

Koh Lau Keow and others v Attorney-General
[2013] SGHC 155

Case Number : Originating Summons No 1021 of 2012
Decision Date : 19 August 2013
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Leonard Manoj Kumar Hazra (Damodara Hazra LLP) and Tang Hang Wu (instructed) for the plaintiff; Zheng Shao Kai / Fu Qi Jing (Attorney-General's Chambers) for the defendant.
Parties : Koh Lau Keow and others — Attorney-General

TRUSTS

19 August 2013

Tay Yong Kwang J:

Introduction

1 This action concerns a trust declared over 10 Rangoon Lane (previously known as 156E Rangoon Road) (“the Property”). The plaintiffs took out these proceedings to set aside the trust on the ground that it is a non-charitable purpose trust and sought a declaration that the first plaintiff is the sole beneficial owner of the Property. I dismissed the action on the basis that the trust is a valid charitable purpose trust. The plaintiffs have appealed and I now give the reasons for my decision.

Background

2 The first plaintiff, Koh Lau Keow (“Koh”), was born in China in 1917 and has been a devout vegetarian Buddhist since childhood. She came to Singapore in 1936 to work and to undertake religious activities. She was very close friends with three elderly women whom she addressed as aunts even though they were not related to her by blood or marriage (“the Aunts”).

3 In 1948, Koh acquired the Property to establish a temple and to provide a home for the Aunts. Koh paid for the Property with an upfront cash payment of \$1900 and a loan of \$1600. Despite Koh paying for the Property, Koh and the Aunts were named as joint tenants of the Property. At that time, Koh was travelling frequently and she did not want the Aunts to be left without a home should anything untoward happen to her.

4 Subsequent to the purchase, Koh erected a simple single-storey wooden building which was divided into a worship hall in front and two rooms at the back. The worship hall was used as a temple (named the Chee Teck Kwang Im Temple, hereinafter “the Temple”). The two rooms were used as living quarters for Koh and the Aunts. In 1957, a concrete building was erected (with Koh paying for the entire costs of the building). The concrete building was similarly divided into two sections, with the front used as the Temple and the back (comprising a kitchen, two bedrooms and a living room) used as a private residence.

5 Soon after the purchase of the Property, Koh was advised that she could ask for property tax

exemption on the basis that the Property was used as a temple for religious worship. Koh applied unsuccessfully for exemption twice, in April 1948 and July 1949. In a letter dated 22 July 1949 to Koh, the Municipal Assessor stated that:

...

2. In April 1948, a similar request was received on your behalf from Messrs. Richard Chuan Hoe Lim & Co. In reply the Municipal Assessor required to know :-

(a) Whether the property was vested under a Deed of Trust, and if so, the names of the Trustees in whom the management of the building is vested?

...

3. No reply was received to this letter, and therefore the matter has not been considered for exemption.

4. Upon having your reply, I will look into the question and put your request before the Municipal Commissioners, **but, I think, it is improbable that exemption will be granted, unless the property is actually vested in Trustees.**

[emphasis added]

6 A third application in May 1960 proved to be successful. After the successful application, Koh was told by her then lawyers, M/s Wee Swee Teow ("Wee Swee Teow") that it would be helpful, for evidential purposes, to sign a document declaring that the Property was being and would continue to be used for religious purposes.

7 It was in that context that Wee Swee Teow prepared a declaration of trust which was executed on 12 October 1960 ("the Declaration of Trust") by Koh and the Aunts. The pertinent extracts of the Declaration of Trust state:

...

WHEREAS the said [Koh and the Aunts] are seised for an estate in fee simple as joint tenants in possession free from incumbrances of the land and premises described in the Schedule hereto and have for some time past permitted the said land and premises and the buildings erected thereon to be used occupied and enjoyed as a temple or place of public worship for persons professing the Buddhist faith and as a home or sanctuary for Chinese women vegetarians of the Buddhist faith and as a place for practising promoting teaching and studying the doctrines principles and teachings of the Buddhist Religion.

