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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

TAHL MAH SAH et al.,

Plaintiffs and Appellants,

v.

NANSHUN JIN,

Defendant and  
Respondent.

B290732

(c/w B293186)

(Los Angeles County

Super. Ct. No. BC590412)

APPEAL from a judgment of the Superior Court of Los Angeles County. Yvette M. Palazuelos, Judge. Dismissed in part, affirmed in part, reversed in part, and remanded with directions.

Grignon Law Firm, Margaret A. Grignon, Anne M. Grignon; Vakili & Leus and Sa'id Vakili for Plaintiffs and Appellants.

Law Offices of Andrew Kim and Andrew Kim for Defendants and Respondents.

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This case involves a fight for control over the land, assets and management of a Buddhist temple owned by Tahl Mah Sah, Buddhist Monastery & Temple of America (TMS), a nonprofit religious corporation. Also, this case involves various tort causes of action.

Sunjung Park (Park), Keum Sun (Sun), and Junggu Kwon (Kwon) (collectively individual defendants) appeal from the judgment in favor of Nanshun Jin (Jin) and challenge the following: (1) the finding that Kwon and Park committed abuse of process and conspiracy to commit abuse of process against Jin, (2) the award of \$250,000 to Jin for tort damages; (3) the grant of unlawful detainer relief to Jin, and the related order expelling the individual defendants and others from the temple; and (4) the appointment of Jin and others to a new board of directors for TMS.

We reverse as to the last three of these items and otherwise affirm the judgment. The matter is remanded for a new trial with respect to tort damages, and for the trial court to apply Corporations Code section 9418 and order the parties to elect a new board of directors for TMS.

TMS purports to appeal from the denial of its claim against Jin to quiet title to two parcels of temple property. This appeal is moot given that the trial court cancelled Jin's competing deeds and effectively quieted title in TMS. We therefore dismiss TMS's appeal.

## **FACTS**

### **The Temple's Property<sup>1</sup>**

The temple's property includes two parcels which are located at 3505 West Olympic Boulevard (Olympic parcel) and 993 South Wilton Place (South Wilton parcel) in Los Angeles. By grant deed recorded April 24, 1978, TMS became the owner of the Olympic parcel. By grant deed recorded October 1, 1998, TMS acquired the South Wilton parcel.

### **TMS's Bylaws; the 1990 Board; Dong Kil Lee**

TMS's bylaws provide that the board of directors must consist of five directors. At each annual meeting of regular members, "there shall be elected a Board of Directors of [TMS] for the ensuing year, at which meeting, each regular member shall be entitled to one vote[.]" Regular membership "shall consist of those persons elected thereto by the Board of Directors."

In 1990, a trial court installed a board of directors comprised of Man Hi Hahn, Moon Yong Song, Jong Mo Kim, Chun Ryun Kim, and Chun Won Kim. They all subsequently died or became incapacitated. Dong Kil Lee (Abbot Lee) served as Chairman of the board and president.

### **Jin Is Hired and Fired**

In 2012, Abbot Lee hired Jin for a short time as a hospitality manager. After Abbot Lee had permanently moved to Korea, Jin was hired a second time. But then, in March 2015, she was fired.

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<sup>1</sup> TMS's property includes a parking lot. It is not at issue in this case.

In this opinion, we refer to "the temple" as shorthand for the property and buildings. When we refer to TMS, it is only as to the corporate entity.

### **Competing Elections for TMS's Board of Directors**

On May 17, 2015, Jin gathered 15 temple devotees after a weekly worship service and organized a vote in which they elected Jin and nine others as TMS directors. These directors met on May 21, 2015, and elected officers. On May 20, 2015, the individual defendants and others declared that TMS's 1990 board called an election of a new replacement board of directors. On June 1, 2015, the individual defendants held an election. The individual defendants and Jeungsuk Han (Han) were named to a replacement board.

