregularity in the use of the funds of the Tong during the suspension of the SCB Account (Issue 10)

As said earlier, the Two Nuns alerted the SCB of the disputes between the members of the Tong and SCB suspended the operation of the SCB Account on 7 November 2017.

The Tong’s case was that as the SCB Account was frozen due to the wrongful acts of the Two Nuns, and in order to enable the operation of the Tong to continue, Wong agreed to lend HKD 200,000 to the Tong as an emergency temporary measure to disburse expenses of the Tong and that Kwong Ming (釋光明) (alias Ng Fai Ki) agreed to lend the use of his personal bank account for such purpose[[188]](#footnote-188). Kwong Ming was the one who issued a cheque to Jan in December 2017 upon her dismissal[[189]](#footnote-189). As mentioned earlier, Ng Fai Ki was a director of HWMH Limited as at 31 December 2016[[190]](#footnote-190). Kwong Ming is now also said to be the Usher of the Tong.

According to the Tong, the Two Nuns had indicated that if the Tong were to use its cash income to pay for expenses, the Tong could deposit the cash into the SCB Account first and that they would instruct SCB to withdraw their earlier allegations and to agree to the SCB Account being operated. Therefore, on 30 November 2017, the Two Nuns and the 4 members went to SCB to deposit the cash income of the Tong but after the deposit, the Two Nuns did not abide by their agreement and as a result, as all the cash which the Tong had relied on for its operations had been deposited into the SCB Account, there was a cash flow problem, and that was why there was an interest free loan from Wong to pay for the wages of the employees and the loan amount was paid into the personal account of Kwong Ming and for Kwong Ming to pay the staff by cheques[[191]](#footnote-191).

However, as seen in a letter dated 11 December 2017 from SCB’s solicitors, it would appear when all the 6 members (including the Two Nuns) went to see the bank on 30 November 2017. During the meeting, it was agreed by SCB and the members that a payroll worksheet in the bank’s prescribed form would be submitted to the bank by the Tong for the payment of salaries and wages to employees but such payroll work sheet was never sent to the bank[[192]](#footnote-192).

Again, the evidence of the 4 members over this meeting with SCB and why the bank’s suggestion was not complied with was confusing. It seems to be their explanation that some staff did not have bank accounts, and/or objected to provide the details of their bank accounts and the Tong was unable to submit the payroll worksheet. However, it was not clear why the members agreed to provide the payroll worksheet to SCB in the first place and why the members did not go and see the bank again to discuss alternatives. In any event, it was not clear why Wong did not use her personal bank account if the loan was provided by her and why Kwong Ming’s bank account had to be used. There was no evidence as to Kwong Ming’s connection with the Tong. When the AuYeung was asked under cross examination, she had at first said it was Kwong Ming who lent the money. When Poon was asked under cross examination, she was at first evasive and eventually she said the 4 members of the Tong thought it was improper to use their personal accounts and instead, they decided to use Kwong Ming’s account. Again, the Tong’s evidence was confusing. Kwong Ming was not called to give evidence. I have to say, the solution proposed by SCB would have been much simpler, and there would have been no need to involve Kwong Ming. The arrangement through Kwong Ming raised more questions than answers.

As pointed out by Sik, it was not clear what happened to all the cash donations made by the public to the Tong during the approximately one year period when the SCB Account was suspended. It was also not clear as to whether all such cash donations were deposited into Kwong Ming’s bank account or not.

I accept that the Tong had not explained properly as to the whereabouts of all receipts/donations during the the one year period. Although there was no sufficient evidence before this Court of any wrongdoing on the part of Wong, Kwong Ming or the Tong in the arrangement set out above, or that there had been any irregularity in the use of the funds of the Tong between November 2017 and November 2018, the convoluted way of dealing with this issue again raises concerns. In my view, it clearly demonstrated the inability of the Tong to manage its own financial affairs.

* 1. Whether the Tong wrongfully used the Tong’s funds to invest in securities (Issue 14)

At the end of the trial, this was no longer a complaint pursued by Jan and Pong[[193]](#footnote-193).

1. CATEGORY IV – QUALIFICATION OF THE MEMBERS AND/OR MANAGERESSES – (ISSUES 2, 4-6, AND 15)
   1. The Abridged Regulations

As mentioned earlier, the original regulations governing the Tong’s constitution were said to have been lost during the war, and the Abridged Regulations are now the only regulations which are available. They are in Chinese and contained in two pages and they appeared to be prepared for the purpose of the Tong’s application for the Section 88 Exemption.

As mentioned, Article 1 has set out the names of the 8 Founding Members of the Tong. Article 4 sets out the succession system.

During the trial, it was suggested by the Tong that there had been amendment to the Abridged Regulations in 2003 at a general meeting held on 1 March 2003. It was allegedly resolved during the meeting to abandon the previous succession system under Article 4 of each “fong” of a Founding Member to have one successor (“承襲制”), and that such system be replaced by a system where by, any person who is a disciple of the Founding Member/her successor can become a member of the Tong, upon the conduct and ability of such a person being approved by each member[[194]](#footnote-194) (“**2003 Amendment**”).

As pointed out by Mr Wang, the 2003 Amendment was never pleaded by the Tong, and it was the Tong’s express pleading that the operation and management of the Tong were and still are subject to the Abridged Regulations, and such was also the evidence of the Tong’s witnesses in their witness statements.

Mr Wang further submitted that under Article 9, the Abridged Regulations can only be amended by all the Founding Members unanimously and that there was no sufficient evidence that the Abridged Regulations had been amended by an unanimous resolution of the Founding Members and/or their successors. According to the minutes of the meeting held on 1 March 2003, 3 out of the Founding Members or 37.5% of the Founding Members were absent, or only 62.5% was present. Although it was recorded that there was a majority of members present, this was only to state that there was sufficient quorum for the meeting to be held. There was no evidence that the 3 absent members had subsequently agreed to the 2003 Amendment.

On the other hand, Mr Chong argued on behalf of the Tong that it was the history and practice of the Tong passing resolutions by majority of votes and that the contention that a resolution would need to be passed by unanimous vote would defy logic and common sense.

However, passing an ordinary resolution by majority of votes is one thing but amending the Abridged Regulations is another. Article 9 of the Abridged Regulations states “本章各項倘有未臻完善，眾發起人得隨時經通過而修改之”. Sik submits that in the context, “眾發起人” should refer to *all* the Founding Members stated therein (or the then successors/members). The Abridged Regulations are in my view akin to the articles of association of an incorporated company, and an amendment thereof requires a special resolution to be passed. I find there is an ambiguity in Article 9. I am not satisfied that a resolution passed by a simple majority of those Founding Members present at the meeting would be sufficient and valid to amend the Abridged Regulations and to introduce the 2003 Amendment. Further, as found later in this judgment, Wong was not a qualified member at that meeting. Also, in completing the answers to the “Questionnaire” required by the IRD from time to time in relation to the Tong’s charitable status, the Tong had in fact confirmed to the IRD that there had been no change to the Abridged Regulation from 29 October 1997 until 29 April 2014[[195]](#footnote-195). Thus the Tong did not seem to have regarded the resolution for the 2003 Amendment having been validly passed.

In any event, as pointed out by Mr Wang, the 2003 Amendment, even if validly passed, was only of a very limited effect in that it only sought to abandon the previous requirement for each “fong” to have one successor to be a member, ie the “承襲制”. Even if the 2003 Amendment had been validly passed, the successor member must still be a disciple of the Founding Member or her successor and that such appointment must be approved by *all* of the then members. I accept what was submitted by Mr Wang.

* 1. Whether the existing members and manageresses of the Tong were/are qualified to take up their current posts (Issue 4)

There was no real dispute that the “Founder” of the Temple was Yung Chau, who was male and a monk. One of the Founding Members set out in Article 1 was Mau Fat. According to the Tong, she was not a nun and that there had been non-ordained members in each generation. Even on the Tong’s case, looking at the Succession Diagram, there appeared to be only one non-ordained member out of a total of 8 members in the 2nd generation, 3 non-ordained members out of a total of 7 members in the 3rd generation, one non-ordained member out of a total of 3 members in the 4th generation, and thus, up to the 4th generation, the majority of the members of the Tong were nuns (尼姑) or female ordained persons (出家人). As for the present 5th generation, there were originally 6 members of which there were the Two Nuns, until they were removed. At the moment, all 4 members are female non-ordained persons.

Under Article 4, each Founding Member during her life time was to appoint her successor from her disciples (指定其徒眾之一為繼承人), or her successor was to be appointed by the remaining 7 Founding Members. Article 4 does not state that the disciple has to be an ordained person, and in fact, the words “而繼承人無論是否出家人” lend support to the view that the disciple needs not be a nun or a female ordained person. However, Article 4 has to be read together with Article 5 which provides for the various offices or responsibilities in the Temple as follows:

“The offices namely (i) Abbot (主持即方丈) *who must be a monk*,(ii) Person-in-charge(當家) *who must be a nun*, (iii) Manager (司理) (iv) Head Chef (典座) and (v) Usher (知客) etc *who must be nuns*, shall be taken by members of Man Wa Tong upon election among members of themselves (ie Founding Members or their successors), and the Abbot must be elected and invited by the Founding Members, for a term of three years and upon expiry of such term, he may be invited again or his term may be extended, or he may be dismissed.”

Mr Wang thus submitted that apart from the Abbot, the other 4 offices under Article 5 must be taken up by nuns and further elected from among the members. On my reading of Article 5, I agree with Mr Wang that the 4 offices specified in (ii) to (v) must be taken up by nuns and further the “互選” procedure of election among members applies to the 4 offices specified in (ii) to (v) above. Only the Abbot can be a monk “elected and invited” (“選請”) by the Founding Members/successor members from outside or from other non members.

To summarise, on a proper construction of Articles 4 and 5 together, it is my view that the members of the Tong who take up the 4 offices in (ii) to (v), ie 6 or 7 members (depending on the number of Ushers) must be members of the Tongs and who must be nuns.

The current manageresses AuYeung and Poon not being nuns were and are not qualified to be manageresses. Gor Hang, being a monk and not a member, is not qualified to be Person-In-Charge (當家). Kwong Ming, as said earlier, being a monk and not a member, is not qualified to be an Usher. Lui, although a member, not being a nun, is not qualified to be the Head Chef.

As to whether the present 4 members are qualified to be even members of the Tong, my interpretation of Article 4 is different from Mr To’s. Article 4 only provides that the children and relatives of a successor should not interfere or participate in the rights and benefits of the Tong. In my view, this does not mean that there is any restriction in Article 4 for a relative to become a “successor” of a Founding Member, so long she is a disciple of the Founding Member and appointed to be her successor, but I accept there is ambiguity in Article 4.