AND WHEREAS with the object of perpetuating such use occupation and enjoyment of the said land and premises and the buildings now and from time to time erected thereon for the purposes aforesaid, the said [Koh and the Aunts] are desirous of dedicating the same to charity and of settling the same in manner hereinafter appearing.

...

... [Koh and the aunts] hereby declare that they and the trustees for the time being of this deed (hereinafter called "the trustees") shall henceforth stand seised of ALL the land and premises described in the Schedule hereto upon the trusts and with and subject to the powers provisions

agreements and declarations hereinafter declared and contained concerning the same, that is to say:-

(1) The trustees shall permit the said land and premises and the buildings now and from time to time erected thereon to be used in perpetuity under the name of "Chee Teck Kwang Imm Tng"(hereinafter referred to as "the said Temple") as and for all or any of the following purposes, that is to say:-

(a) As and for a temple or place of worship for persons of the Chinese race professing the Buddhist faith.

(b) As and for a home or sanctuary for such Chinese women vegetarians of the Buddhist faith as may from time to time be chosen by the trustees of this deed.

(c) As and for a place for practising promoting teaching and studying the doctrines principles and teachings of the Buddhist Religion.

...

(4) The Chinese women vegetarians of the Buddhist faith who may reside in the said Temple shall be such persons as the trustees may from time to time in their absolute and uncontrolled discretion choose and allow with liberty to the trustees from time to time and at all times at their absolute and uncontrolled discretion to expel without assigning any reason therefor any such person or persons.

...

(6) The following provisions as to the appointment of new trustees and the removal of trustees by way of extension and variation of the statutory provisions shall apply to this deed:-

(a) The number of trustees of this deed shall not at any time be less than four.

(b) The power of appointing new trustees or trustee of this deed shall be vested in [Koh and the Aunts] or the survivors or survivor of them and after the death of the last survivor of them in the trustees or trustee for the time being of this deed

(c) The persons who may be appointed to act and may act as trustees of this deed shall be persons of the female sex and of the Chinese race professing the Buddhist faith.

(d) [Koh and the Aunts] or the survivors or survivor of them may at any time or times by deed remove any trustees or trustee of the trusts hereby created from their or her offices or office of trustees or trustee of these trusts.

...

8 Since its establishment, the following temple-related activities have been conducted on the Property:

(a) Mass worship sessions and celebrations four times a year (on the birthdays of the Goddess of Mercy in the second, sixth and ninth lunar month and during the Lunar New Year);

- (b) Daily prayer recitals in the morning and evening;
- (c) Ad hoc worship sessions by relatives, close friends and neighbours;
- (d) Teaching of Buddhist doctrines to a few old and uneducated vegetarian women (but this was discontinued in 1970).

The Temple was never open to the public for worship except for the aforementioned four times a year. All along, Koh only allowed a close group of relatives, friends and neighbours (initially numbering about 20 but currently numbering about 70 to 80) to freely visit or use the temple.

9 Two of the Aunts passed away in April 1970 and April 1975. The third, and remaining Aunt, retired as a trustee in June 1976.

10 The second to sixth plaintiffs were appointed as trustees between 1992 and 2003 at the behest of Koh. The third and fourth plaintiffs were adopted by Koh at birth. The second, fifth and sixth plaintiffs were close to Koh who treated them as akin to daughters. Only persons close to or related to Koh have resided on the Property, *viz.*, the aunts, Koh's adopted daughters, a daughter of one of Koh's adopted daughters and a daughter of one of Koh's relatives.

11 In 2005, the Inland Revenue Authority of Singapore reviewed the property tax exemption for the Property and held that property tax was payable retrospectively from 1999.

12 Koh, a 96-year old lady, averred that she had been contemplating discontinuing all temple activities for some years. Due to her limited physical mobility, she was not able to cope with the physical demands of maintaining the Temple and performing the usual temple activities. Koh's daughters also had no desire to take over the management of the Temple. Koh therefore wanted to terminate the Declaration of Trust and make provisions for the testamentary disposition of the Property.