### **The Temporary Restraining Order; the Hearing**

On July 13, 2015, Kwon filed an application for a civil harassment restraining order against Jin. In the application, Kwon alleged that Jin threatened him, interfered with his services and meditations, and would not let him use his assigned room, the kitchen or shower facilities at the temple. The trial court issued a temporary restraining order (TRO) pending a hearing.<sup>2</sup>

At the August 3, 2015, hearing, Jin claimed ownership of the Olympic parcel and Wilton parcel through deeds dated November 23, 2013, and recorded on July 24, 2015. The deeds were purportedly signed by "Dong Kil Lee, Authorized Representative" on behalf of "Tahl Mah Sah Buddhist Monastery [*sic*] and Temple of America."

The TRO was rescinded.

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<sup>2</sup> In support of a motion to consolidate various actions, Kwon declared that the police removed Jin from the temple on July 20, 2015.

### **The Three Actions; Consolidation**

The individual defendants filed an action in TMS's name and sued Jin, inter alia, to cancel her deeds and quiet title to the temple property.

Jin filed an action in her own name and in the name of TMS against the individual defendants on various causes of action including abuse of process, conspiracy to abuse process, conversion, trespass to chattels, battery, and intentional infliction of emotional distress (IIED). Apart from damages, this action sought a permanent injunction barring the individual defendants from acting illegally and to the detriment of TMS's and Jin's interests.<sup>3</sup>

About two weeks after filing the tort action, and solely on her own behalf, Jin filed an unlawful detainer action against the individual defendants.

In the tort action, Kwon filed a cross-complaint in his own name and in the name of TMS against Jin and others for, inter alia, declaratory and injunctive relief. Kwon sought a declaration that Jin and others are not officers and directors of TMS. Also, Kwon requested an injunction preventing Jin and others from claiming otherwise.

The trial court consolidated the three actions for all purposes.

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<sup>3</sup> Jin later filed a first amended complaint.

## **Trial**

The matter proceeded to trial.<sup>4</sup>

In the individual defendants' closing brief, they asked the trial court to declare that their election of a new board of directors was valid and Jin's election of a board of directors was invalid. In Jin's closing brief, she asked the trial court to recognize the directors chosen in her election. In the alternative, she asked the trial court to order that the temple conduct a new election.

## **Statement of Decision**

In its September 28, 2018, statement of decision, the trial court noted that it held a bench trial in 2016 that lasted nine days. It proceeded to set forth the following procedural history, findings and conclusions.

### Procedural History

The trial court issued a tentative decision on February 27, 2017. After the parties filed objections, they agreed that the declaratory relief causes of action were amended "to permit a court declaration as to the validity of the respective (competing) boards of [TMS]." Further, the parties agreed they would try to agree on an election procedure for a new board of directors.

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<sup>4</sup> Other than a few random details, none of the briefs gave us a sense of what happened at trial. Notably, the evidence showed that Abbot Lee was in a hospital in Korea in 2013. A handwriting expert testified that there was a strong probability that Jin's deeds were forged. The notary whose signature and seal were placed on the deeds testified that he did not notarize either of the deeds, and that the stamped notary seals on them contained incorrect information.

### Findings of Fact

The trial court found that TMS's articles of incorporation were amended in 1975 and it adopted bylaws. The trial court noted that "[b]oth sides in this litigation claim to represent [TMS]."

TMS has a history of infighting. "In 1990, this infighting resulted in a civil lawsuit. . . . That case ended with the court declaring the identities of the Board of Directors of [TMS] and ordering them to lead the organization[.]" They were identified as "the only individuals authorized to act on behalf of" TMS.

The 1990 Board of Directors chose Abbot Lee as the new Chief Abbot. He became the chairman of the board and president. But there are no clear succession records to support Abbot Lee's election to these positions. Abbot Lee "would personally designate anyone to any position on an ad hoc, as needed, basis. In other words, until his departure from [TMS] to Korea in 2013, [Abbot] Lee maintained a one-man organization without a Board of Directors and no general meetings." After Abbot Lee left, "[TMS] operated with neither a working Board of Directors nor general meetings."

Abbot Lee hired Jin as a hospitality manager. She claimed that he repeatedly expressed his interest in having her take over the management of the temple. She became "intimately familiar with the operations of [the temple]." After he left, and with his blessing, Jin took over the temple's day to day operations.

