

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2023] SGHC 172

Originating Summons No 656 of 2021 (Registrar's Appeals Nos 40 and 41 of 2023)

Between

Lian Chee Kek Buddhist
Temple

... Plaintiff

And

- (1) Ong Ai Moi
- (2) Ho Thien Chan
- (3) Tan Mary

... Defendants

JUDGMENT

[Charities — Charity proceedings — Interpretation of s 32 of the Charities Act 1994]

[Charities — Charitable trusts — Legal capacity]

[Charities — Registration — Effect of registration]

[Civil Procedure — Striking out]

[Civil Procedure — Parties — Joinder]

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Lian Chee Kek Buddhist Temple

v

Ong Ai Moi and others

[2023] SGHC 172

General Division of the High Court — Originating Summons No 656 of 2021
(Registrar's Appeals Nos 40 and 41 of 2023)

Philip Jeyaretnam J

21 April, 16 May 2023

19 June 2023

Judgment reserved.

Philip Jeyaretnam J:

Introduction

1 A trust is not a legal person. It is a relationship concerning property ordinarily between the persons who hold that property on trust and those for whose benefit they do so. In an exceptional category of charitable purpose trusts, the trustees hold the trust property for the charitable purpose set out in the trust deed. As a trust is not a legal person, it cannot sue or be sued. It is the trustees who must sue or be sued in respect of the trust property or the administration of the trust.

2 In this case the named plaintiff is Lian Chee Kek Buddhist Temple, which is said to be a charitable trust registered under the Charities Act 1994 (2020 Rev Ed) (the “Charities Act”). For reasons that will soon be evident, I shall refer to this party simply as the “Plaintiff”. As for the religious adherents

who practise their faith at Lian Chee Kek Buddhist Temple, I shall refer to them neutrally as the “Worshippers”. In the originating summons, the Plaintiff seeks a declaration that the defendants hold certain land and premises as trustees on trust for the Plaintiff, and for the replacement of the defendants as trustees with certain senior Worshippers as new trustees. The defendants have applied in HC/SUM 223/2022 (“SUM 223”) to strike out this originating summons on the ground that the Plaintiff does not exist in law as a separate personality capable of suing or being sued. The Plaintiff responded in two ways. First, it contends that upon registration as a charity it acquired the capacity to commence charity proceedings under s 32 of the Charities Act. Second, in HC/SUM 3804/2022 (“SUM 3804”), two members of its management committee applied to be joined as plaintiffs (the “Additional Plaintiffs”). The Additional Plaintiffs have obtained the consent of the Attorney-General to do so under s 9(1) of the Government Proceedings Act 1956 (2020 Rev Ed) (the “Government Proceedings Act”).

3 Before the learned Assistant Registrar, the argument on behalf of the Plaintiff seems to have been put in terms of the Plaintiff being simply a “charity” or an “undertaking” clothed upon registration under the Charities Act with separate legal personality.¹ The language employed in the Plaintiff’s written submissions suggest that the Lian Chee Kek Buddhist Temple is the subject matter or object of a trust, with the Plaintiff as such described as “a charitable trust” or something that “has been carrying out the purpose” of a trust, and the defendants being described as the Plaintiff’s trustees.² The learned Assistant Registrar appears to have agreed with the Plaintiff’s submission that registration

¹ Defendant’s Bundle of Documents at 504–506 and 524.

² Plaintiff’s Written Submissions dated 5 January 2023 (HC/SUM 223/2022 & HC/SUM 3804/2022) at paras 15–17, 29, 33, 56, and 59.

was sufficient without the need for legal personality and she therefore dismissed the striking out application in SUM 223.³ She also permitted the joinder of the Additional Plaintiffs in SUM 3804. The defendants now appeal against both decisions of the learned Assistant Registrar in HC/RA 41/2023 (“RA 41”) and HC/RA 40/2023 (“RA 40”) respectively.

4 In these appeals, the Plaintiff contends that it is the very trust for which the defendants are trustees.⁴ In my view, the principal questions that arise for my determination are thus whether the Plaintiff is a trust, and if so, whether registration as a charity has clothed it with separate legal personality. Thereafter, I will turn to address the question of whether the Additional Plaintiffs should be allowed to join these proceedings.