Issues raised

13 Koh initially claimed in her affidavit affirmed on 19 October 2012 ("the First Affidavit") that she did not appreciate that the Declaration of Trust would have the effect of giving up ownership of the Property absolutely and forever and that she could no longer deal with or sell the Property as she wished. Neither Koh nor the Aunts had read the Declaration of Trust before signing as they did not read or understand English. She also claimed that Wee Swee Teow did not explain to her or the Aunts that this would be the effect of the Declaration of Trust. Had she been so informed, Koh (and the Aunts) would not have signed the Declaration of Trust. Further, Koh was under the mistaken belief that the purpose and effect of the Declaration of Trust were only to serve as evidence that the Property was to be used for religious purposes (so as to be eligible for property tax exemption).

14 After Wee Swee Teow was notified about Koh's allegations, the law firm replied to the plaintiffs' solicitors to state that it was not able to confirm the facts alleged as all its files from the 1960s had been disposed of and the lawyer who was said to have drafted the deed had already passed away. The letter also made some comments and observations about the points of law raised by the plaintiffs. At the hearing before me, the plaintiffs decided not to pursue the issues of *non est factum* and/or fundamental mistake raised in Koh's allegations. The letter from Wee Swee Teow therefore became irrelevant to these proceedings.

15 Koh further stated in her First Affidavit that she verily believed that the use of the Property "as

and for a home or sanctuary for such Chinese women vegetarians of the Buddhist faith as may from time to time be chosen by the trustees of this deed" (see the Declaration of Trust at [7] above; hereinafter "Purpose B") was not a charitable purpose. Additionally, insofar as using part of the Property as a residence was concerned, she had only intended the same to be used as a residence for herself, the Aunts and her adopted daughters and not Buddhist vegetarian women in general.

16 This raised two issues. The first was whether Purpose B was charitable in nature and the second was, assuming that the trust was charitable in nature, whether the trust was a sham. The plaintiffs, however, did not explicitly raise the issue of whether the trust was a sham and only went so far as to submit that "a very strong inference which can be made is that the settlors declared the trust with the intention of *inter alia* providing a home for themselves. This clearly suggests that the trust has a private purpose but is disguised as one which has a public character."

17 Accordingly, the sole issue before me was whether one of the declared purposes of the trust (*i.e.* Purpose B) was non-charitable in nature. If so, the trust was liable to be set aside.

Was one of the declared purposes of the trust non-charitable in nature?

Fundamental propositions of law

18 I shall first set out some propositions of the law relating to trusts. Firstly, non-charitable purpose trusts are void because such trusts violate the beneficiary principle. In *Morice v Bishop of Durham* (1804) 9 Ves Jr 399 at 405, Sir William Grant MR said:

Every other [non-charitable] trust must have a definite object. There must be somebody, in whose favour the court can decree performance.

In *In Re Endacott, Corpe (deceased) v Endacott* [1960] Ch 232 ("*In Re Endacott*") at 246, Lord Evershed MR held that:

No principle perhaps has greater sanction or authority behind it than the general proposition that a trust by English law, not being a charitable trust, in order to be effective, must have ascertained or ascertainable beneficiaries.

The parties before me agreed that non-charitable purpose trusts are void.

19 Secondly, charitable purpose trusts are a well-recognised exception to the beneficiary principle. Sir William Grant MR in *Morice v Bishop of Durham* at 405 said:

But it is now settled, upon authority, which it is too late to controvert, that where a charitable purpose is expressed, however general, the bequest shall not fail on account of the uncertainty of the object...

20 Thirdly, for a purpose to be classified as "charitable" in the legal sense, it must fall under one of four categories: the relief of poverty, the advancement of education, the advancement of religion and other purposes beneficial to the community (see the *The Commissioners for Special Purposes of the Income Tax v John Frederick Pemsel* [1891] 1 AC 531 ("*Pemsel*") at 583, where Lord Macnaghten categorised the purposes enumerated in the preamble to the Charitable Uses Act of 1601 (43 Eliz I, c 4) (more commonly cited as "the Statute of Elizabeth") and recently cited in *Re Will of Samuel Emily, deceased* [2001] 3 SLR(R) 335) (hereinafter "the *Pemsel* categories").