So far as Poon is concerned, she came to settle in Hong Kong in 1982 and according to her, she was a niece of Kwong Yuen and Poon appeared to become a follower or disciple (皈依) of Kwong Yuen on 15 October 1982, and later in February 2006 she was formally employed by the Tong to light lamps in the Temple and to do cleaning and miscellaneous work. There was a proposal on 24 January 2003 for her to succeed Yee Ting[[196]](#footnote-196). AuYeung came to Hong Kong in 1985 through the application of Sik Kwong Wai (釋光慧, also known as AuYeung Kwong Wai), one of the members of the Tong of the 3rd generation, to first work as a person lighting the lamps and later in 1989, she was employed as a clerical staff to work in the Reception Hall. At the general meeting on 1 March 2003, both Poon and AuYeung were confirmed to be members. Poon and AuYeung also appeared to have been given religious names, respectively “通道” and “通明”[[197]](#footnote-197), even though in the end they did not become ordained as nuns. By then, they had worked in the Temple for respectively 21 and 18 years. According to AuYeung, she and Poon became members being disciples (徒眾) of respectively Kwong Yuen and Kwong Wai. There was no sufficient evidence to contradict their evidence. Lui is a Chinese herbalist. She joined the Temple in 1968 when she was 8 years old and was said to be a disciple of Yee Kai (意皆法師) who died on 25 January 2005. There was no sufficient evidence to contradict this. Lui became a member of the Tong in 2005 having been in the Temple for some 37 years. She also appeared to have a religious name “光靄” although also did not become ordained as a nun.

As for Wong, she appeared to be appointed as a member of the Tong on 20 November 2002, to succeed Yee Har[[198]](#footnote-198). Her appointment was also confirmed at the general meeting on 1 March 2003. However, Wong was not appointed by Yee Har as her successor during Yee Har’s lifetime nor was there any evidence that Wong was a disciple of Yee Har or any of the Founding Members or their successors.

To conclude, I am prepared to accept Poon, AuYeung and Lui were/are qualified to be members of the Tong under Article 4. However, I find Wong was/is not qualified to be a member of the Tong as there was no sufficient evidence that she was a disciple of a former member. However, none of them were/are qualified to take up any offices set out in Article 5 or Article 6.

* 1. Should SHA cancel the appointment of AuYeung and Poon as manageresses of the Tong (Issue 2)

Quite apart from the fact that the appointment of Poon and AuYeung as manageresses of the Tong was in contravention of Article 5 of the Abridged Regulations as they were not nuns and were not qualified to be manageresses, it was the case of Sik, Jan and Pong that the two were incompetent to be appointed as manageresses of the Tong and their appointment should be cancelled.

On the other hand, it was Mr Chong’s submission that *dishonesty* is a “*fundamental requirement*” for removal of a manager[[199]](#footnote-199) citing the Court of Appeal decision in *Cheung Man Yu v Lau Yuen Ching* [2007] 4 HKC 314. The *Cheung Man Yu* case does not really support Mr Chong’s proposition. The Court of Appeal in the *Cheung Man Yu* case allowed the appeal of the applicant and found that the 4th respondent Lin Fat Tong was a charity, in the legal sense and had remained a charity at the time of the appeal[[200]](#footnote-200), and ordered the 1st to 3rd respondents to make disclosure and to deposit the relevant monies into Court and gave liberty to the applicant to apply for, amongst other things, removal of the 1st and 2nd respondents as trustees/members of the Lin Fat Tong and for a better administration order of Lin Fat Tong under section 57A of the Ordinance. Insofar as one can see, there was no clear finding of any dishonesty or breach of trust on the part of the trustees in that case, or that such is a fundamental requirement for removal of a manager.

Mr Chong had submitted that any deviation from the fundamental requirement of dishonesty for removal of manager would meet with procedural difficulties as:

1. AuYeung and Poon were properly and unanimously elected as mangers by members during 2 meetings in 2003;
2. the appointments of AuYeung and Poon were considered and approved by the District Officer in 2003 and 2007 pursuant to section 15 of the New Territories Ordinance.

It is Mr Chong’s submission that under the statutory scheme, only the District Officer has the power, on ‘good cause shown’ to remove a statutory manager and would require proof of Chinese law and custom applicable to the locality.

The current version of section 15 of the New Territories Ordinance, Cap 97 states that:

“Whenever any land is held from the Government under lease or other grant, agreement or licence in the name of a clan, family or t’ong, such clan, family or t’ong shall appoint a manager to represent it. Every such appointment shall be reported at the appropriate New Territories District Office of the Home Affairs Department, and the Secretary for Home and Youth Affairs on receiving such proof as he may require of such appointment shall, if he approves thereof, register the name of the said manager who shall, after giving such notices as may be prescribed, have full power to dispose of or in any way deal with the said land as if he were sole owner thereof, subject to the consent of the Secretary for Home and Youth Affairs, and shall be personally liable for the payment of all rents and charges and for the observance of all covenants and conditions in respect of the said land. Every instrument relating to land held by a clan, family or t’ong, which is executed or signed by the registered manager thereof in the presence of the Secretary for Home and Youth Affairs and is attested by him, shall be as effectual for all purposes as if it had been executed or signed by all the members of the said clan, family or t’ong. The Secretary for Home and Youth Affairs may on good cause shown cancel the appointment of any manager and select and register a new manager in his place. If the members of any clan, family or t’ong holding land do not within 3 months after the acquisition of the land make and prove the appointment of a manager, or within 3 months after any change of manager prove the appointment of a new manager, it shall be lawful for the Government to re-enter upon the land held by such clan, family or t’ong, which shall thereupon become forfeited. Such re-entry shall be effected by the registration of a memorial thereof in the Land Registry.”

There were no authorities produced by Mr Chong as to what would be regarded as “good cause”. In particular, there were no authorities to say that, for example, the Tong’s own cancellation of its managers or the manager’s own resignation or lack of qualification or an order of removal made by the Court would not constitute a “good cause”. If one looks at the history of the Tong, Yung Chau was not “cancelled” as a manager because of any dishonesty and the Tong’s allegation was that he was in breach of Buddhist precepts. Yee Har or Yee Ting and others were cancelled as managers upon their respective retirement. SJ in the present actions represent both the Secretary of Justice and the Secretary of Home Affairs. Their position is that both AuYeung and Poon should be removed for two reasons, namely that (i) AuYeung accepted that they did not insist upon being the managers and Poon said she was only asked to become one, and (ii) both of them have accepted that they are incompetent and ill-equipped in carrying out their duties as the manageresses[[201]](#footnote-201).

As said earlier, both AuYeung and Poon were farmers in the Mainland before they joined the Temple, AuYeung being educated to junior secondary level and Poon only completed primary education. Through no fault of their own, there is a clear limitation in their ability in dealing with administration and financial affairs of the Tong. It was AuYeung’s written evidence that it was only in about 2017 that she found out that (i) the Tong was registered as a Chinese temple and that (ii) in about 1985, the Tong had obtained the Section 88 Exemption[[202]](#footnote-202). Their evidence as to when they found out about the Section 88 Exemption was particularly confusing and inconsistent. During the trial, under cross examination, AuYeung admitted that she knew of the Tong’s Section 88 Exemption in early 2005 at about the time of the official opening of the Hall of 500 Arhats. As for Poon, when she was asked during the trial about the Tong’s Section 88 Exemption and when she learnt of the same, she was not able to provide any proper answer. She first said it was in October 2017, then she said it was after Jan was dismissed which would be in December 2017 but when it was pointed out to her in her affirmation of 17 March 2017, she had produced a letter of 3 October 2005 from IRD of the Tong’s charitable status, she had no answer. She later admitted having signed an IRD questionnaire on 23 April 2014 in relation to the Tong’s Section 88 Exemption/charitable status.

It was further AuYeung’s evidence that when she found things “went out of control” in the Temple in 2017, and the Tong was in a mess, and everyone was very scared, including herself and she then “fled” and stayed away from the Tong for a total of 3 months during this period. Her behaviour was in my view irresponsible and unbefitting as a manager of the Tong.

Anyway, it is clear to this Court that neither of AuYeung nor Poon would be able to exercise any independent decision or judgment over matters concerning the Land, and over the administration and financial affairs of the Tong or to properly understand their duties as manageresses of the Tong. Having considered their evidence, I am satisfied that neither of them has demonstrated an ability to properly carry out their managerial and/or administrative duties and/or financial duties, and that their competence falls far short of any reasonable standard one may expect for a manager who runs a charity with a sizeable fund as the Tong. According to an assets report as at 27 July 2017 produced by Sik in his affirmation of 10 September 2018, the total assets of the Tong were some HKD 210,450,000. In any event, both of them had accepted their own incompetence during the trial. In my view, they should both be removed.

As submitted by Mr To, the removal issue should be part of the broader BAO sought.

* 1. Whether the existing members of the Tong were entitled to pass a resolution to invite the 3 Gentlemen to become members of the Tong (Issue 5)

On 30 October 2017, a resolution was passed at a meeting to appoint the 3 Gentlemen to become members of the management[[203]](#footnote-203). This meeting was attended by AuYeung, Poon, Lui and Wong, namely the non-ordained members of the Tong and the Two Nuns were absent. The 3 Gentlemen appointed were not ordained persons, nor was there any evidence that they were disciples of any of the Founding Members, or members or former members of the Tong. The 3 Gentlemen had no prior connection with the Tong, and they were only stated to be eminent persons in Hong Kong.

The 2003 Amendment, even if validly passed, would not empower the existing members to admit or to appoint the 3 Gentlemen to become members of the Tong. During the trial, the Tong maintained that the 3 Gentlemen had not actually become members as they had all declined to join. Notwithstanding this, what is clear is that the 4 members did try to act in contravention of the Abridged Regulations by admitting or appointing the 3 Gentlemen to become members of the Tong. This is a matter of grave concern as the current members seemed to think they could ignore the provisions in the Abridged Regulations by appointing whomever they wished to become members of the Tong.

* 1. Whether the Two Nuns were unlawfully evicted (Issue 15)

It was the Tong’s case that due to the wrongful interference with the management and affairs of the Tong, the Two Nuns were lawfully removed by way of resolution passed at a meeting on 20 December 2017.

There are no provisions in the Abridged Regulations in relation to the removing, evicting or expelling a member of the Tong or whether any removal should be by unanimous vote of members. Mr Chong had submitted that if a member/successor had to be removed by an unanimous vote of the members, no member/successor could ever be removed as the defaulting member/successor would unlikely to vote in support of his/her own removal.

In the past, there was only one member, namely Sik Wai Ching (釋惟正) (“**Wai Ching**”) who had been removed as a member in 2010 by majority votes as she had left Hong Kong in 1991 and was in 2010 still living in the United States. There was no objection from Wai Ching to her own removal.

However, for the removal of the Two Nuns, the chronology of events was that as early as on 11 October 2017[[204]](#footnote-204), AuYeung and Poon, in their capacity as the manageresses of the Tong had already issued a notice to all the members of the Tong to call for a meeting of the members on 30 October 2017 to discuss (1) adding the 3 Gentlemen as new members and (2) removing 4 members namely Wong, Lui, and the Two Nuns. It is my understanding that Wong and Lui had offered to resign as members in order for the 3 Gentlemen to be appointed. However, the Two Nuns did not agree to their removal, nor did they consent to the 3 Gentlemen being appointed.