Background and parties

5 The saga starts with a deed of indenture dated 21 January 1958 (the “1958 Indenture”) by which the owner of certain land in Paya Lebar conveyed “said land and premises together with all buildings thereon” to trustees as joint tenants upon trust “to allow the same at all times hereafter to be used occupied and enjoyed as a place of public worship according to the Chinese religious rites and customs of followers of Kwan Yin”.⁵ I shall refer to the trust constituted under the 1958 Indenture neutrally as the “Trust” and to the trustees for the time being as the “Trustees”. I will refer to the land together with its buildings and fixtures neutrally as the “Premises”. Parties do not dispute that Lian Chee Kek Buddhist Temple, in the sense of the place of worship, is currently, and has for

³ Defendant’s Bundle of Documents at 544.

⁴ Plaintiff’s Supplementary Written Submissions dated 2 May 2023 at para 1.

⁵ Defendant’s Bundle of Documents at 48.

some time been, situated upon the Premises. The 1958 Indenture contains no reference to “Lian Chee Kek Buddhist Temple”.

6 The defendants are not the original trustees but were appointed in accordance with the provisions of the Trust some years later. Proviso (1) of the 1958 Indenture provides:

... whenever any of the Trustees shall retire or become incapable of acting in the Trusts hereof or shall die *the continuing or surviving Trustee or the last survivor of them shall have power forthwith to appoint a new trustee or new trustees* to act in the place of the Trustee retiring or becoming incapable of acting or dying and so that the number of trustees hereof shall not be less than two nor more than five.

[emphasis added]

These provisions thus took the form of a self-perpetuating trust where the trustees are empowered to appoint their successors. The first defendant was duly appointed on 7 March 1988, while the second and third defendants were appointed on 14 August 1991.⁶ The defendants are reflected on the land register as the proprietors of the Premises, holding as joint tenants in trust.⁷

7 The 1958 Indenture contains two other provisions that are relevant:⁸

(a) Under proviso (2), the Trustees were to “manage and superintend the management of the said land and premises in accordance with such rules and regulations as the Trustees and their successors in office shall from time to time think expedient”.

⁶ Defendant’s Bundle of Documents at 401 and 405.

⁷ Defendant’s Bundle of Documents at 62-63.

⁸ Defendant’s Bundle of Documents at 49.

(b) Under proviso (3), the Trustees were empowered to take down and remove “the building now erected on the said land for the purpose of rebuilding the same with premises better”.

8 It is helpful to introduce next the second proposed Additional Plaintiff, the Venerable Tjie Giok Sang, who is said to be the Abbot of Lian Chee Kek Buddhist Temple (“Abbot Tjie”). Abbot Tjie has exhibited a letter dated 10 June 1987 by which the then trustees of the Trust first invited him to stay at the Premises.⁹ Abbot Tjie was not appointed a trustee of the Trust. He, like the first Additional Plaintiff, is a member of the Plaintiff’s management committee. At this juncture, it is helpful to describe briefly, and in neutral terms, how this management committee came about.

9 The defendants as Trustees appear to have come to the view sometime prior to 1998 that it would be better to transfer the Premises to the Singapore Buddhist Federation, a registered society and registered charity that has the object of unifying Buddhist institutions and Buddhists in Singapore. The Singapore Buddhist Federation was ready to accept this gift.¹⁰ However, before they could make this gift, the Trustees needed to alter the objects of the Trust accordingly, and to that end applied by a letter dated 28 October 1998 to the Commissioner for Charities (the “Commissioner”) to exercise her power under s 24(1)(c) of the version of the Charities Act then in force (currently s 22(1)(c) of the Charities Act).¹¹ In their application, the Trustees relied on the doctrine of *cy-près*. The Trustees informed the Commissioner that the Premises were occupied by “a buddhist temple styled ‘Lian Chee Kok Temple’”, which

⁹ Defendant’s Bundle of Documents at 67.

¹⁰ Defendant’s Bundle of Documents at 204.

¹¹ Defendant’s Bundle of Documents at 206-209.

provided a place for general Buddhist worship not limited to the worship of Kwan Yin. The Trustees stated that the Premises were being underutilised and could be optimised for the advancement of Buddhism in Singapore by a transfer of the Premises to the Singapore Buddhist Federation. The Trustees therefore sought to alter the objects of the Trust and apply the Premises *cy-près* under ss 21(1)(c) and 21(1)(e)(iii) of the version of the Charities Act then in force (currently ss 19(1)(c) and 19(1)(e)(iii) of the Charities Act). The Trustees also indicated their desire to gift an adjoining strip of land, described as being beneficially owned by the Trustees, to the Singapore Buddhist Federation, should their application succeed.