"Over the following years, Jin, without a Board of Directors or chief abbot, operated the temple. She did so with the help of some of the elderly and long-standing members/'devotees' of the temple." Jin and the members/devotees lived in the onsite women's dormitory.

In 2015, Jin overheard Abbot Kwon, a visiting monk from Korea, discussing the terms of the sale of the temple. Jin and the other members sent a letter to Abbot Kwon's temple (also known as Sudeoksa) and expressed their disapproval of a takeover by a foreign entity.

"Meanwhile, Kwon and Chundong Lee, the younger brother of [Abbot] Lee, hatched a plan to takeover [TMS]." Park, a fellow monk and associate of Kwon, allegedly beseeched Kwon to take over the temple's management. Kwon and Park then proceeded to hire an attorney to help them take over [TMS].

In response, Jin and other devotees gathered on May 17, 2015, after a weekly worship service and elected 10 directors. The trial court found this election to be "unauthorized and irregular." The trial court found no evidence that the devotees who voted on May 17, 2015, "were members who properly followed the bylaws . . . with respect to the election of a Board of Directors."

The individual defendants "declared that 'the 1990 Board' called an election of a new replacement Board of Directors. . . . An election was allegedly held on June 1, 2015, and Kwon, Park, Sun and [ ] Han were allegedly elected by 'members' as the replacement Board of Directors." This election was "unauthorized, irregular, and fraudulent" because there was no 1990 Board of Directors in place to call an election. "In fact, the [members of the] 1990 Board of Directors . . . all passed away or had become incapacitated." Also, the directors elected by the individual defendants "were not even members of the [temple], but Korean nationals and monks sent from Korea to take [it] over[.]"



“On June 3, 2015, Kwon and Park, with the help of a local attorney, filed a false Statement of Information showing themselves as the President and Secretary of the temple.” Almost a month later, they “attempted to take over the premises of [the temple], including the women’s dormitory, by physically occupying the premises and removing others on the premises. These two men were rebuffed by police officers who were called by Jin and other members/devotees.” Subsequently, the individual defendants and Han “filed bogus Amended Articles of Incorporation with the Secretary of State showing Kwon and Park[] as the President and Secretary of [TMS]. Kwon and his cohorts’ bogus Revised Articles with the California Secretary of State added a brand new provision of religious affiliation with the Temple Sudeoksa in Korea with an instruction to ‘turn over all assets to Sudeoksa in the event of dissolution.’”

Kwon applied for a restraining order alleging harassment by Jin on July 13, 2015. “Without giving ex parte notice, Kwon obtained [a] two-week long temporary restraining order (TRO) which included a removal order against Jin from her dormitory room.” In the application, Kwon misrepresented that the stay away order would allow Jin to go to her job when the truth was it would prevent her from attending to her live-in job at the temple. Also, he misrepresented that he did not give notice to Jin because he was afraid that violence would occur if he did. “This was false. The court observed during trial that Kwon is a large, fit, young monk of muscular build and that Jin is a short, elderly woman. The only one who would likely engage in violence would be Kwon, and even if Jin initiated violence, Kwon . . . would have no problem evading or thwarting an attack.”

On July 15, 2015, the individual defendants occupied the Buddha Hall “after hoodwinking Yu, a leader of members/devotees, by claiming that they . . . wanted to enter the premises ‘only to stay overnight.’ Immediately upon occupying the premises, [the individual defendants] brought in a swarm of fellow monks and changed [the] temple locks and intimidated Jin and the women occupying the Yosache, the women’s dormitory. The women resisted the monks’ efforts to take over the Yosache but Kwon fought back. . . . [He] resorted to the extreme and outrageous behavior of physically attacking Jin and another elderly fellow member/devotee. Kwon hit, pushed, pulled and punched Jin and her elderly friend. . . . Kwon injured the women, including punching the friend in the eye. . . . Kwon also turned off the water at the temple and disabled the CCTV. After the battery, the police were called” but Jin and her friend declined to prosecute.