On 23 October 2017, the Two Nuns issued a letter to AuYeung, Poon, Wong, and Lui stating their objection to the above proposals as such proposals were in contravention of Article 4 of the Abridged Regulations[[205]](#footnote-205), and the Two Nuns had copied their letter to SHA. On 26 October 2017, one of the Two Nuns, Tung Ding sent a further letter to SHA to request for supervision of the Tong in relation to the proposed change of membership and to investigate into the motives of the manageresses and if necessary to cancel their appointment[[206]](#footnote-206).

Nevertheless, the meeting on 30 October 2017 went ahead. The Two Nuns did not attend the meeting, and notwithstanding their objection, as said earlier, it was resolved by the 4 members present at the meeting, namely AuYeung, Poon, Wong and Lui to appoint the 3 Gentlemen to be new members (“**30.10.17 Resolution**”). However, it appeared that the Two Nuns were not removed at that meeting, nor were Wong and Lui.

On 1 November 2017, a letter was then issued to the members of the Tong, and all residential monks/nuns, Goo Tais, staff and believers at the Temple by the Two Nuns in their capacity as successors and members of the Tong and by Wai Ching in her capacity as successor and past member (2003-2010) of the Tong, complaining about the appointment of the 3 Gentlemen under the 30.10.17 Resolution being in breach of the Abridged Regulations and not lawful, and proposing to cancel the 30.10.17 Resolution and further proposing certain reforms to the constitution of the Tong[[207]](#footnote-207).

The above letter was followed by a further letter dated 6 November 2017, issued to all members of the Tong, in the name of the Two Nuns and Wai Ching and signed by Tung Ding on behalf of herself and Ben Jian, and also signed by Wai Ching, proposing certain reforms to the constitution, ie the Abridged Regulations[[208]](#footnote-208) including maintaining the original number of members being 8, the managers have to be nuns and all offices to be taken up by nuns. On the same day, a letter was again sent to SHA requesting for their assistance[[209]](#footnote-209). Thereafter, there were a number of complaint letters sent out by the Two Nuns, to the bank and also to various authorities.

The SCB Account was then suspended on 7 November 2017. The resolution to remove the Two Nuns as members of the Tong was only passed on 20 December 2017[[210]](#footnote-210) (“**Removal Resolution**”). As seen in the above chronology of events, the decision and intention to remove the Two Nuns was however made known by the other members as early as 11 October 2017, over a month before the SCB Account was suspended.

Mr Chong had argued that the burden was on Jan and Pong to prove that the Removal Resolution was invalid, whether under the Abridged Regulations or pursuant to Chinese customary law, as it was Jan and Pong who had relied on this to seek a BAO.

As said earlier, Wai Ching was removed only because she had been living in the States for a long period of time, and she was not really removed for any wrongdoing and there was no objection from Wai Ching over her removal. There was no evidence that prior to the Removal Resolution any member/s of the Tong had been removed for any wrongdoing. In any event, there was no sufficient evidence that at the time of the issue of the notice of 11 October 2017 the Two Nuns were guilty of any wrongdoing. The subsequent actions of the Two Nuns only arose out of the members’ appointment of the 3 Gentlemen as 30 October 2017, in contravention of the Abridged Regulations.

Having considered the above, in my view there being no provisions in the Abridged Regulations for removal of a member, whether with or without cause, the Removal Resolution would be invalid. Having said this, there is an ambiguity/omission in the Abridged Regulations, and to avoid future disputes, there is a need to have a review of the Abridged Regulations to include such a provision but the details are part of the BAO.

* 1. Whether the Abridged Regulations require any amendment (Issue 6)

As set out above, a review of the Abridged Regulations is necessary. It was the Tong’s pleaded case that the Abridged Regulations require amendments due to change in social conditions such as change of popularity and populations of monks and nuns.

Having considered the original purpose and principles of setting up the Tong and the provisions in the Abridged Regulations, I am of the view that it would be against the original intention, purpose and principles for the Abridged Regulations to be amended to allow *all* members of the Tong who are not disciples or designated successors of an existing member to be non ordained persons (whether male and female) and/or to allow those offices set out in Article 5 and Article 6 to be all held by non ordained members.

On the other hand, in light of what has been set out earlier by this Court, it appears that there are ambiguities and/or omissions in the Abridged Regulations, and I am of the view that the Abridged Regulations do require an overall review and/or amendments. This should be part of the BAO sought.

1. CATERGORY V – WHETHER THE SJ SHOULD INTERVENE AND WHETHER A BAO SHOULD BE GRANTED (ISSUE 3)

Both SJ and SHA had already been named as a parties in the 496 Action, and SJ also in the 595 Action. A defence was filed on behalf of SJ on behalf of both SJ and the SHA. SJ had participated in the trial on behalf of themselves and SHA, as directed by this Court. It is thus no longer an issue as to whether they should intervene.

The Tong has referred the Court to Article 141 of the Basic Law and that this Court shall not interfere in the internal affairs of religious organisations. Article 141 states as follows:

“The Government of the Hong Kong Special Administrative Region shall not restrict the freedom of religious belief, interfere in the internal affairs of religious organizations or restrict religious activities which do not contravene the laws of the Region.

Religious organizations shall, in accordance with law, enjoy the rights to acquire, use, dispose of and inherit property and the right to receive financial assistance. Their previous property rights and interests shall be maintained and protected.

Religious organizations may, according to their previous practice, continue to run seminaries and other schools, hospitals and welfare institutions and to provide other social services.

Religious organizations and believers in the Hong Kong Special Administrative Region may maintain and develop their relations with religious organizations and believers elsewhere.”

It is not disputed that the Tong is a charitable trust and as such it is subject to the provisions of the Trustee Ordinance. The BAO is being sought in relation to the Tong being better administered and run as a charitable trust and in that status. The internal affairs and religious activities and practice are not being interfered with or restricted. This is also a view shared by Mr To on behalf of SJ and SHA.

To summarise, I am satisfied that (1) there has been mismanagement of its affairs and/or that there has been a failure on the Tong’s part to put in place a proper or effective system and clear guidelines in the management and administraton of, in particular, its external affairs in carrying out of its charitable objects; (2) the Tong has demonstrated an inability to manage its own financial affairs; (3) AuYeung and Poon were not qualified to take up their offices as manageresses and should be removed; (4) one of the current members, namely Wong, was/is not qualified to be a member and should be removed; (5) there is no one from the current members who is qualified to take up any of the offices in Articles 5 and 6; and lastly (6) there should be an overall review of Abridged Regulations. For all these reasons and having considered all the circumstances of this case, I have come to the view that a BAO should be granted, subject to the further consideration of its ambit and terms.

1. CATEGORY VI - THE TONG’S ALLEGATIONS AGAINST JAN & PONG (ISSUES 17-21, 16)
   1. Generally

Issues 17- 21 of the Scott Schedule are allegations made by the Tong against Jan and Pong in the 595 Action. Issue 16 concerns whether the Tong’s claims are time-barred.

The Tong’s allegations against Jan in Issues 17, 20 and 21 are:

1. Whether Jan had breached her duties as an assistant and an accounting clerk of the Tong in the course of her employment (Issue 17)
2. Whether Jan (and Pong) had been in wrongful interference with management of the business and affairs of the Tong (Issue 20)
3. Whether Jan was entitled to withhold the ledgers, books and accounting documents from the Tong (Issue 21)

The Tong’s allegations against Pong in Issues 18 to 20 were:

1. Whether Pong had, in the course of working as a volunteer worker for the Tong, misappropriated money said to be ‘salary’ payable to the ‘Master of the Tong’ (堂主) (Issue 18)
2. Whether Pong had been in wrongful occupation of part of the Yung Chau Memorial Hall (Issue 19)
3. Whether Pong (and Jan) had been in wrongful interference with management of the business and affairs of the Tong (Issue 20)
   1. Whether Jan had breached her duties as an assistant and an accounting clerk of the Tong in the cause of her employment (Issue 17)
      1. Whether Jan was an employee of the Tong

Jan was born in Taiwan in 1939 and had completed a teaching course at a college in Taiwan. As mentioned earlier, she and her husband Pong Kwong Wai met and married in Taiwan and they moved to Hong Kong in 1964. Both she and her husband had worked as teachers, but they frequently went to the Temple to visit Yung Chau.

It was Jan’s evidence that in 1972, she and her husband had in their free time helped Yung Chau with the planning and construction of the new Main Hall and the new dormitories. It was also Jan’s evidence that she would help the Goo Tais to write letters and/or to accompany them to see doctors and/or to pay their medical fees for them[[211]](#footnote-211).

As mentioned earlier Yung Chau passed away on 12 August 1976, and Yung Chau Memorial Hall was officially opened in July/August 1991. According to Jan, in 1990s, she and her husband and their 4 children (3 daughters and a son) had emigrated to Canada, but they would often commute between Canada and Hong Kong.

It was the Tong’s case that after the completion of the Yung Chau Memorial Hall in 1991, Jan and her husband had resided in the Yung Chau Memorial Hall from time to time and as mentioned earlier, the telephone number 2417 3605 was registered by Pong Kwong Wai in 1991.

It was the Tong’s pleaded case in paragraph 11 of its statement of claim the 595 Action that between 1 January 1989 and 20 December 2017, Jan was an employee of the Tong as an accounting clerk[[212]](#footnote-212).

In her amended defence in the 595 Action, Jan denied that she was an employee of the Tong, and her case was she was invited by Kwong Yuen to assist the Tong in dealing with paper work and to assist the manageresses to deal with part of Tong’s financial work, and in return she was paid some travelling expenses[[213]](#footnote-213).

The Tong had produced an employment letter (in English) dated 2 March 1991 signed by Kwong Yuen as “*Director*” of the Temple[[214]](#footnote-214), stating that with immediate effect Jan had been employed as the “*Accountant*” of the Temple from 2 March 1991 to 1 March 1994 (“**Employment Letter**”). Jan’s duties were stated therein to include “*controlling all the cash and accounts, assisting the Director in the daily matter and all other accounts related matters*”. However, when Jan was asked about the Employment Letter, she claimed she never saw the letter. Jan maintained during the trial that in her mind, she was only paid “travelling expenses” by the Tong, as the monthly sum she was paid was only a small amount.

Notwithstanding Jan’s denial, there was a tax return filed by the Tong with the Inland Revenue Department for the financial year 1990/1991 reporting Jan’s employment and salary and stating that Jan was an assistant to the manager during the period of 1 April 1990 – 31 March 1991[[215]](#footnote-215). Further, a copy of the “Remittance Statement” issued by Manulife Provident Funds indicated that Jan was on the payroll period 1/6/2001-30/06/2001 and that the Tong had made the employer’s mandatory contributions on behalf of Jan[[216]](#footnote-216). When Jan was asked about this, she admitted that the Tong did pay MPF contributions for her and, she should also have paid her own voluntary contribution under the scheme.