10 The application ran into a roadblock. Before the Commissioner would consider the Trustees' application, she required a certified statement of accounts for the previous five years (1993 to 1997) as well as a description of the activities carried out "by the Temple" since 1993.¹² The Trustees thus reached out to Abbot Tjie for the necessary accounts and description of activities, but they were not forthcoming.¹³ It appears that Abbot Tjie did not agree with the decision to transfer the Premises to the Singapore Buddhist Federation.¹⁴ The application could not proceed.

11 By way of a lawyers' letter dated 14 August 2000, the defendants as Trustees issued a notice to quit to Abbot Tjie, addressed to Abbot Tjie as a licensee of the Premises.¹⁵ Evidently, Abbot Tjie did not leave the Premises and the Trustees did not take further legal action. While I need not and do not reach

¹² Defendant's Bundle of Documents at 216.

¹³ Defendant's Bundle of Documents at 217-218.

¹⁴ Defendant's Bundle of Documents at 223 and 281-282.

¹⁵ Defendant's Bundle of Documents at 227.

any conclusion on this point, I observe parenthetically that this raises the question of whether Abbot Tjie remained lawfully on the Premises after having been served a notice to quit.

12 On 20 April 2006, an application for the registration of a charity was made by Abbot Tjie.¹⁶ It is the defendants’ position that this application was done surreptitiously without their knowledge. They claim to have discovered this application only during these proceedings.¹⁷ The Plaintiff’s position is that Abbot Tjie had been forced to make the application on account of the defendants’ wilful refusal to register as a charity since 1991.¹⁸

13 The application form named “Lian Chee Kek Buddhist Temple” as the organisation seeking registration as a charity and identified the Premises as the address. The form required a declaration as to the nature of the legal entity making the application, providing five options, namely a society; a company limited by guarantee; a quasi-government organisation; a trust; or “others”. The option “others” was selected with the annotation “Buddhist Temple”. The date of establishment was given as 21 January 1958, the same date as the 1958 Indenture, and the land occupied for charitable purposes, identified as the Premises, was declared as being “Owned”. The form also required stating the particulars of “charity trustees”, which was submitted in an attached list. Fifteen persons were named, including Abbot Tjie, but no mention was made of any of the three defendants.¹⁹ It appears (but I need not and do not make a finding to this effect given the stage at which these appeals arise) that the defendants did

¹⁶ Defendant’s Bundle of Documents at 173 and 358-361.

¹⁷ 1st Affidavit of Ong Ai Moi @ Seck Sian Siang dated 17 January 2022 at para 49.

¹⁸ Plaintiff’s Written Submissions dated 14 April 2023 (HC/RA 40/2023 & HC/RA 41/2023) at paras 14-17.

¹⁹ Defendant’s Bundle of Documents at 358-361.

not know about or approve this application. It also appears that the Commissioner proceeded to register the Plaintiff as a charity based on the constitution and management committee furnished by Abbot Tjie in this application, even though previous correspondence in 1998 had come from the defendants' lawyers. The original constitution of the Plaintiff submitted by Abbot Tjie did not make any reference to the 1958 Indenture. Apparently, it was the Commissioner that required the addition of a clause expressly referring to the 1958 Indenture in the constitution, and the Commissioner who provided Abbot Tjie with a copy of the 1958 Indenture in response to his initial application.²⁰

14 The Plaintiff's constitution appears to be based upon a typical constitution for an association. It briefly sets out the core objectives of the Plaintiff, but focuses in the main on membership conditions, rights, and fees, and management procedures, such as meetings and the election of office bearers.²¹ In particular, provisions are set out for the election of "trustees" by a general meeting of the members of the Plaintiff and for the vacation of that office upon the occurrence of specified events. "Trustee" is not defined in the Plaintiff's constitution, but clause 37 specifies their role, stating that "[i]f the Temple at any time acquires any immovable property, such property shall be vested in Trustees subject to a declaration of trust". Although the drafting is not a model of clarity, it also appears that the general meeting may consider proposals to remove trustees.²²

²⁰ Defendant's Bundle of Documents at 179; Plaintiff's Written Submissions dated 14 April 2023 (HC/RA 40/2023 & HC/RA 41/2023) at para 80.