The individual defendants ejected Jin from the premises and “they and their cohorts took control of [the temple] and the donation boxes and began to use the donations as they saw fit. Valuable items from the premises of [the temple], including, but not limited to, a Ford Lincoln Automobile, kitchen equipment, multi-media projector equipment and other furniture items became missing. The court finds that these items were taken by Kwon, Park, Sun and by others at the direction of Kwon, Park and Sun.”

Jin and members/devotees filed revised articles of incorporation “deleting the affiliation with Sudeoksa in Korea and reaffirming its correct and legal status as an independent religious, non-profit denomination in the United States.” In opposition to Kwon’s application for a restraining order, Jin

claimed she was the owner of the temple property based on fraudulent deeds from Abbot Lee. Even though the trial court refused to grant a restraining order, Kwon did not allow Jin to return to the temple.

#### Conclusions of Law

##### *Cancellation of Deeds*

The trial court concluded that Jin's deeds were void because there was no evidence that Abbot Lee was authorized to deed temple property to her, and because they did not bear the notary's genuine signature. It declared the deeds cancelled. Next, the trial court stated that its "finding does not mean that Kwon is the correct representative of [TMS] or that Kwon's [TMS] is entitled to ownership of the premises. Indeed, the [trial court] finds that Kwon had questionable standing to file the lawsuit on behalf of [TMS]."

##### *Quiet Title*

As to the quiet title claim, the trial court stated that it "cancelled the instrument that gave title to Jin so the ownership reverts back to [TMS]. However, the [trial court's] finding does not mean that Kwon is the correct representative of [TMS] or that Kwon's [TMS] is entitled to ownership of the premises. Therefore, the [trial court] finds in favor of Jin and title is not quieted in favor of Kwon's [TMS]."

##### *Abuse of Process; Conspiracy to Abuse Process*

The trial court concluded that Kwon's and Park's submission of an application for a TRO was an abuse of process because they falsely stated they were officers of TMS and did not give ex parte notice to Jin due to fear of physical violence. Moreover, the individual defendants used the TRO and a "bogus" Statement of Information with the Secretary of State "for the

improper purpose of harassing and forcibly removing Jin from the temple premises and to take complete control over the premises[.]”

The trial court found “in favor of Jin’s TMS and Jin and against Kwon and Park only.”

#### *Battery*

Kwon committed battery by hitting, pushing, punching and pulling Jin. “The damages to Jin [were] her ejectment from the premises and physical and mental suffering, loss of enjoyment of life, inconvenience, grief, anxiety, humiliation and emotional distress.”

#### *IIED*

On the IIED cause of action, the trial court found in favor of Jin against Kwon based on “bizarre and outrageous” acts that included “climbing up the ladder trying to enter the Yasache—women’s dormitory—at night; displaying demonic gestures to temple-goers[,] including Jin; physically attacking Jin, and another elderly female temple-goer, causing bruises and other physical injuries, in front of Jin.” Also, Kwon abused the legal process “to eject Jin forcibly, called the police without good cause, removed temple property, turned off the water at the temple and disabled the temple CCTV.”<sup>5</sup>

#### *Injunctive Relief*

The trial court enjoined the individual defendants from representing themselves as officers, directors or owners of TMS or the temple; from being present in the temple without

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<sup>5</sup> The trial court found no liability for conversion and trespass to chattels because Jin failed to present damages evidence.

permission of TMS's board of directors; and from interfering with Jin's possession of the temple.

Separately, the trial court enjoined "Jin and Jin's TMS" from representing herself/itself as the owner of the temple or that the May 2015 election was valid. Additionally, the trial court enjoined "Kwon and Kwon's TMS" from representing himself/itself as the owners of the temple or that the June 2015 election was valid.

The trial court also stated: "Due to the cancellation of the instruments, Jin is not the owner of the [temple]. However, the [trial court] finds in favor of Jin as to possession of the premises as she was wrongfully removed from the premises pursuant to the TRO . . . which was obtained with false information provided by Kwon and Park, among others. Jin has the right to return to the [temple]." The trial court found that the individual defendants and all occupants of the premises "must vacate the premises forthwith."

#### *Damages*

For past and future physical pain, mental suffering, loss of enjoyment of life, inconvenience, grief, anxiety, humiliation and emotional distress the trial court "award[ed] [\$]250,000 in favor of Jin against Kwon and Park."

