Chen Ter Cheng and Others v Po Chiak Keng (Tan Si Chong Su) and Others [2007] SGHC 2

Case Number : OS 1560/2005

Decision Date : 09 January 2007

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Wong Siew Hong (Infinitus Law Corporation) for the plaintiffs; Rey Foo Jong Han (K S Chia Gurdeep & Param) for the defendants

Parties : Chen Ter Cheng; Tan Eng Lim; Tan Eng Kwee; Tan Ngai Seng — Po Chiak Keng (Tan Si Chong Su); Tan Khuan Seng; Tan Kwa Hua (also known as Tan Hua Hua); Tan Kee Seng; Tan Teow Bock; Tan Kah Ho; Tan Hong Tee; Tan Hong Chye; Tan Cha Boo

Unincorporated Associations and Trade Unions – Friendly societies – Disputes – Whether court proper avenue to settle dispute between members of association – Whether breach of association's constitution and rules taking place – Whether to allow plaintiffs' application for disclosure of association's documents and correspondence where such application not connected to any principal dispute between parties

9 January 2007 Judgment reserved.

Choo Han Teck J:

1 The deity Zhen Yuan Kwang worshipped in the Tan Si Chong Su Temple is in danger, it seems. His temple at Magazine Road, which also houses Po Chiak Keng, an association of Hokkien Chinese from the Tan clan as well as providing the only ancestral hall for the Tan clan may be trodden by the feet of outsiders. The plaintiffs fear that the management of the temple was planning to admit persons outside the Tan clan into the association to participate in the worship of deity Zhen, who, counsel submitted, was originally named "Tan Guan Kuang" and lived during the Tang Dynasty in China 1350 years ago. However, it was not immediately known how the inclusion of other surnames into the association becomes a sacrilege to deity Zhen, but that may not be important because the plaintiffs advanced their case, through Mr Wong their counsel, on the basis that the proposal to welcome other surnames into the association was the smaller, secular matter of a breach of the association's constitution.

2 The plaintiffs were further aggrieved, and sought to bolster their case, by alleging that the temple, which had been gazetted a "National Monument" under the Preservation of Monuments Act (Cap 239, Rev Ed 1985), had been illegally rebuilt in parts. The second defendant was named as the principal culprit. The plaintiffs identified him as the person who had been prosecuted by the authorities for making unauthorised changes to the temple's structure. They claimed that the alterations had not been rectified. It is not immediately clear how an ancient structure might be restored when its old beams and walls had been replaced, but on Mr Wong's submission, it seemed that the plaintiffs were horrified that the second defendant had "put up on the wall of the left courtyard a large write up measuring about 6 feet by 5, together with a large photograph of himself as a testament to himself." One can immediately surmise that this had probably generated the fear that the resident deity might also be changed. The defendants do not deny that alterations had been made to the temple from 1998 to 2001 and that the second defendant was subsequently prosecuted and fined $500; but they say that all that was past and had no bearing on the issues in dispute in these proceedings. The plaintiffs are also asking the defendants to produce the audited accounts for

the years 2003 and 2004, and all records including correspondence concerning the action by the Preservation of Monuments Board in relation to the unauthorised alterations to the temple. They also want the defendants to give a full written explanation in respect of his non-compliance with the Board's directives. They insisted that the defendants have such documents and that they be compelled to disclose them for inspection.

3 The first plaintiff is 72 years old and had been worshipping at the temple for more than fifty years, but he only became a member of the association in 2002. According to him, the association was run by the second defendant, and it was that defendant who appointed members of the executive committee of the association, and when he joined the association in 2002, the second defendant appointed him into the executive committee. The first plaintiff deposed that he did not question his appointment because he was new to the association. The first plaintiff then provided instances of what he regarded as the second defendant's autocratic control of the executive committee, and through it, the association. He cited, for example, the admission of new members into the association by the second defendant without first obtaining the approval of the executive committee. He also deposed that there seemed to be a large number of the second defendant's relatives in the committee. The breach in the relationship between the first plaintiff and the second defendant occurred after the latter indicated that he would rent space in the temple for the placement of ancestral tablets of persons outside the Tan clan. This horrified the first plaintiff. He did not think that it would be right to have ancestral tablets of outsiders in the ancestral hall when there are ancestral tablets of members of the Tan clan lying in the association's storeroom.