In the Summary Judgment Decision[[217]](#footnote-217), it was stated by Au-Yeung J that Jan was the Tong’s former accounting clerk from 1 January 1989 to about December 2017. In Jan’s own letter dated 8 August 2017 to the Chairman of the Chinese Temples Committee, she herself claimed that she was a respected senior person (長老) at the Temple and she was entrusted with the Tong Chops and was invited to join the Temple in 1989 to be responsible for the management of the Tong’s financial matters[[218]](#footnote-218). Having considered all the evidence, even though Jan may have regarded herself to have a special role at the Temple and/or had special duties, I find she was no more than an employee of the Tong and that she had been so employed since 1989.

It was stated in the Employment Letter that Jan’s term of employment was for 3 years from 2 March 1991 to 1 March 1994. Although there appeared to have been no further written contracts of employment, the “Remittance Statement” issued by Manulife Provident Funds for June 2001 indicated that Jan had remained an employee at that time. Thereafter, her employment had continued.

On 30 November 2017, the Tong members passed a resolution by majority to “suspend” Jan’s duties at the Tong[[219]](#footnote-219). It was not clear whether the Tong had properly notified Jan. However it appeared that in a letter dated 15 December 2017 in response to Jan’s enquiry of 13 December 2017, the Tong informed Jan of her suspension on 30 November 2017[[220]](#footnote-220). Anyway, on 3 January 2018, a letter was sent by the Tong to Jan formally informing her that she was dismissed by the Tong on 20 December 2017 with immediate effect[[221]](#footnote-221). Having considered the evidence, I find that it was on 20 December 2017 that Jan was formally dismissed as an employee of the Tong.

* + 1. Jan’s duties

Lord Justice Lewison has explained in *Jeremy Michael Ranson and Customer Systems PLC* [2012] EWCAC: V841 paragraphs 25-43 in relation to fiduciary duties which may arise out of an employment relationship. What is not disputed is that an employee owes an obligation of fidelity and good faith towards his employer.

In the Tong’s statement of claim in the 595 Action, it was Tong’s pleaded case that as an “accounting clerk”, Jan’s responsibilities included “(a) filing, depositing cash and cheques to the Shanghai Commercial Bank, general cleaning and other miscellaneous tasks assigned by the Management Board from time to time; and (b) rendering accounts of all her dealings with the money and assets of the Tong. And, in the discharge of her duties, Jan owed a duty of fidelity and good faith towards the [Tong]”[[222]](#footnote-222).

There was no real dispute as to Jan’s responsibilities in (a) above although Jan had said there was no formal “Management Board” appointed. It was not disputed that Jan’s duties were those assigned to her by the manageresses.

As for the responsibilities in (b) above, Jan was never appointed a manager or a member of the Tong, nor had she occupied any of the offices mentioned in Article 5 of the Abridged Regulations. There was no evidence to contradict Jan’s evidence that she had worked as a teacher after she moved to Hong Kong. There was no evidence that Jan held any accounting/bookkeeping qualifications or any experience in the accounting field prior to her being employed by the Tong.

What seemed clear was that the accounts that Jan was to prepare were the “Monthly Accounts” and “Annual Accounts” referred to later in this judgment. Even though Jan had assisted Kwong Yuen and other manageresses in their management of the Tong’s affairs and had participated in their meetings, there was no clear pleading in the Tong’s statement of claim as to what “dealing with money and assets of the Tong” consisted of. According to the 3rd Schedule attached to the Tong’s statement of claim, the Tong alleged mainly (1) collection on regular basis of donations to the Tong and keeping the same at her residence (ii) depositing money into the SCB Account at her pleasure (iii) obliging the 2 authorized signatories to sign blank cheques to enable her to withdraw money.

What was not disputed was that Jan was never authorized to sign, nor had she ever signed any of the Tong’s financial documents. She was never a signatory for any of the Tong’s bank accounts. AuYeung, Poon, Wong and Lui were the only 4 authorised signatories for the Tong’s bank accounts and any two of the four of them could sign cheques with the Tong’s chop. According to Jan, she was entrusted with safe-keeping the 2 chops belonging to the Tong, one was for operating the the Tong’s bank accounts (“**Bank Chop**”), and one was for other administrative matters (collectively “**Tong Chops**”). It was not disputed that Jan was responsible for applying the Bank Chop to bank documents/cheques. It was Jan’s evidence that Kwong Yuen was the one who had instructed her to safe keep the Bank Chop in Kwong Yuen’s room with the Tong’s bank statements and financial documents, but that any of the Tong manageresses or members had the right to check and inspect the same at any time. During the trial, Poon admitted there were 3 sets of keys to Kwong Yuen’s room, one set kept by Jan, one set kept by Kwong Yuen when she was alive and one set kept by Poon and after Kwong Yuen passed away on 27 June 2014, Poon held 2 sets of the keys.

It was the Tong’s case that AuYeung and Poon had pre-signed cheques in blank and that when Jan needed to issue cheques, she would apply the Bank Chop to the cheques. However, Jan’s evidence during the trial was both AuYeung and Poon came from the Mainland and that they had to return to the Mainland from time to time but they would not both return at the same time. When *one of them* needed to return to the Mainland, she would pre-sign the cheques. Jan denied that both of them had pre-signed blank cheques at any one time. In any event even if both AuYeung and Poon had pre-signed blank cheques at any one time, there was no sufficient evidence that Jan had ever used those or any pre-signed cheques to withdraw money for her personal benefit.

It was not denied by Jan that in Decmeber 2017, she removed the Tong Chops and financial documents from Kwong Yuen’s room. On 23 December 2017, Jan had sent a letter to the Tong explaining why she had kept in her possession the Tong’s Chops and financial documents and proposed arrangements for handover[[223]](#footnote-223). The Tong did not agree to Jan’s proposed handover arrangements and replied on 30 December 2017 by demanding Jan to hand over all items belonging to the Tong[[224]](#footnote-224). Mr. Wang has attached an Appendix 2 to his Closing Submissions in relation to the chronology of delivery of documents by Jan (“**Delivery Chronology**”). As set out therein, Jan returned the Tong Chops and the 1st set of documents on 15 December 2021 (“**1st Set**”) as per JP’s Supplemental List of Documents dated 14 May 2021. The 2nd set of documents was sent on 15 July 2022 (“**2nd Set**”) but according to Mr Wang, the 2nd Set did not consist of any documents requested by the Tong but those documents were in possession of JP who decided to return them to the Tong. The 1st Set had consisted of all those documents sought by the Tong in their statement of claim in the 595 Action.

It was not really disputed that the office of “cashier” (出納) from 2003 onwards was held by AuYeung, and AuYeung admitted that every day, the daily record and accounts of income and expenses of the Tong were prepared by her (“**Daily Accounts**”) and before 5 pm each day, she would hand the Daily Accounts to Jan and if Jan was not free or not around, then she would hand than to Pong. Au Yueng said that Jan or Pong would check the Daily Accounts but Poon would also check, and Lui would only check very rarely. AuYeung’s evidence was that she was responsible for the daily cash and cheque transactions and all cash and invoices and receipts would be handed by her to Poon to check and then Poon would hand the cash to Jan to deposit at bank the following day.

Jan and Pong had also called a withness Tang Mui Mui who had been a worshipper at the Temple. According to Tang Mui Mui, she would donate “incense money” (香油錢) in cash to the persons at the counter in the Reception Hall and usually such cash was received by a staff Ms Lee and she had also pointed out AuYeung sitting in the court room as the other person who had collected the cash donations from her.

In any event, the amount of cash receipts handed to Jan each day had been counted and checked by AuYeung and Poon before being handed to Jan. Even if Jan did not deposit such cash into the bank immediately the same day, there was no sufficient evidence that the amount of cash handed to Jan was not deposited in its entirety by Jan into the Tong’s bank account. As for other cash donations and/or “incense money”, according to Wong, there was a cash donation box at each hall and a mobile one at the Reception Hall and one at the Hall of 500 Arhats. Jan’s evidence was that in 2001, Yee Kai had misappropriated the “incense money” but the Tong decided not to report to the police and that since then AuYueng was designated to be in charge of “incense money” or cash donations which would be counted once a week in the presence of everyone at the Reception Hall. Although Wong disagreed, AuYeung herself had said the donation boxes would be opened and cash therein would be counted about every week in the presence of everyone and either Jan or Pong would then deposit the cash into the bank account and that if cash was not deposited immediately, it would be placed in a locked box. Again, there was no sufficient evidence the any cash handed to Jan was not deposited in its entirety by Jan into the Tong’s bank account.

At the end of each month, Jan would prepare the monthly record (“**Monthly Accounts**”) based on the Daily Accounts. The Daily Accounts and the Monthly Accounts would be verified (對數) by at least one existing member. Jan would then prepare the annual accounts (“**Annual Accounts**”)[[225]](#footnote-225) based on the Monthly Accounts and the Annual Accounts would be presented to the members at the annual general meeting each year for them to review. Jan’s evidence was that the Monthly Accounts and Annual Accounts were prepared by her in accordance with previous practice of the Tong. There was no sufficient evidence to contradict Jan’s evidence.

Further, according to Jan, there was always one duplicate set of the Daily Accounts kept by AuYeung. This was admitted by AuYueng. Also, according to AuYeung, at end of every month, for payment of salaries, Jan would go to the bank to withdraw cash to hand to AuYeung who would then distribute them to all the staff in envelopes.

Even though Jan’s own case was she had been responsible for “financial management”, at the request of the manageresses/Abbot, there was no sufficient evidence that Jan had any dealings with the Tong’s cash or had to handle the Tong’s cash or had kept the Tong’s cash at her residence, without depositing the same into the Tong’s bank account. The so-called cash handling was only that she was to deposit into the Tong’s bank account the cash handed over to her after being counted and/or checked by AuYeung and Poon and to withdraw cash from the bank’s account at end of the month to hand over to AuYeung. As said, there was no sufficient evidence that the amount of cash handed to Jan was not the entire amount deposited at the bank by Jan or that Jan had not handed over the entire amount/withdrawn by her from the bank to AuYeung. There was no sufficient evidence that Jan was entrusted with any assets or cash of the Tong save pending depositing the same at the bank/s and/or pending handing over to AuYeung. She was no more than an “accounts clerk” according to the Tong and was even responsible for miscellaneous menial work such as cleaning. She was not a senior employee even if she regarded herself as a “長老” or had volunteered other work. In my view, the duty of fidelity and good faith. Jan owed to the Tong was no more than that of a clerical/accounts clerk. I find there was no sufficient evidence that Jan was in breach of such duty of fidelity or good faith during her period of employment or in the course of her employment.