²¹ Defendant's Bundle of Documents at 92-102.

²² Defendant's Bundle of Documents at 99-100.

15 Abbot Tjie’s application was granted on 19 June 2006 and the Plaintiff was thereafter registered as a charity.²³ The defendants are not members of the Plaintiff.

16 Abbot Tjie then appears to have proceeded to run the Plaintiff and manage the Premises without reference to the Trustees. This extended to proceeding with additions and alterations to the Premises between 2017 and 2019 without the approval of the Trustees. The Urban Redevelopment Authority (“URA”) appears to have picked up on the absence of consent on the part of the registered proprietors of the Premises when the Plaintiff sought approval of the renovation works in 2020. By letter dated 12 January 2021, the URA required the Plaintiff to provide this consent, noting that the Premises were not owned by the President of the Plaintiff, who had been erroneously declared as the owner of the Premises in the Plaintiff’s application for approval.²⁴

17 Three days later, the Plaintiff, by its solicitors Wee Swee Teow LLP (“WST”), wrote to the defendants requesting them to sign and return the requisite consent.²⁵ There was no response. WST wrote again by a letter dated 8 March 2021, this time requesting that the defendants sign a deed of retirement as trustees and stating the Plaintiff’s intention to appoint new trustees in their place, presumably being Abbot Tjie and others from his management committee. This letter accused the defendants of being disinterested in the activities of the Plaintiff and warned that legal proceedings would be commenced to remove the defendants as trustees should they continue to fail to

²³ Defendant’s Bundle of Documents at 192.

²⁴ Defendant’s Bundle of Documents at 113.

²⁵ Defendant’s Bundle of Documents at 115-117.

respond.²⁶ When there was no response, the Plaintiff then convened a general meeting on 26 June 2021 and passed resolutions purporting to remove the defendants as trustees pursuant to and under the terms of the Plaintiff's constitution, appointing Abbot Tjie and two other members of the management committee as new trustees.²⁷ The defendants were not asked to attend this general meeting and the resolutions were passed in their absence.

18 On 30 June 2021, the Plaintiff filed this originating summons seeking declarations that the removal of the defendants as trustees and the appointment of the new trustees on 26 June 2021 were valid and effectual, and seeking consequentially a declaration vesting the Premises in these new trustees.

Issues to be determined

19 I will address the issues in these appeals in the following order:

- (a) Is the Plaintiff a trust?
- (b) If it is, has it been conferred a separate legal personality by registration under the Charities Act?
- (c) Ought the Additional Plaintiffs to be joined to these proceedings?

Issue 1: Is the Plaintiff a trust?

20 It is obvious from the undisputed facts that the Plaintiff is not *a* trust, let alone *the* Trust. The Trust was established under the 1958 Indenture. It has trustees – the defendants. This is not disputed. The Trustees of the Trust are

²⁶ Defendant's Bundle of Documents at 120.

²⁷ Defendant's Bundle of Documents at 125-126.

appointed and removed under the terms of the 1958 Indenture, specifically proviso (1) (see above at [6]).

21 The correct analysis is as follows. The Lian Chee Kek Buddhist Temple, in the sense of the building situated upon the Premises and in which religious activities are practised, is real property that forms part of the subject matter of the Trust. The Lian Chee Kek Buddhist Temple, in the sense of the organisation of Worshippers operating on the Premises, is the group of people who claim to have been fulfilling the purpose of the Trust. The Plaintiff's submissions conflate the two.²⁸

22 I pause to note that, strictly speaking, the purpose of the Trust concerns the use of the Premises as a place of worship for followers of "Kwan Yin", also known as Bodhisattva Guanyin. This detail may yet have significance, but for the purpose of these appeals I leave it to one side.

23 What happened is that, in or about 2006, Abbot Tjie and other Worshippers came together to establish rules for how they would associate together and carry out their religious activities. For this purpose, they formed an unincorporated association: a group of persons organised for a common purpose and bound by contractual rules governing their association (*Life Bible-Presbyterian Church v Khoo Eng Teck Jeffrey and others and another suit* [2010] SGHC 187 at [36], citing *Conservative and Unionist Central Office v Burrell (Inspector of Taxes)* [1982] 1 WLR 522). These rules were contained in the Plaintiff's constitution. They did not register this association under the Societies Act 1966 (2020 Rev Ed) ("Societies Act"), but simply submitted an application to the Commissioner seeking charitable status. There is no reference

²⁸ Plaintiff's Written Submissions dated 14 April 2023 (HC/RA 40/2023 & HC/RA 41/2023) at paras 117-119.

to the defendants in the application because those identified as “charity trustees” were drawn from the members of the unincorporated association.