4 Other matters also caused the first plaintiff to resent the second defendant. One example cited concerned the latter's breach of promise to support the association's fund raising activities, specifically, an event known and deposed by the first plaintiff colloquially as the *getai*, which I believe is a song and dance entertainment. Moving on to something more administrative, the first plaintiff deposed that the minute books of the association were poorly maintained, and he laid the responsibility on the second defendant. Furthermore, he claimed that the second defendant had taken the minute books home to prevent inspection by the plaintiffs. He claimed that under the rules of the association, the Annual General Meeting of the association ought to be held in December but it appeared that there had been a delay and hence the meeting was held in April instead. The first plaintiff alleged that the second defendant admitted that the second defendant was unable to produce the association's accounts in the annual general meeting of 30 May 2005, initially scheduled for 9 April 2005. There was no general meeting in 2004. There were thus no accounts for the year 2003. The first plaintiff complained of various actions by the second defendant during and after the general meeting of 30 May 2005, including the matter of the election of new committee members. The second and third plaintiffs are also members of the association and they filed affidavits in support of the matters raised by the first plaintiff.

5 Associations, like clubs, are self-governing bodies whose members are bonded to each other and the association by contract. The contract invariably requires the members to abide by the rules and regulations of the association. Usually, the rules would provide the procedure in which members may oppose any proposed action by the association. The affairs of the association are not regulated or run by anyone else, and that includes the courts. While the courts will not interfere in such matters, it retains the jurisdiction to hear disputes between members and their association if those disputes concern fundamental legal issues such as a breach of contract between the association and the members. The High Court has also the power of judicial review in respect of matters that are so justifiable. The power of judicial review is exercised by the court to correct errors made by the association in the exercise of any quasi-judicial function or in any situations in which the courts would enforce the rules of natural justice. I need not dwell into the details and specifics of the court's powers over clubs and associations because the plaintiffs' claims in this Originating Summons did not

present any basis for interference in any way.

6 Membership is always a matter governed by the association's constitution and rules. If the association decides to invite outsiders to worship deity Zhen or to place their ancestral tablets alongside those of the Tan clan the plaintiffs can only oppose it through the procedures of the association unless the law was breached. On the plaintiffs' averments in this Originating Summons there appeared to be no breach because the act of admitting the new members had not been committed. Article 3 (1) of the constitution of the association in question, permits "any person who has been in long service to the Temple, or have made outstanding contributions to the Temple, or of indisputable character and integrity may also become permanent members through recommendation and subsequent approval by the General Meeting of members." The cases in which Mr Wong relied on involved an act of the club of a nature that either justified judicial review because the act was contrary to the rules of natural justice or that, on the evidence, was done in breach of the regulations. See *Harrington v Sendall* [1903] 1 Ch 921 where the rules specifically provided for the amount of subscription to be paid but no provision for the amendment of those rules. It is true that the court in *Thellusson v Viscount Valentia* [1907] 1 Ch 921 held that the fundamental objects of a club could not be altered, but in that case, the court found that there was no fundamental change to the objects of the club in question there. The object of that club was to provide several activities including pigeon shooting and polo. No object being more fundamental than another, the club was therefore permitted to discontinue pigeon shooting. The objects of the present association provided for ancestral worship, the promotion of brotherly love, the encouragement of members to be self-governing, the exchange of knowledge, the establishment of schools, the management of the temple, and, ironically, the resolution of disputes. The proposal to permit new members who might not be persons of the Tan clan does not appear to be a fundamental change to any of the stated objects. Deity Zhen is not in danger of any sacrilegious act.

7 The plaintiffs' prayers for the disclosure of correspondence and other documents concerning the prosecution of the second defendant were not relevant as there was no principal dispute in this Originating Summons to which discovery of such documents and information could be connected. An order for discovery is normally made as an interlocutory order pursuant to the main action. If it was true that the second defendant was prosecuted by the authorities in connection with alterations to the association's premises, the proper plaintiff would be the association. The cause of action has to be properly and accurately pleaded. An association should be open about its activities so as to be accountable to its members, but it is not required to permit each individual members or any group of members to inspect all its official documents and correspondence unless an order for discovery is relevant to a pending action. In this Originating Summons, the prayers for discovery were not related to any action that would have justified an order granting them. There are other, more appropriate recourse in such circumstance, namely, that the management respond to the body of members at a general meeting. I note, in passing, that the plaintiffs had commenced another Originating Summons but that was in respect of setting aside a particular general meeting, and so that is not relevant to the prayers here made. If the plaintiffs' complaint is that their contractual rights had been breached, then the action must be founded on contract and specifically pleaded as such; but that did not seem to be the case. As for the accounts of the association, it appears from the record that the accounts had been presented at the previous annual general meeting in which the plaintiffs were present, and the accounts were duly passed. In the circumstances, the applications in this Originating Summons are dismissed. I shall hear the question of costs at a later date.