Although the Tong seemed to suggest that there had been misappropriation of the Tong’s funds on the part of Jan, there was no sufficient evidence of this suggestion. In relation to the alleged missing of the HKD 130,000 HSBC cashier order, as mentioned earlier, although the Tong’s savings passbook did not show the credit of that cashier order around the time of the date of the cashier order, the name of the Temple was written on the cashier order, and there was no sufficient evidence that the cashier order could have been deposited into the account of another beneficiary or receipt. In any event, Jan was dismissed at end of 2017 and the Tong’s SCB Account was unfrozen in November 2018. The 1st Set of documents and Bank Chops were handed over to the Tong by Jan on 15 December 2021. The Tong should have had plenty of time to check all transactions prior to this trial, and so far, I find there had been no sufficient evidence of any misappropriation of the Tong’s funds on the part of Jan.

Having considered all the above, and notwithstanding Mr Chong’s and Mr To’s submissions in this respect, I do not find that there is a duty to account on the part of Jan.

The Tong had requested for an adjournment of its claim for an account until the Tong has had the chance of considering in full the late documents namely the 2nd Set delivered on 15 July 2022. By now, it has been almost 10 months. I am not prepared to grant the Tong any further time. Even if Jan had/has a duty to account, as said earlier, she is not a qualified accountant, and there was no sufficient evidence that she would have the ability to prepare accounts in accordance with the acceptable “Hong Kong Accounting Practice” or indeed what this practice was. In any event, there was no sufficient evidence that Jan still had in her possession, custody or control any of the Tong’s financial documents to enable her to prepare any such accounts, and having considered all the evidence, I am not prepared to grant an order for Jan to account or to order an enquiry.

* 1. Whether Jan was entitled to withhold the ledgers, books and according documents from the Tong (Issue 21)

As said, it was only on 11 July 2022 Jan’s solicities delivered to the Tong’s solicitors the 2nd Set of documents, consisting of 4 large cartons of documents, namely items 1, 4, 5 and 6 of the Delivery Chronology. The 2nd Set consisted of (ii) Buddhist birthday income and expenses accounts (2005-2016), (iii) Annual Accounts and related documents (including balances in bank accounts and the GooTai Deposits) (1989-2016), (i) Daily Accounts (1989-2009, 2013-2016 and 2017 (Jan-Oct)). However, the cheque stubs and cheque books and the Tong Chops which were part of 1st Set and subject matter of the Tong’s claim had been delivered to the Tong earlier on 15 December 2021 together with the bank passbooks and numerous other financial documents.

Anyway, by the time of the trial, as said earlier, according to Jan, she had delivered up all the financial documents belonging to the Tong, whether sought by the Tong or not. I understand that Jan was concerned that the control of the Tong was being taken over by persons whom she regarded as unqualified. However, this did not mean that Jan, not being a manageress nor a member of the Tong, and being only an employee as found by this Court, was entitled to withhold the Tong Chops, the ledgers, books and/or any other financial/accounting documents belonging to the Tong after her dismissal. She was not entitled to withhold those documents and was in wrongful possession of the same, whether they were part of the Tong’s claim or not. I find the Tong is entitled to an order for damages to be assessed.

* 1. Whether Jan and Pong had been in wrongful interference with management of the business and affairs of the Tong (Issue 20)

As for the Tong’s allegation that Jan and Pong had been wrongfully interfering with the management of business and affairs of the Tong and the rights and privileges of the Tong in the management of the business and affairs of the Tong under paragraphs 14-22 in their statement of claim in the 595 Action[[226]](#footnote-226), the Tong’s pleaded case in this regard was mainly that Jan and Pong had prevented Gor Hang from acting as Principal Monk and to discharge his duty and interfering with the Tong’s right of management[[227]](#footnote-227).

Gor Hang was born and brought up in the Mainland, and had once been deported by the Immigration Department because of overstaying in Hong Kong and/or visa issues. Eventually, Gor Hang managed to successfully apply for a single journey permit to come to Hong Kong permanently in 2009. It was the Tong’s case Gor Hang was converted as a Buddhist monk when he was 10 years old by Yee Chiu, the then Abbot of the Tong. A copy of Gor Hang’s monk certificate (戒碟)[[228]](#footnote-228) was only disclosed by the Tong shortly before the trial. Gor Hang was said to be a designated successor of Yee Chiu, and that according to the Tong, he was appointed to be the Principal Monk (首座和尚) at the Temple on the 15th day 8th moon of 2012[[229]](#footnote-229). It was the Tong’s case that his appointment was pursuant to a handwritten note by Yee Chiu[[230]](#footnote-230). There was however no date on this handwritten note and it was not clear as to where and when it was allegedly written and there were no witnesses called in respect of the circumstances in which the note was allegedly written by Yee Chiu. Both Jan and Sik had queried the authenticity of this handwritten note. The note appeared to be written by someone with an unsteady hand. I agree that had it been genuine, it would not make sense that Yee Chiu would start of by writing words such as “*according to the order of the Abbott* …” (奉和尚命). In any event, it was not stated in the handwritten note that Gor Hang was to succeed Yee Chiu as Abbot (住持/方丈). All it said was Gor Hang was sent to be the Principal monk (首座). Having considered the handwritten note, without details as to the circumstances of how and when it was allegedly written by Yee Chiu, I am not prepared to accept the same to be a proper appointment by Yee Chiu for Gor Hang to be his successor to be the Abbot of the Temple.

1. Although it was the Tong’s pleaded case that as the Principal Mok, Gor Hang was to be ascended to become the Abbott of the Temple[[231]](#footnote-231), this did not in fact take place. The evidence was that on 5 May 2018, another monk Sik Neng Sau (釋能修) (“**Neng Sau**”) was appointed as the Abbot of the Temple[[232]](#footnote-232). The minutes of the general meeting of the members on 15 February 2014 recorded that Neng Sau about to move to the Temple[[233]](#footnote-233) and it appeared that by 6 March 2015, Neng Sau had already moved in[[234]](#footnote-234).

Again the Tong’s own case was confusing. There was no sufficient evidence that Gor Hang was ever appointed or selected by Yee Chiu to be the Abbot of the Tong. Yee Chiu subsequently passed away on 5 January 2013, and according to the Tong thereafter Gor Hang had chaired management meetings of the Tong and that Jan had participated in some of such meetings. The Tong had produced various minutes of several meetings of the Tong from 1961 to 2017, as set out in Appendix 3 of JP’s Closing Submissions. Gor Hang was present and appeared to be Chairman at the general meetings on 17 January 2013, 15 February 2014, 6 March 2015 and he was present at other management meetings. According to AnYeung’s evidence at the trial, Gor Hang was also the Person-In-Charge (當家). Anyway, there was no evidence of any interference on part of Jan and/or Pong to any of the administrative and management matters resolved during those meetings.

It was the Wong’s allegation that disagreement developed between Jan and the Tong in about February 2017, due to the Tong’s proposal for the engagement of an accountant firm to carry out an audit of Tong’s accounts to refute rumours of misappropriations of charitable funds but that was opposed by Jan[[235]](#footnote-235). Wong had referred to a newspaper report of “East Weekly Magazine” in October 2017 about a recorded managers’ meeting in February 2017[[236]](#footnote-236) regarding the proposal but during re-examination Wong then said Jan neither objected nor agreed during the recorded meeting. In any event, there was no mention of this allegation in AuYeung’s 1st witness statement made on 16 October 2020 in the 595 Action. The minutes of the recorded meeting were not produced. When AuYeung was asked during the trial about this matter, all she said was that it was mentioned by Wong during a meeting before 2017 and this was *because Jan was getting old* but it was not proceeded with. I find there was no sufficient evidence to support the allegation that Jan had objected to the engagement of a professional accountant/auditor for the Tong. It was also not clear how Jan could have opposed such a proposal as she was neither a manager nor a member of the Tong. In fact, from 1 November 2017, the Tong did employ a firm of accountants through Wong to prepare accounts for the Tong. AuYeung had said this was after Jan left the Tong, but in fact Jan’s duties were only suspended on 30 November 2017 and Jan was formally dismissed on 20 December 2017. Again, the Tong’s own evidence was confusing and inconsistent.

According to the Tong’s pleaded case, in January 2017, JP arranged the attendance of martial art practitioners at the Temple and threatened Gor Hang with physical violence[[237]](#footnote-237). However, according to JP, the Tong brought in 10 odd “black-clothed” men in February 2017 to stop worshippers praying at the Temple and to stop meetings going on[[238]](#footnote-238). It was further Jan’s evidence that she and Poon had initially met with a barrister to seek his opinion on what to do. Apparently, the Tong had later installed a CCTV at the Temple, which worshippers and believers at the Temple found interfering with their activities.

Jan was only an employee according to Tong’s case. Jan said she was always involved in the Tong’s management but this was at the request of its previous members and managers and to assist them. As mentioned earlier, in February 2017, Jan had authorized Hang Yee to represent her in management meetings. JP’s pleaded case was that any exchanges between JP and Hang Yee was with the approval of Poon. Anyway, it appeared that due to threats from Gor Hang, Hang Yee later disappeared[[239]](#footnote-239). As for the alleged incident on 2 August 2017, “*Jan’s crowd of individuals*” were said to have caused disturbance at the Temple and made threats of physical violence to Gor Hang and that Gor Hang later had to escape through the back exit of his room but he was prevented by “*Jan’s crowd of individuals*” to leave the Temple by taxi. No particulars were however provided by the Tong. Later, Jan and Pong were said to have changed the locks of the Yung Chau Memorial Hall and only they held the keys. All such disputes appeared to have arisen out of Jan and/or her supporters demanding the Tong to remove all CCTV cameras installed, as the CCTV cameras had given rise to privacy issues. AuYeung was not in Hong Kong at the time and she stayed away for some three months. According to Poon, Wong also went into hiding. Poon herself said it was a mess and she had made a report to the police. There was no evidence that the police took any action against Jan and/or Pong. Gor Hang was not called to give evidence. No CCTV recordings were produced. No legal action was taken by the Tong at the time against Jan and/or Pong nor was Jan dismissed from her employment immediately. There were also no particulars of loss pleaded by the Tong. Having considered all the evidence, I find no sufficient evidence that Jan and/or Pong had wrongfully interfered with the management of Tong’s business and affairs.

* 1. Whether Pong had, in the course of working as a voluntary worker for the Tong misappropriated the ‘salary’ payable to the master of the hall’ (堂主) (Issue 18)

Pong was a civil servant in Hong Kong. Upon his retirement from civil service in 1991, according to Pong, he was a voluntary worker providing *pro bono* service to the Tong on the basis that he could reside in the Yung Chau Memorial Hall rent free for life. It was JP’s pleaded case in their amended defence and counterclaim that at about end of 1990, Kwong Yuen, the then manageress requested Pong and his elder brother to jointly look after the Yung Chau Memorial Hall and that a portion within the Yung Chau Memorial Hall would be used for their residence and upon reliance thereon, Pong sold his own properly in about 1992 and he had continued to look after the Yung Chau Memorial Hall after his elder brother died in November 2006[[240]](#footnote-240).