24 Abbot Tjie did not himself believe that the registration of the Plaintiff as a charity would in any way affect the Trust, which he knew was a trust over the Premises and for the purpose set out in the 1958 Indenture (see above at [5]).²⁹ This belief is correct. The registration of the unincorporated association and the adoption of a constitution governing the association cannot overreach the provisions of the 1958 Indenture. The charitable purpose, and indeed the charitable status, is distinct from the institutional form (*Zhao Hui Fang and others v Commissioner of Stamp Duties* [2017] 4 SLR 945 at [100], referring to *Khoo Jeffrey and others v Life Bible-Presbyterian Church and others* [2011] 3 SLR 500 at [33]). The fact that Abbot Tjie succeeded in registering the unincorporated association as a charity did not change the fact that it remained an unincorporated association in law. The fact that the unincorporated association was for a stated purpose consistent with the purpose of the Trust under the 1958 Indenture did not alter its character or transform it into a trust, let alone the Trust.

25 It is trite that an unincorporated association is not a legal entity separate from its members. As the Court of Appeal in *Chee Hock Keng v Chu Sheng Temple* [2016] 3 SLR 1396 noted at [28]:

An unincorporated association consists of a mere aggregate of individuals, and is not a legal entity capable of suing or being sued in its own name: see *Chen Cheng v Central Christian Church* [1995] 3 SLR (R) 806 ... at [6]. An unincorporated association may, however, be clothed with legal personality by Parliament through legislation such as the Societies Act: see *Chen Cheng* at [8]. But, unless and until such legal personality

²⁹ 3rd Affidavit of Tjie Giok Sang @ Seik Hui Siong dated 14 February 2022 at para 58.

is conferred by statute, an unincorporated association has no legal existence separate from the members who comprise it.

Unlike the Societies Act, which expressly empowers registered societies to sue or be sued (pursuant to s 35(1)(b) of the Societies Act), the Charities Act contains no equivalent provision conferring legal personality upon a registered charity.

26 The formation of the unincorporated association ran parallel to the continued existence of the Trust. Abbot Tjie may have believed that being conferred charitable status by the Commissioner meant that he could now manage the Premises without reference to the Trustees, but that was not correct. The Premises continued to belong to the Trust, and it was the Trustees who had the power to manage the Premises in accordance with the 1958 Indenture (see above at [7]). Abbot Tjie could not abrogate this power. Abbot Tjie ought to have first sought the consent of the Trustees to his proposed additions and alterations to the Premises before undertaking them.

Issue 2: If the Plaintiff is a trust, has it been conferred a separate legal personality by registration under the Charities Act?

27 While this question is moot, given that the Plaintiff is not in fact a trust but an unincorporated association, it is worth considering the argument further. Indeed, if it is the case that registration under the Charities Act confers a separate legal personality on a trust, then it could do the same for an unincorporated association. The argument that succeeded below was that, upon registration, the Plaintiff had been conferred the right to sue by virtue of s 32(1) of the Charities Act, which provides:

Taking of legal proceedings

32.—(1) Charity proceedings may be taken with reference to a charity either by the charity, or by any of the governing board

members, or by any person interested in the charity, but not by any other person.

28 The argument before me ran as follows. Section 2 of the Charities Act defines “charity” to mean “any institution, corporate or not, which is established for charitable purposes” and “institution” to include “any trust”. Thus, when s 32(1) of the Charities Act states that charity proceedings may be taken “by the charity”, this means that the charity as such may take legal proceedings, even though prior to being recognised as a charity it did not have a separate legal personality or the capacity to sue or be sued.³⁰ In fact, the Plaintiff’s interpretation of s 32(1) of the Charities Act presents it as a one-way street: the charity may sue in its own name, but cannot *be sued* in its own name.³¹ Moreover, s 32(2) of the Charities Act disallows charity proceedings brought under s 32(1), “unless the taking of the proceedings is authorised by order of the Commissioner”. The Plaintiff has duly obtained authority from the Commissioner by an order dated 18 October 2021.³²