#### *Appointment of a Board of Directors*

The trial court appointed a group of five people that included Jin to a new TMS board of directors.

#### *Commentary*

The trial court noted that TMS's articles of incorporation provided that it is a California nonprofit corporation and that "the specific and primary purposes for which this corporation is formed are: to operate a Buddhist Temple and monastery in

order to propagate the correct doctrines, philosophies, practices and rituals of Buddhism. . . .’ [Citation.] Contrary to Kwon, Park, Sun and the other monks’ assertions, [TMS] was not organized for the benefit of their temple in Korea—aka ‘Sudeoksa’—a foreign entity. The monks insist that [TMS] was formed to perpetuate the Jogye Order lineage of Korean monks in ‘Sudeoksa.’ In fact, nothing in the Articles of Incorporation or the Bylaws of [TMS] so state. And, the [trial] court notes that in 1990, when the same issue was before another trial court, that court appointed no abbots or monks as directors. Throughout the history of [TMS], the chief abbots and other monks served at the invitation of the Board of Directors—not the other way around.”

“Aware of the value of the [temple property], the Korean monks sought to wrest control over the [temple] from long term (and elderly) devotees/temple-goers who had been operating the temple in the absence of a properly elected Board of Directors or Officers.”

The purpose of the trial court’s ruling “is to restore control of and operation of the temple to a Board of Directors that will adhere to [TMS’s] primary charitable purpose, without concern for other interests. The five directors selected by the [trial court] have been members of the temple and/or practicing Buddhists for at least 25 years and up to 40 years. The [trial court] reminds the new board to comply with its articles of incorporation and bylaws moving forward. Otherwise, the parties will find themselves back in court fighting over the same issues for a third time.”

### **Judgment**

The trial court filed a judgment that followed the statement of decision. On the same date, the trial court entered an

unlawful detainer judgment in favor of Jin and against the individual defendants and other occupants of the temple. The unlawful detainer cited to the statement of decision in the consolidated action.<sup>6</sup>

### **New Trial Motion**

The individual defendants moved for a new trial on behalf of themselves and TMS and argued, inter alia, that the \$250,000 damages award was excessive and unsupported by the evidence. The motion was denied.

### **Appeal**

On October 5, 2018, the individual defendants appealed from the judgment. Also, they prompted their attorney to file an appeal on behalf of TMS.

## **DISCUSSION**

### **I. TMS's Appeal is Moot.**

An appeal will be dismissed when no effective relief can be granted. (*Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 78.) Here, the trial court cancelled Jin's deeds and determined that title reverts to TMS. Effectively, the trial court quieted title in TMS. All that the trial court denied was quiet title in favor of "Kwon's TMS," an entity that does not exist. Thus, if we were to entertain the appeal on behalf of TMS, we could not grant effective relief.

TMS's appeal must be dismissed.

### **II. Abuse of Process and the Related Conspiracy Count.**

Kwon and Park challenge the finding of abuse of process and conspiracy to commit abuse of process.

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<sup>6</sup> We construe the two judgments as effectively one judgment in the consolidated action.

Because the facts are not in dispute, the only question is whether the trial court properly applied the law. Our review is de novo. (*Martinez v. Brownco Construction Co.* (2013) 56 Cal.4th 1014, 1018.)

“The tort of abuse of process constitutes the use of a legal process against another to accomplish a purpose for which it is not designed. [Citations.] Its elements are: (1) an ulterior motive; and (2) a willful act in the use of process not proper in the regular conduct of the proceedings. [Citation.] ‘[T]he essence of the tort “abuse of process” lies in the misuse of the power of the court; it is an act done in the name of the court and under its authority for the purpose of perpetrating an injustice. . . .’ [Citations.]” (*Drum v. Bleau, Fox & Associates* (2003) 107 Cal.App.4th 1009, 1019, disapproved on other grounds in *Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1065 (*Rusheen*).) The litigation privilege in Civil Code section 47, subdivision (b) bars any abuse of process claim based on communications (1) made in a judicial proceeding by litigants or other participants authorized by law to achieve the objects of the litigation and (2) which have some connection or logical relation to the action. (*Rusheen, supra*, 37 Cal.4th at p. 1062.)