Pong had counterclaimed in the 595 Action for a declaration that he held/holds a licence to reside in the Yung Chau Memorial Hall rent free for life. Although the Tong did not dispute Pong was a voluntary worker, the Tong denied there was any promise on part of Kwong Yuen to allow Pong to reside in the Yung Chau Memorial Hall rent free for life.

It was JP’s case that the then members of the Tong had agreed to pay a monthly sum of HKD 2,500 (later after various increments, to a monthly sum of HKD 8,000) for the management fees and expenses of the Yung Chau Memorial Hall, including cleaning, gardening, and simple repairs, and that this sum would be recorded as “salary payable to the Master of the Yung Chau Memorial Hall (“**Hall Master**”) (堂主薪金)” in the accounting records of the Tong, and that the Tong had confirmed such expenses and records[[241]](#footnote-241).

The Tong’s case was the post of the Hall Master did not exist. The Tong had produced the minutes of a meeting in early 1991, ie the 9th day of the 12th lunar Month at end of 1990, which recorded the imminent opening of Yung Chau Memorial Hall and it was resolved that after opening, Yung Chau Memorial Hall was to be managed by the Pong brothers temporaily[[242]](#footnote-242). The Tong admitted that Pong Kwong Wai was an employed staff responsible for taking care of the Yung Chau Memorial Hall including lighting the lamps, and that during his lifetime, Pong Kwong Wai was on the payroll of the Tong at a monthly salary (namely in 1992, HKD 2,700, HKD 3,240 in 1995 and HKD 3,500 in 2000), and Pong was a volunteer assisting his brother to look after the Yung Chau Memorial Hall and had performed the lighting of the lamps since 1992, and who had continued doing this despite the death of his brother Pong Kwong Wai in November 2006.

According to the Tong, the list of payments for “salaried” staff was prepared by Jan, and that for November 2017, a sum of HKD 8,000 was paid to the Hall Master. AuYeung’s evidence was that she had inserted the payment in an envelope which she delivered to Jan. However, the Tong’s pleaded case was against Pong and not Jan, and that Pong was the one who misappropriated the sum. Pong denied at the trial that he had ever received the sum.

Notwithstanding the Tong’s case was that the post of Hall Master was non-existent, on AuYeung’s evidence, the Tong was fully aware of the sum payable every month to the Hall Master was in fact paid to Jan and the purpose of the payment was for taking care of Yung Chau Memorial Hall. Up until Jan was dismissed, the Tong had never queried the payment received by Jan for the Hall Master, even though Pong Kwong Wai had died in November 2006. It was also AuYeung’s evidence that prior to 2017, the Tong had always employed staff to work in the Yung Chau Memorial Hall, including gardening, cleaning, other repair works and that the expenses were paid by the Tong[[243]](#footnote-243). Jan was not cross examined as to the whereabouts of the monthly sum said to be paid to the Hall Master but received by her. There was no sufficient evidence that Jan had “misappropriated” the monthly sum. I find there was no reason why Jan should now be asked to account for those payments. As said, this was not even the Tong’s pleaded case, which was against Pong only. It was also not the Tong’s case that the Yung Chau Memorial Hall had not been maintained properly.

Anyway, having considered all the evidence, I find no sufficient evidence that Pong had in the course of working as a volunteer worker for the Tong misappropriated such ‘salaries’ as alleged by the Tong[[244]](#footnote-244). The Tong’s own pleaded case was that Pong was all along a volunteer worker, and the Tong must know that no “salaries” were payable to Pong nor had there been any paid to Pong by the Tong. The Tong’s case against Pong in this respect was contradictory and must fail.

* 1. Whether Pong had been in wrongful occupation of part of the Yung Chau Memorial Hall (Issue 19)

Pong had explained in detail how he and his brother Pong Kwong Wai were asked by the Tong to provide voluntary services and to take care of the Yung Chau Memorial Hall indefinitely and how the Pong brothers had stayed in the Yung Chau Memorial Hall since 1990s in reliance upon the promise that they could do so. As said earlier, it was Pong’s case that in reliance of this promise, he had sold his property bought in 1969. The property was bought by Pong on 15 September 1969 for HKD 22,000 and in fact sold by him to Pong Cho Wai and Jan as joint tenants on 27 June 1992 for HKD 500,000[[245]](#footnote-245).

The Pink Portion claimed by the Tong consisted of, amongst others, the Yung Chau Memorial hall and another attached 2 storey toilet/store room block of about 200 sq fit (“**Attached Block**”). The fact is that Pong had occupied the Attached Block and part of the Yung Chau Memorial Hall for some 28 years between 1991 and 2019 with the full knowledge of the Tong, and had the discord between the Tong and Jan not arisen in early 2017 and the 496 Action not commenced by Sik, it would appear that Pong would have been allowed to continue to reside in the rent free and in peace. In fact, Wong, Lui and Poon all agreed no one had ever objected to Pong’s occupation until the commencement of the 595 Action.

Yung Chau Memorial Hall and the Attached Block was stated for non-domestic use[[246]](#footnote-246) in the occupation permit issued by the Buildings Authority on 13 September 1991. However, as pointed out by Mr Wong, the Tong had reported to the Government that there was a caretaker’s dormitory (看更宿舍) in the Yung Chau Memorial Hall in a property tax return filed on 14 October 1993[[247]](#footnote-247). The caretaker’s dormitory appeared to refer to the Attached Block.

During the trial, Pong clarified that he was only seeking a declaration that he could live in the Attached Block rent free for life and he explained the upper level of the Attached Block was for living and sleeping area and downstairs was the bathroom and the kitchen. In fact this was what Pong had told Master Ho at the summary judgment hearing on 1 December 2020[[248]](#footnote-248).

There had also been a precedent on the Tong’s part to allow an elderly retired employee to reside in the Temple rent free and meals free for life[[249]](#footnote-249), although the Tong claimed Pong’s situation was different from that employee. In any event, having considered the evidence, I accept Pong’s evidence that there was a licence granted by Kwong Yuen on behalf of the Tong to Pong, namely a promise on the Tong’s part that Pong could reside within the Pink Portion on condition of his looking after the Yung Chau Memorial Hall. I find Pong had acted to his detriment upon reliance on this promise. However, there was no sufficient evidence that Pong was allowed to occupy as his residence any part of the actual Yung Chau Memorial Hall. The Tong had provided photographs to show Pong had been occupying part of the actual Yung Chau Memorial Hall[[250]](#footnote-250). In my view, no part of the Yung Chau Memorial Hall should be used for residence purpose. Pong must vacate the actual Yung Chau Memorial Hall and to hand over one set of keys thereof to the Tong. I understand that Pong may need to access the Attached Block through the Yung Chau Memorial Hall and he may retain one set of the keys for such purpose. I am only prepared to grant a declaration that Pong could reside in the Attached Block rent free for life.

* 1. Whether any part of the Tong’s claim was time-barred (Issue 16)

In light of all above said and my findings, I do not find it necessary to consider the issue as to whether any part the Tong’s claim was statute barred.

1. ORDERS

As said earlier, I grant a better administration order (BAO) for the Tong in the 496 Action. SJ is requested to assist the Court as to the format and scope of the BAO. I direct the parties to fix a further hearing (estimated length of hearing: half day) in relation to the format and scope of the BAO. I am not prepared to grant an order to freeze the Tong’s bank accounts at this stage as there had been no sufficient evidence of risk of dissipation.

As for the Tong’s claims against Jan and/or Pong in the 595 Action, Claim (1) (for possession) against Pong is dismissed. As for Claim (2) (a) and Claim (3), I grant an order against Jan, that any damages suffered by the Tong as a result of Jan’s failure to deliver up the Tong Chops and financial documents on or before 28 December 2017[[251]](#footnote-251) are to be assessed by a master, at the same time as the mesne profits ordered against Jan under the Summary Judgment Order. The Tong’s claims against Jan in (2)(b) (for account) and 2(c) (for enquiry) are dismissed. As for Claim (4) regarding the BAO, whether Articles 4 and 5 need to be amended and to what extent will be further considered at the direction hearing.

As for JP’s counterclaim in the 595 Action, for paragraph 26C, as said, I grant a BAO. As for paragraph 26D, I am only prepared to grant a declaration that Wong was/is not qualified to be a member of the Tong and her removal be effected forthwith. As for paragraph 26E, I grant a declaration that AuYeung and Poon were/are not qualified to be manageresses of the Tong under the Abridged Regulations and they should be removed upon interim manageresses being appointed.

As for paragraph 26F, I grant a declaration that Pong is entitled to reside in only the Attached Block rent free for life. He has to move all his belongings out of and vacate the actual Yung Chau Memorial Hall and to hand over one set of the keys of the Yung Chau Memorial Hall to the Tong within one month from the date of this order to ensure the Tong has access to the Yung Chau Memorial Hall at all times.

Regarding costs:-

1. in relation to the 496 Action, Sik has succeeded in seeking a BAO. The Tong should pay his costs to be taxed if not agreed on party and party basis. As for SJ and SHA, the Tong shall pay their costs to be taxed if not agreed on party and party basis.
2. in relation to the 595 Action:
3. the Tong is to pay Pong’s costs to be taxed if not agreed on party and party basis for Claim (1) of the statement of claim and paragraph 26F of Pong’s counter claim;
4. As for Jan, she had been ordered to pay the Tong’s costs under the Summery Judgment Order in relation to the Tong’s claim for vacant possession of the Pink Portion and Mesne Profits under Tong’s Claim (1) against her. The Tong has failed in its claim for an account and enquiry against Jan under Claim (2)(b) and Claim (2) (c) but succeeded in claiming damages for Jan’s wrongful retention of the Tong’s documents under Claim (2) (a) and Claim (3). I therefore make no order as to costs as between the Tong and Jan in relation to Claim (2) (a), Claim (2) (b), Claim (2) (c) and Claim (3) of Tong’s claims in its statement of claim.
5. As between the Tong and SJ, the Tong is to pay the SJ’s costs, to be taxed if not agreed on party and party basis.
6. As for JP’s counterclaim, they have succeeded in their claim in paragraph 26D in removing Wong as a member and in their claim in paragraph 26E to remove Poon and AuYeung as manageresses of the Tong. These are matters which are part of the BAO and costs should be paid by the Tong to Jan and Pong, be taxed if not agreed on party and party basis.
7. I will apportion the costs of the trial as to roughly 50% for the 495 Action and 50% for the 595 Action. As for the 595 Action, I will apportion the costs of the Tong’s claim and JP’s counterclaim roughly 50/50. Further as for costs of Jan and Pong, this is also apportioned roughly 50/50.
8. All costs are orders *nisi,* which shall be made final after 21 days.