29 I am unable to agree with this argument. Unlike the Societies Act, the Charities Act has no empowering provision. In my view, s 32 of the Charities Act establishes *additional* qualifications that a party seeking to commence charity proceedings must have. First, they must come within the requirements of s 32(1), and second, they must obtain prior authority from the Commissioner. It neither grants legal personality to anything that does not already have it, nor vests the capacity to sue in anyone who has no such capacity in the first place. It may be helpful to illustrate this by way of an example. There are many

³⁰ Plaintiff’s Supplementary Written Submissions dated 2 May 2023 at para 2.

³¹ Plaintiff’s Supplementary Written Submissions dated 2 May 2023 at para 7.

³² Charity Proceedings Order No 1 of 2021; Plaintiff’s Written Submissions dated 5 January 2023 (HC/SUM 223/2022 & HC/SUM 3804/2022) at para 22.

charities for the protection of children. It is possible that a child might be considered someone “interested” in such a charity. But a child, no matter how determined, has no capacity to commence legal proceedings generally (see O 4 r 1 of the Rules of Court 2021). That a child might be described as a “person interested in the charity” within s 32(1) of the Charities Act in respect of a particular charity does not mean that that child would have capacity to commence charity proceedings in their own name. The correct position is that nothing under the Charities Act alters what the general law requires before a party may commence legal proceedings. In the case of a charitable trust, charity proceedings brought “by the charity” under s 32(1) of the Charities Act would mean an action commenced by the trustees in their capacity as trustees.

30 I note that the Attorney-General and Commissioner both agree with my view. I accept their submission that the charity must have been established as an “institution” prior to registration, and their submission that the act of registration does not alter or confer legal personality. They also point out that the charitable status of an institution may be revoked in certain circumstances by the Commissioner pursuant to s 7(3) of the Charities Act, but this is entirely independent from the continued legal existence of the institution. For example, a company that is removed from the register of charities does not by that very fact also get wound-up and struck off the register of companies.³³

31 In view of my determination on the first two issues, I hold that the Plaintiff as an unregistered unincorporated association has no capacity or standing to commence or continue these proceedings. Accordingly, I allow the appeal in RA 41.

³³ Attorney-General’s Written Submissions dated 9 May 2023 at paras 5–9.

Issue 3: Ought the Additional Plaintiffs be joined to these proceedings?

32 In view of my determination of the first two issues, the question is not merely joinder, as sought in SUM 3804, but complete substitution. The Additional Plaintiffs would in substance take over conduct of the matter entirely.

33 Before me, much of the argument was spent on whether the Additional Plaintiffs come within s 9(1) of the Government Proceedings Act, which provides:

Public, religious, social or charitable trusts

9.—(1) In the case of any *alleged breach* of any express or constructive trust for public, religious, social or charitable purposes, or where the direction of the court is deemed necessary for the administration of any such trust, the Attorney-General or 2 or more persons having an interest in the trust and having obtained the consent in writing of the Attorney-General, may institute a suit or be joined as a party in any existing suit on behalf of the Government or the public for the purpose of —

- (a) asserting any interest or right in the trust property;
- (b) *removing any trustee;*
- (c) *appointing a new trustee;*
- (d) *vesting any property in a trustee;*
- (e) directing accounts and inquiries;
- (f) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;
- (g) authorising the whole or any part of the trust property to be let, sold, mortgaged, charged or exchanged;
- (h) settling a scheme; and
- (i) obtaining such further or other relief as the nature of the case may require.

(2) No suit claiming any of the reliefs specified in subsection (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with that subsection.

...

[emphasis added]

34 The Attorney-General gave consent on the basis that the Additional Plaintiffs, as members of the management committee of the Plaintiff, had an interest in the Trust.³⁴ His view rested on the point that for many years the association of persons operating the Plaintiff had been the only persons fulfilling, in a broad sense, the purpose of the Trust in providing a place of Buddhist worship upon the Premises.³⁵ The Attorney-General also noted that in exercising his power to grant consent, there only had to be an *allegation* of breach of trust, and identified this as the Plaintiff's allegation that the Trustees' failure to sign their consent to the additions and alterations already carried out on the Premises (as requested by the Plaintiff). The Attorney-General did not consider this allegation of breach of trust to be explicit but found it to be *implicit* in the reliefs sought in the originating summons read together with Abbot Tjie's affidavits and correspondence from the Plaintiff's solicitors.³⁶ I pause to observe that the learned Assistant Registrar also considered this allegation to be implicit rather than explicit.³⁷ The Attorney-General has made abundantly clear that he takes no position on the true institutional form of the Plaintiff, whether the Plaintiff has standing, or what is the precise relationship between the Trust and

³⁴ Attorney-General's Written Submissions (HC/RA 40/2023) dated 14 April 2023 at paras 10 and 23–29.