In their briefs, Kwon and Park selectively focus on the findings that they committed abuse of process by submitting a false Statement of Information to the Secretary of State and false declarations in support of their TRO application. Because the Statement of Information did not involve a judicial process and the declarations were absolutely privileged, they do not support abuse of process. But Kwon and Park ignored the finding that they committed abuse of process by using the TRO to remove Jin



from the temple and to take over complete control of it.<sup>7</sup> “When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived. [Citations.]” (*Nelson v. Avondale Homeowners Assn.* (2009) 172 Cal.App.4th 857, 862.)

Aside from the waiver, we note that the Civil Code section 47, subdivision (b) privilege “applies only to communicative acts and does not privilege tortious courses of conduct. [Citations.]” (*Kupiec v. American Internat. Adjustment Co.* (1991) 235 Cal.App.3d 1326, 1331.) The act of removing Jin and taking over the temple was not a communicative act and therefore is not shielded by the privilege.

The trial court’s finding was supported by the law.

### **III. Unlawful Detainer.**

The trial court determined that Jin is not the owner of the temple property. It granted unlawful detainer on the theory that Jin was removed from the premises pursuant to a TRO that was obtained based on false information. We are called upon to review the application of statutes to undisputed facts. Once

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<sup>7</sup> At oral argument, counsel for the individual defendants maintained that abuse of process was based solely on the filing of false declarations and a bogus Statement of Information. When we suggested there was at least a third basis, counsel assured us that was not true. But the statement of decision provided, “Kwon, Park and Sun used the TRO, the false statements therein, and the bogus Statement of Information[,] for the improper purpose of harassing and forcibly removing Jin from the temple premises and to take complete control over the premises of [the temple].” The trial court specifically found that the use of the TRO to remove Jin and gain control of the temple was an abuse of process.

again, our review is de novo. (*Gonzalez v. County of Los Angeles* (2004) 122 Cal.App.4th 1124, 1129.)

The trial court erred.

An unlawful detainer action is a remedy for a landlord to recover possession of property from a tenant. (Code Civ. Proc., § 1161 et seq.) Because the trial court did not find that Jin was the owner of the temple property or a tenant subletting to the individual defendants, relief under the unlawful detainer statutes was not authorized.

#### **IV. General Damages.**

Kwon and Park argue that \$250,000 in general damages was excessive and unsupported by the evidence.

They posit that Jin failed to present any evidence that the TRO caused her any damages. Further, she did not present evidence of her living expenses after being ejected from the temple. Beyond that, she presented no evidence at trial that she sought medical or psychological treatment for any alleged injury based on Kwon's battery. The only injury she referenced in her testimony was bruising to her knees. Kwon and Park claim that Jin did not testify to mental suffering, loss of enjoyment of life, disfigurement, physical impairment, grief, anxiety or emotional distress.

In her respondent's brief, Jin does not dispute this characterization of the record. Consequently, we accept it as accurate for purposes of this appeal.

When an award appears to be excessive as a matter of law, or where the recovery is so grossly disproportionate as to raise a presumption that it is the result of passion or prejudice, a reviewing court has a duty to act. (*Cunningham v. Simpson* (1969) 1 Cal.3d 301, 308.)

Due to the absence of evidence of Jin's damages, we conclude that the general damages were so grossly disproportionate as to raise a presumption the award was the result of passion or prejudice and must be reversed. In reaching this conclusion, we reject Jin's sole defense, which is that evidence describing Kwon's and Park's acts against Jin and other elderly worshippers was legally sufficient to support the general damages. Tacitly, she suggests that they were a just punishment for bad acts. The problem is that a general damages award is supposed to compensate rather than punish. (*Thayer v. Kabateck Brown Kellner LLP* (2012) 207 Cal.App.4th 141, 156 ["General damages includes pain and suffering, emotional distress, and other 'subjective' items"].)