( Bebe Pui Ying Chu )

Judge of the Court of First Instance

High Court

The Plaintiff in HCMP 496/2017, unrepresented, acting in person

Mr Ken To, instructed by Department of Justice, for the 1st and 2nd Defendants in HCMP 496/2017 and the 3rd Defendant in HCA 595/2019

Mr KM Chong and Ms Vivian Li, instructed by KC Ho & Fong, for the 3rd Defendants in HCMP 496/2017 and the Plaintiff in HCA 595/2019

Mr Clark Wang, instructed by KB Chau & Co, for the 1st and 2nd Defendants in HCA 595/2019

1. According to the information contained in the website of the Chinese Temples Committee in respect of the Chuk Lam Sim Yuen in about 2014, the registered address of the Chuk Lam Sim Yuen was however stated to be Lot 1255 *and Lot 1140* in DD 452, see E1:160 [↑](#footnote-ref-1)
2. According to the registration record of “Charitable institutions & Trusts of a public character exempted from tax under section 88 of the Inland Revenue Ordinance”, see C1:124 [↑](#footnote-ref-2)
3. E1:156-158 [↑](#footnote-ref-3)
4. C5:983 [↑](#footnote-ref-4)
5. See para 8 of the CA Judgment (as later defined), and E1:158, penultimate paragraph [↑](#footnote-ref-5)
6. See E1:158, penultimate paragraph [↑](#footnote-ref-6)
7. Also said to be a former name for Guan Yin Grotto [↑](#footnote-ref-7)
8. “住持” 即 “方丈” has been referred to in the Tong’s statement of claim in the 595 Action and/or various judgments in various actions as the “presiding monk” or “managing monk” or the keeper, or the abbot. In this judgment, this position will be referred to as the Abbot [↑](#footnote-ref-8)
9. This was the evidence of both Chao Jung and Sik, and see also para 7 of the Court of Appeal Judgment in CACV 221/2017, but this appears to be denied by the Tong in its Amended Defence in the 496 Action, at para 4, A1:33 [↑](#footnote-ref-9)
10. See para 7 of the Strikeout Decision [↑](#footnote-ref-10)
11. A1:104-139 [↑](#footnote-ref-11)
12. A1:140-162 [↑](#footnote-ref-12)
13. A2:12-13 [↑](#footnote-ref-13)
14. Para 16(c)(i), A2:8, para 20(a), A2:10, Relief (1)(a) and (b), A2:12-13, paras 13-15, 3rd Schedule, A2:24-25; see also A2:28 [↑](#footnote-ref-14)
15. A2:112-114 [↑](#footnote-ref-15)
16. A2:115-128 [↑](#footnote-ref-16)
17. [2022] HKCFI 2253, A2:145-154 [↑](#footnote-ref-17)
18. [2022] HKCFI, A2:155-180 [↑](#footnote-ref-18)
19. See para 4, Lam Decision (defined later), in the 10388 Action, C6:1329-1330 [↑](#footnote-ref-19)
20. C5:974-984; for English translation of clauses (1), (2) and (14) see para 6, C6:1330-1332 [↑](#footnote-ref-20)
21. See para 8, C6 [↑](#footnote-ref-21)
22. [2020] HKCFI 417, C6:1328-1349 [↑](#footnote-ref-22)
23. CACV 90/2020, [2021] HKCA 1597 [↑](#footnote-ref-23)
24. See letter dated 31 May 2002 from the Tsuen Wan District Office, D1:57 [↑](#footnote-ref-24)
25. C1:56 [↑](#footnote-ref-25)
26. C1:58 [↑](#footnote-ref-26)
27. C1:61 [↑](#footnote-ref-27)
28. C1:62 [↑](#footnote-ref-28)
29. C1:63 [↑](#footnote-ref-29)
30. C1:118 [↑](#footnote-ref-30)
31. See C6:1297, C6, 1300 [↑](#footnote-ref-31)
32. C6:1302 [↑](#footnote-ref-32)
33. C1:64, C6:1303-1307 [↑](#footnote-ref-33)
34. C1:72-75 [↑](#footnote-ref-34)
35. On some memorials registered at the District Office and on the records of the Land Registry, “Wang Kwong” was typed as or written as “Wan Kwong” [↑](#footnote-ref-35)
36. C1:76 [↑](#footnote-ref-36)
37. C6:1308 [↑](#footnote-ref-37)
38. According to the Tong, it was “registered as early as 1928 with the then Secretary for Chinese Affairs, see para 3, C5:994. According to a letter dated 31 May 2022 from Tsuen Wan District Court, the Tong is recognised as a “t’ong” under section 15 of the New Territories Ordinance, Cap 97, but as government records lost during the World War II, it was unable to provide information whether the Tong was established in or about 1928, but acceptance of Land Registry to register ownership of land in the name of the Tong and entry in the relevant land register can be treated as evidence of it being a “t’ong”, D1:57. According to a letter dated 31.08.17 sent by Jan to SJ, the Tong was registered in late 1920s, see D1:76. According to Sik’s 1st affirmation filed in the 496 Action, the Tong was established in 1932, see para 2, E1:1. According to the land registry records, the earliest date when various lots in DD 453 were acquired in the name of “Pong Yat Tung, manager for Man Wa Tong of Fu Yung Shan” was *4 June 1932* was 4 June 1932, see C1:61. According to Article 1 of the Abridged Regulations (defined later), the Tong was established before World War II, see C1:122. [↑](#footnote-ref-38)
39. See also the Strikeout Decision in which the Judge had stated that the Temple was first built by Yung Chau and his disciples with funds raised from donations, at para 19 A1:111 [↑](#footnote-ref-39)
40. E1:157 [↑](#footnote-ref-40)
41. According to the witness statement of Kwong Yuen in the 10388 Action, when she joined the Temple in 1929, Yung Chau was already the Abbot: see para 3, C5:1002 [↑](#footnote-ref-41)
42. C1:1, 1(1) [↑](#footnote-ref-42)
43. See C1:1(2) and C1:2 [↑](#footnote-ref-43)
44. C1:7 [↑](#footnote-ref-44)
45. B3:642 [↑](#footnote-ref-45)
46. Filed on 9 April 2002, C5:993-1000 [↑](#footnote-ref-46)
47. See para 2, C5:994 [↑](#footnote-ref-47)
48. They were referred to as “subscribers” by AuYueng and Poon in their joint affidavit of 16 March 2017 in the 496 Action, E1:150, but in AuYeung’s witness statement, they were referred to as 創辦人, see B4:793 [↑](#footnote-ref-48)
49. See para 2 of Wang Kwong’s witness statement, C5:994 [↑](#footnote-ref-49)
50. Filed on 8 September 2003 [↑](#footnote-ref-50)
51. See para 13 of Kwong Yuen (Kam Lan)’s witness statement, C5:1003 [↑](#footnote-ref-51)
52. Eg C1:117 [↑](#footnote-ref-52)
53. C1:119-120 [↑](#footnote-ref-53)
54. C1:121 [↑](#footnote-ref-54)
55. C2:254-256 [↑](#footnote-ref-55)
56. C1:122-123 [↑](#footnote-ref-56)
57. See letter dated 31 October 2005 from the IRD to the Tong, C1:194 [↑](#footnote-ref-57)
58. Namely 釋茂清, 釋茂常, 釋茂顯, 釋茂霞, 釋茂寛, 釋茂雲, 釋茂願 and 伍茂法. [↑](#footnote-ref-58)
59. At para 4, B3:475 [↑](#footnote-ref-59)
60. See Article 3, C1:122 [↑](#footnote-ref-60)
61. According to the newspapers cuttings, Cheung Yuet Kam died when giving birth to the 5th child. [↑](#footnote-ref-61)
62. According the Pong, his eldest brother Pong Kwong Wai was born in 1938, Pong himself was born in 1943 and his 2 younger brothers born in 1948 and 1950 respectively. [↑](#footnote-ref-62)
63. See page 2 of the letter dated 31 August 2021 from Jan to SJ, D1:77 [↑](#footnote-ref-63)
64. See paras 6, 7, C5:1002 [↑](#footnote-ref-64)
65. See para 10(b), A2:6 [↑](#footnote-ref-65)
66. C1:13 [↑](#footnote-ref-66)
67. C6:1317,1318 [↑](#footnote-ref-67)
68. E1:169 [↑](#footnote-ref-68)
69. E1:174 [↑](#footnote-ref-69)
70. The names are in accordance with a letter dated 11 December 2017 from the solicitors of Shanghai Commercial Bank (except “Sik” is used herein instead of “Shih”), D1:107 [↑](#footnote-ref-70)
71. See item 3, C1:126 [↑](#footnote-ref-71)
72. E1:157 [↑](#footnote-ref-72)
73. See newspapers cuttings of 22 March 2017, C1:14-15, 3rd paragraph “他們想擁立果恆法師為禪院方丈”. [↑](#footnote-ref-73)
74. At para 13, B5:968 [↑](#footnote-ref-74)
75. C6:1399 [↑](#footnote-ref-75)
76. Issue 1, Scott Schedule [↑](#footnote-ref-76)
77. Although not listed as a disputed issue in the Scott Schedule, this was raised by the Tong, see paras 13-24, Tong’s Opening Submissions; paras 131- 134, Tong’s Closing Submissions [↑](#footnote-ref-77)
78. Issues 7, 8, 11, 13 in the Scott Schedule [↑](#footnote-ref-78)
79. Issues 9, Scott Schedule [↑](#footnote-ref-79)
80. Issues 2, 4-6, 15, Scott Schedule [↑](#footnote-ref-80)
81. Issue 3, Scott Schedule [↑](#footnote-ref-81)
82. Issues 17-21, Scott Schedule [↑](#footnote-ref-82)
83. Issue 16, Scott Schedule [↑](#footnote-ref-83)
84. See paras 19-36, CA Judgment [↑](#footnote-ref-84)
85. At para 39, CA Judgment [↑](#footnote-ref-85)
86. At para 40, CA Judgment [↑](#footnote-ref-86)
87. At paras 43, 47, CA Judgment [↑](#footnote-ref-87)
88. A1:163-165 [↑](#footnote-ref-88)
89. A1:166-168 [↑](#footnote-ref-89)
90. In paras 46 and 47, Tong’s Amended Defence, A1:47 and 1st Schedule, A1:65-67 [↑](#footnote-ref-90)
91. At para 18 [↑](#footnote-ref-91)