³⁵ Attorney-General's Written Submissions (HC/RA 40/2023) dated 14 April 2023 at para 14.

³⁶ Attorney-General's Written Submissions (HC/RA 40/2023) dated 14 April 2023 at paras 9 and 16–19.

³⁷ Defendant's Bundle of Documents at 543; Plaintiff's Written Submissions dated 14 April 2023 (HC/RA 40/2023 & HC/RA 41/2023) at para 74.

the Plaintiff, and still less on whether the alleged breach of trust was made out. However, he did submit that the grant of consent is not open to challenge within these proceedings, any more than a decision of the Attorney-General to institute or be joined as a party to the proceedings himself. When the Attorney-General institutes such a suit himself or authorises others to do so, he acts in his capacity as protector of charities. The Attorney-General submits that court's role would not be to second-guess the decision to grant consent to the action, but to decide the action on the merits.

35 While I note the persuasiveness of his submissions, I do not need to decide the question of whether it is open to parties to challenge the grant of consent by the Attorney-General in the very proceedings for which consent has already been given. This is because it is clear in my view that I should not exercise my discretion to permit joinder under O 15 r 6 of the Rules of Court (2014 Rev Ed) ("ROC 2014").

36 The Plaintiff's argument in favour of the joinder is that the additional plaintiffs are "necessary parties". Thus, they rely on the necessity limb in O 15 r 6(2)(b)(i) of the ROC 2014, which provides for the addition of any party if "necessary to ensure that all matters in the cause or matter may be effectually and completely determined and adjudicated upon". In a literal sense, given that I have found that the Plaintiff has no capacity or standing, and I have struck out its action, the Additional Plaintiffs are needed to push forward any allegation of breach of trust.

37 Assuming that the Additional Plaintiffs satisfy the necessity limb, the court nevertheless retains a discretion whether or not to permit joinder. At this stage, considerations of fairness and the balance of justice come to the fore. As the Court of Appeal in *Ernest Ferdinand Perez De La Sala v Compañia De*

Navegación Palomar, SA and others and other appeals [2018] 1 SLR 894 explained at [205]:

At the discretionary stage, the court's concerns are substantially similar whether the necessity limb or the just and convenient limb is relied upon. It should not be thought that where the necessity limb is successfully invoked, and the non-discretionary requirement is met, joinder will follow as a matter of course. Although the need to effectually and completely determine a dispute is in itself a strong reason for joinder, it is entirely possible for countervailing concerns of fairness (among other things) to override it. Either way, the court will consider all the factors which are relevant to the balance of justice in a particular case ...

38 In my view, it will not be just or fair to join the Additional Plaintiffs to this originating summons. This is because the originating summons as it stands is not in the right shape or form to facilitate the fair or expeditious resolution of whatever the real issues are now asserted to be. The relief sought in the originating summons is first and foremost declarations that the removal of the defendants as trustees of the Trust and the appointment of new trustees of the Trust as resolved by the Plaintiff in general meeting on 26 June 2021 is valid and effectual (see above at [17]). This prayer is wholly misconceived. What the unincorporated association of persons have agreed among themselves in relation to the running of the religious activities on the Premises has no effect whatsoever on the provisions for appointment of trustees contained in the 1958 Indenture. The fact that the Plaintiff's constitution included provisions for the removal of trustees *of the unincorporated association* does not mean that it can remove the Trustees *of the Trust*. Indeed, this was recognised by WST and Abbot Tjie himself when they requested that the defendants retire and appoint new trustees by deed.³⁸ The only way to replace the Trustees is in accordance

³⁸ 3rd Affidavit of Tjie Giok Sang @ Seik Hui Siong dated 14 February 2022 at paras 65–67.

with proviso (1) of the 1958 Indenture (see above at [6]), unless a court can be persuaded to exercise its power under s 42 of the Trustees Act 1967 (2020 Rev Ed) (“Trustees Act”) to appoint new trustees on the ground of expedience. Although the title of this originating summons mentions s 42 of the Trustees Act, reliance is placed on it only to the effect that the passing of the resolutions made it expedient to remove the defendants as Trustees.