#### **V. Appointment of a Board of Directors.**

The trial court appointed the board of directors pursuant to Corporations Code section 9220. It provides that a court may appoint directors to a nonprofit religious corporation upon application of an interested party if the "corporation has not issued memberships and (1) all the directors resign, die, or become incompetent, or (2) a corporation's initial directors have not been named in the articles and all incorporators resign, die, or become incompetent before the election of the initial directors[.]" (Corp. Code, § 9220, subd. (d).)

The application of this statute to the facts dictates a single conclusion. Because no interested party applied for an appointment of a board of directors, the trial court was not authorized to appoint one.<sup>8</sup>

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<sup>8</sup> The individual defendants argue that another element was missing, namely the resignation, incapacity or death of all prior

In counterpoint, Jin says that the individual defendants agreed “that the [trial court] has [the] power to select a director[.]” Presumably she is suggesting that TMS and the individual defendants did, in fact, apply to the trial court to appoint a board of directors. The suggestion cannot prevail. During a discussion between the trial court and the parties about a procedure for electing a board of directors, counsel for the individual defendants said he thought the matter was ecclesiastical. Without conceding that argument, he said he would focus on the neutral principles of the law for their discussion. He said that if the trial court found that there was no existing director, it could elect a director under Corporations Code section 9220, subdivision (d). Counsel argued that Abbot Lee was the sole existing director and that under the Corporations Code the trial court could deem him as such. Then counsel proposed a procedure by which Abbot Lee would select five regular members of TMS and they would elect a board of directors. This is not equivalent to an application for the trial court to appoint a new board.

The trial court’s unilateral appointment of the board of directors must be reversed.

## **VI. Instructions to the Trial Court.**

At oral argument, we asked the parties how to resolve TMS’s lack of a board of directors. The individual defendants suggested that we order the trial court to follow Corporations Code section 9418. It provides that the “[trial] court, consistent with the provisions of this part and in conformity with the

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directors. They contend that there are two existing directors. We need not determine this issue.

articles and bylaws to the extent feasible, may . . . order a new election to be held[.]” (Corp. Code, § 9418, subd. (c).)

Currently, TMS has no board of directors. It is appropriate for the trial court to order an election.

We recognize that TMS’s bylaws require members to elect directors, and that is impossible here. The record and the trial court’s findings establish that there are no formal members who can conduct a vote. Corporations Code section 9418, subdivision (c), however, does not require compliance with the bylaws if it is not feasible. We therefore conclude that the trial court may determine a different procedure for the election, but only if the procedure avoids excessive entanglement with TMS’s determination of religious or ecclesiastical matters. (*Singh v. Singh* (2004) 114 Cal.App.4th 1264, 1275.)

The trial court can consider ordering the parties to utilize the procedure they agreed to previously.

Given that TMS lacks a board of directors, its property rights are implicated, i.e., it currently lacks the ability to control its own assets. Thus, if either party interferes with the election, the trial court may appoint a receiver to take control of TMS and conduct the election. (Code Civ. Proc., § 564, subd. (b)(9) [a receiver can be appointed “where necessary to preserve the property rights of any party”].)

## DISPOSITION

TMS's appeal is dismissed.

We reverse the portions of the judgment granting unlawful detainer relief to Jin, awarding \$250,000 to Jin against Kwon and Park, and appointing a new board of directors. We affirm the judgment in all other respects.<sup>9</sup>

On remand, the trial court is directed to conduct a new trial on the issue of Jin's damages, and it is directed to order the parties to elect a new board for TMS. The parties shall bear their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.  
ASHMANN-GERST

We concur:

\_\_\_\_\_, P. J.  
LUI

\_\_\_\_\_, J.  
HOFFSTADT

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<sup>9</sup> Our disposition leaves intact the portions of the judgment that (1) cancelled Jin's deeds; (2) granted injunctive relief; and (3) established liability on Jin's claims for abuse of process, conspiracy to commit abuse of process, battery and IIED. Also, our disposition leaves intact the portions of the judgment that (1) denied TMS relief for slander of title, unjust enrichment, and quiet title; (2) denied Jin relief for conversion and trespass to chattel; and (3) denied TMS and the individual defendants relief for fraud and conspiracy to commit fraud.