92. At para 42, A1:156 [↑](#footnote-ref-92)
93. See paras 46, 47 of the Amended Defence of the Tong, at A1:47, and the 1st schedule at A1:65-67 [↑](#footnote-ref-93)
94. At para 4, B1:141 [↑](#footnote-ref-94)
95. See para 16, C5:997 [↑](#footnote-ref-95)
96. Ie over 10 off years prior to the date of Wang Kwong’s witness statement dated 9 April 2002 [↑](#footnote-ref-96)
97. Ie 3, 4 years prior to the date of Wang Kwong’s witness statement [↑](#footnote-ref-97)
98. According to the land search produced by Sik in his affirmation of 24 September 2018, Lot 1202 was at that time held in joint names of Wang Kwong and Wai Ching. [↑](#footnote-ref-98)
99. Later appointed Abbot of the Temple after Yung Chau [↑](#footnote-ref-99)
100. C1:8 [↑](#footnote-ref-100)
101. See para 3 of Sik’s witness statement, B1:2; see also para 54, CA Judgment, per Cheung JA, 虛雲大師 (Master Hui Wan or Xu Yun) (1840-1959) was one of the most respected Zen monks of the modern age. [↑](#footnote-ref-101)
102. See para 3, B1:2 [↑](#footnote-ref-102)
103. E1:194-233 [↑](#footnote-ref-103)
104. C1:35-36 [↑](#footnote-ref-104)
105. Item 2, B2:314 [↑](#footnote-ref-105)
106. At paras 6-8, B3:785 [↑](#footnote-ref-106)
107. C6:1398 [↑](#footnote-ref-107)
108. See para 13, B4:913; C1:45 [↑](#footnote-ref-108)
109. B3:650 [↑](#footnote-ref-109)
110. At para 4, C1:2 [↑](#footnote-ref-110)
111. In para 4, pg 3, Yellow Road Decision [↑](#footnote-ref-111)
112. See para 14, Lam Decision [↑](#footnote-ref-112)
113. At para 7, B1:3 [↑](#footnote-ref-113)
114. B2:317-329 [↑](#footnote-ref-114)
115. B2:336-341, 331-334 [↑](#footnote-ref-115)
116. B2:344 [↑](#footnote-ref-116)
117. Para 89, A1:19 [↑](#footnote-ref-117)
118. B1:148-196 [↑](#footnote-ref-118)
119. At paras 2-11, B1:148-151 [↑](#footnote-ref-119)
120. A2:93(13) [↑](#footnote-ref-120)
121. See C1:184, 186, 187 [↑](#footnote-ref-121)
122. B1:187/B1:188 [↑](#footnote-ref-122)
123. C4:818(3) [↑](#footnote-ref-123)
124. C4:818(3), 818(4) [↑](#footnote-ref-124)
125. B1:179 [↑](#footnote-ref-125)
126. D1:174-175 [↑](#footnote-ref-126)
127. C4:818(1)-818(2) [↑](#footnote-ref-127)
128. C1:189 [↑](#footnote-ref-128)
129. B1:184 [↑](#footnote-ref-129)
130. C1:185 [↑](#footnote-ref-130)
131. D1:112 [↑](#footnote-ref-131)
132. D1:133 [↑](#footnote-ref-132)
133. C3:660-692 [↑](#footnote-ref-133)
134. C3:675 [↑](#footnote-ref-134)
135. See para 207, pg 82 the Tong’s Closing Submissions [↑](#footnote-ref-135)
136. See the Tong’s case in relation to Issue 8 of the Scott Schedule [↑](#footnote-ref-136)
137. See para 163 of the Tong’s Closing Submissions [↑](#footnote-ref-137)
138. Item 3, C1:122 [↑](#footnote-ref-138)
139. E1:192 [↑](#footnote-ref-139)
140. E1:190 [↑](#footnote-ref-140)
141. See paras 7-10, 2nd Joint Affirmation of AuYeung and Poon, 19 April 2017, 496 Action, E1:181-183 [↑](#footnote-ref-141)
142. C1:140 [↑](#footnote-ref-142)
143. Discussion item (4) [↑](#footnote-ref-143)
144. See para 52, A1:12 [↑](#footnote-ref-144)
145. See amended defence & counterclaim, annexure 2 para 21, A1:77 [↑](#footnote-ref-145)
146. B2:440 [↑](#footnote-ref-146)
147. Which appeared to have been carried out by the Tong, see also the witness statement of Wang Kwong [↑](#footnote-ref-147)
148. See Appendix 1 of the Lam Decision, C6:1349 [↑](#footnote-ref-148)
149. See para 39(1), Lam Decision, C6:1346-1347 [↑](#footnote-ref-149)
150. See para 39(2), *supra* [↑](#footnote-ref-150)
151. See paras 26, 27, *supra* [↑](#footnote-ref-151)
152. See CACV 90/2020, [2021] HKCA 1597 [↑](#footnote-ref-152)
153. C3:569 [↑](#footnote-ref-153)
154. C5:1285 [↑](#footnote-ref-154)
155. See para 9, B1:4 [↑](#footnote-ref-155)
156. See para 10, B1:4 [↑](#footnote-ref-156)
157. B1:27, 28 [↑](#footnote-ref-157)
158. B1:11-15 [↑](#footnote-ref-158)
159. C2:439 [↑](#footnote-ref-159)
160. C2:439 [↑](#footnote-ref-160)
161. C2:450 (item 4), 451 (item 9) [↑](#footnote-ref-161)
162. At para 19, B5:970 [↑](#footnote-ref-162)
163. At para 22, B5:971 [↑](#footnote-ref-163)
164. Yee Chiu passed away on about 5 January 2013 [↑](#footnote-ref-164)
165. At para 22, B5:971-972 [↑](#footnote-ref-165)
166. Para 20, B3:493 [↑](#footnote-ref-166)
167. C6:1319-1327 [↑](#footnote-ref-167)
168. See C6:1324, a report by “HK01” [↑](#footnote-ref-168)
169. The Private Columbaria Ordinance, Cap 630 first came into effect on 30 June 2017. [↑](#footnote-ref-169)
170. See C6:1322 [↑](#footnote-ref-170)
171. B2:356-361 [↑](#footnote-ref-171)
172. Under clauses (10) and (11) of the agreement, C5;974-984, at C5:981 [↑](#footnote-ref-172)
173. C4:894 [↑](#footnote-ref-173)
174. C4:893 [↑](#footnote-ref-174)
175. C4:864 [↑](#footnote-ref-175)
176. C4:926 [↑](#footnote-ref-176)
177. C4:958 [↑](#footnote-ref-177)
178. B2:394 -396 [↑](#footnote-ref-178)
179. Item 12, B2:396 [↑](#footnote-ref-179)
180. See letter dated 10 November 2020 from the Tong’s solicitors, B2:408-441 [↑](#footnote-ref-180)
181. At B2:412-413 [↑](#footnote-ref-181)
182. B3:709-710 [↑](#footnote-ref-182)
183. B3:710 [↑](#footnote-ref-183)
184. C4:856, item 12 [↑](#footnote-ref-184)
185. C3:623(1) [↑](#footnote-ref-185)
186. See para 36, B3:481 [↑](#footnote-ref-186)
187. C3:600 [↑](#footnote-ref-187)
188. C1:252 [↑](#footnote-ref-188)
189. See C5:1290 [↑](#footnote-ref-189)
190. E1:226 [↑](#footnote-ref-190)
191. Paras 4(9)-(14), A2: 93(9) –(11) [↑](#footnote-ref-191)
192. D1:107-108 [↑](#footnote-ref-192)
193. See para 145, Closing Submissions of Jan & Pong [↑](#footnote-ref-193)
194. See C1:153-155 [↑](#footnote-ref-194)
195. C1:205, 207, 215 [↑](#footnote-ref-195)
196. C1:152, 153 [↑](#footnote-ref-196)
197. C1:155 [↑](#footnote-ref-197)
198. B5:977-978, C1:148-149 [↑](#footnote-ref-198)
199. See paras 246, 247 of the Tong’s Closing Submissions. [↑](#footnote-ref-199)
200. See para 91 of judgment of Tang VP, as he then was [↑](#footnote-ref-200)
201. See para 17, SJ’s Closing Submissions [↑](#footnote-ref-201)
202. See para 6, B2:207 [↑](#footnote-ref-202)
203. C1:182; the 3 Gentlemen being 李卓芬教授, 楊振鑫居士, 鄧竟成先生. [↑](#footnote-ref-203)
204. D2:18 [↑](#footnote-ref-204)
205. D2:32-34 [↑](#footnote-ref-205)
206. D2:30-31 [↑](#footnote-ref-206)
207. D2:26-28 [↑](#footnote-ref-207)
208. D2:20-21 [↑](#footnote-ref-208)
209. D2:24-25 [↑](#footnote-ref-209)
210. D1:171 [↑](#footnote-ref-210)
211. See paras 4, 5 B3:475 [↑](#footnote-ref-211)
212. A2:6, para 11 [↑](#footnote-ref-212)
213. See para 11, A2:64 [↑](#footnote-ref-213)
214. C1:37 [↑](#footnote-ref-214)
215. See C1:38-40 [↑](#footnote-ref-215)
216. C1:41 [↑](#footnote-ref-216)
217. At para 5 [↑](#footnote-ref-217)
218. D1 :70-71 [↑](#footnote-ref-218)
219. B5:987, 990 [↑](#footnote-ref-219)
220. C1:46-47 [↑](#footnote-ref-220)
221. C1:43-44 [↑](#footnote-ref-221)
222. At par 12, A2:6-7 [↑](#footnote-ref-222)
223. D1:124-126 [↑](#footnote-ref-223)
224. D1:127-128 [↑](#footnote-ref-224)
225. See C1:196, for the 2013 Annual Accounts [↑](#footnote-ref-225)
226. A2:7-12 [↑](#footnote-ref-226)
227. See para 95, the Tong’s Closing Submissions, pg 38-39 [↑](#footnote-ref-227)
228. C6:1392 [↑](#footnote-ref-228)
229. C6:1397 [↑](#footnote-ref-229)
230. C6:1396 [↑](#footnote-ref-230)
231. See para 17, A2:25 [↑](#footnote-ref-231)
232. See C6:1324 [↑](#footnote-ref-232)
233. C1:177 [↑](#footnote-ref-233)
234. C1:179 [↑](#footnote-ref-234)
235. See para 100, the Tong’s Closing Submissions [↑](#footnote-ref-235)
236. C1:17-23 [↑](#footnote-ref-236)
237. Para 10, A2:24 [↑](#footnote-ref-237)
238. Para 6, A2:74 [↑](#footnote-ref-238)
239. A2:83 para 11; also, according to AuYeung, Hang Yee left on 21 March 2017, B4:403, para 40 [↑](#footnote-ref-239)
240. See para 13, AZ:66 [↑](#footnote-ref-240)
241. See paras 6, 7 of Annex 3 JP’s amended defence and counterclaim in the 595 Action, A2: 81-82 [↑](#footnote-ref-241)
242. C6:1309 [↑](#footnote-ref-242)
243. Para 16, B4: 795 [↑](#footnote-ref-243)
244. See Issue 18, Scott Schedule [↑](#footnote-ref-244)
245. C1:49-52 [↑](#footnote-ref-245)
246. C1:105 [↑](#footnote-ref-246)
247. B3:750-751 [↑](#footnote-ref-247)
248. A&D, D2:218 [↑](#footnote-ref-248)
249. See item (6), C1:158 [↑](#footnote-ref-249)
250. E2:475-487 [↑](#footnote-ref-250)
251. The deadline imposed for Tong in the letter dated 15 December 2017 to Jan, D1:118 [↑](#footnote-ref-251)