39 If, as the Additional Plaintiffs seek to contend, the defendants should be removed as Trustees because they have committed breach of trust, then such a claim should properly have been brought by way of a writ of summons, or if commenced today, an originating claim. A writ action or originating claim is more suitable for the determination of an allegation of breach of trust. Pleadings would identify the allegations with precision, enabling the defendants to know what case they have to meet, rather than implied or inferred allegations arising from correspondence or affidavits. The facts relevant to whether Abbot Tjie was justified in not informing the defendants of his additions and alterations before carrying them out, running afoul of the authorities, and then expecting the defendants to consent to his *fait accompli* lest their failure to so consent expose them to an accusation of breach of trust, are all matters that need to be inquired into at trial. The facts and evidence must be tested with cross-examination of, among others, Abbot Tjie himself.

40 WST, acting also as counsel for the Additional Plaintiffs, suggests that upon joinder or substitution of parties they will consider applying to convert the originating summons into a writ. That, in my view, is not a sufficient answer. The Additional Plaintiffs, if so minded, are at liberty to commence fresh proceedings by originating claim with pleadings and oral evidence that will ensure that all matters may be effectually and completely determined and adjudicated upon.

41 A further point must be made in the event the Additional Plaintiffs intend to commence fresh proceedings. The consent of the Attorney-General must be sought under s 9 of the Government Proceedings Act if the action is based on breach of trust. If the Additional Plaintiffs are of the view that the fresh proceedings constitute “charity proceedings”, proper authorisation must be obtained from the Commissioner under s 32(2) of the Charities Act. As held by the Court of Appeal in *Singapore Shooting Association and others v Singapore Rifle Association* [2020] 1 SLR 395 (“*Singapore Shooting Association*”), any authorisation obtained from the Commissioner to commence charity proceedings will be interpreted strictly. The authorisation will be limited to the precise heads of claim or reliefs sought, and the authorised party cannot be allowed to pursue new claims outside the scope of authorisation (*Singapore Shooting Association* at [161]). It is not permissible for the Additional Plaintiffs to seek the addition of a new prayer, as they have in their submissions to me,³⁹ without the prior authorisation of the Commissioner. Costs savings is not an answer to lack of authorisation (*Singapore Shooting Association* at [166]).

42 Accordingly, I allow the appeal in RA 40 as well, and dismiss the application for joinder.

Conclusion

43 A trust is not a legal entity capable of suing or being sued, and recognition of a trust as a charity by the Commissioner does not entitle the trust to commence legal proceedings, regardless of whether such proceedings come within the subset of “charity proceedings” under the Charities Act. It is the

³⁹ Plaintiff’s Supplementary Written Submissions dated 2 May 2023 at para 24.

trustees of a trust who sue or are sued in connection with the subject matter or administration of a trust.

44 In the case of the Plaintiff, an unregistered unincorporated association, the absence of capacity to sue under the general law is fatal to this originating summons, regardless of any charitable status successfully acquired. Further, I find that it is neither fair nor just to join the Additional Plaintiffs to an originating summons that is not in the right shape or form to facilitate the effectual determination of the matters in dispute.

45 If costs cannot be agreed, parties are to file written submissions on costs within 14 days of this judgment, including on the question of who should bear the costs of the defendants in relation to RA 41 and SUM 223 given that the purported Plaintiff not only has no standing, but has no separate legal personality. Excluding any appendices showing the breakdown of time spent or disbursements incurred, I fix a page limit of 20 pages.

46 Lastly I record my appreciation for Mr Ng's clear and circumspect submissions made on behalf of the Attorney-General.

Philip Jeyaretnam
Judge of the High Court

Giam Chin Toon SC, Hui Choon Wai and Marcus Chia Hao Jun
(Wee Swee Teow LLP) for the plaintiff;
Tan Tee Jim SC, Yan Chongshuo and Chee Kai Hao (Lee & Lee) for
the defendants;
Evans Ng and Darshini Ramiah (Attorney-General's Chambers) for
the intervener.