21 Fourthly, under the common law, if upon a true construction of the trust, the trustees have a power to apply funds to purposes which do not fall within the *Pemsel* categories, such a trust is not a valid charitable trust falling within the exception to the beneficiary principle and is thus void (see *e.g. In Re Davis, Thomas v Davis* [1923] 1 Ch 225, *In Re Chapman, Hales v Attorney-General* [1922] 2 Ch 479, *In Re Davidson, Minty v Bourne* [1909] 1 Ch 567). The position has since been legislatively altered by s 64 of the Trustees Act (Cap 337, 1999 Rev Ed). However, this provision does not apply to trusts declared before 14 July 1967 (and hence does not apply to the Declaration of Trust here which was executed on 12 October 1960).

22 Fifthly, it is well-settled that courts lean in favour of charity when construing trust deeds. For instance, Lord Loreburn LC in *Weir and others v Crum-brown and others* [1908] 1 AC 162 stated (at 167):

Now there is no better rule than that a benignant construction will be placed upon charitable bequests.

23 The plaintiffs and the defendant agreed that the enumerated purposes, with the exception of Purpose B, are charitable in nature in that they fall within the category of advancement of religion. The parties disagreed over the nature of Purpose B. The plaintiffs sought to set aside the trust on the basis that Purpose B did not fall within any of the *Pemsel* categories. The defendant conceded that Purpose B was not for the relief of poverty or for other purposes beneficial to the community but sought to show that Purpose B fell within the category of advancement of religion. Accordingly, in the light of the foregoing propositions, the trust was liable to be set aside if it did not fall within the *Pemsel* category of advancement of religion. This accordingly raised two sub-issues: firstly, whether Purpose B advances religion; and secondly, whether Purpose B sufficiently benefits the public.

Does Purpose B advance religion?

24 I reiterate the language of Purpose B: "As and for a *home or sanctuary* for such Chinese women vegetarians of the Buddhist faith as may from time to time be chosen by the trustees of this deed" (emphasis in italics and bold added).

25 The *Shorter Oxford English Dictionary* (Oxford University Press, 6th ed, 2007) (Volume 2) has several definitions for "sanctuary" (at p 2661), two of which are relevant to the language of Purpose B:

1 A building or place set apart for the worship of a god or gods; a church; a temple. Also (*arch.*), a church or body of believers; a priestly office or order.

...

5 a Orig., a church or order sacred place in which, by the law of the medieval church, a fugitive or debtor was immune from arrest. Later *gen.*, any place in which a similar immunity is granted to a fugitive; a place of refuge and safety. b Immunity from arrest or punishment, secured by taking refuge in a sanctuary; the right or privilege of such protection; shelter, refuge.

26 The *Shorter Oxford English Dictionary* (*ibid.*) (Volume 1) also has several relevant definitions for "home" (at p 1266):

...

2 The place where one lives permanently, esp. as a member of a family or household; a fixed place of residence. Freq. without article or possessive, esp. as representing the centre of family life. ["Definition 2"]

...

4 A place or region to which one naturally belongs or where one feels at ease. Also **spiritual home** .

...

6 An institution looking after people etc. who need care or have no home of their own. ["Definition 6"]

...

[emphasis in original]

27 The conjunction "or" is susceptible to two definitions. *The Oxford English Dictionary* (Clarendon Press, Oxford, 2nd Ed, 1989) (Volume X) proceeds thus (at p 882 – 3):

I. 1. *generally*. A particle co-ordinating two (or more) words, phrases, or clauses, between which there is an alternative.

...

6. *Or* connects two words denoting the same thing: = otherwise called, that is...

...

28 Hubert Picarda QC, *The Law and Practice Relating to Charities* (Bloomsbury Professional, 4th Ed, 2010) confirms that "or" has two disparate meanings (at p 330):

The primary meaning of 'or' is disjunctive, but there is a secondary meaning which may perhaps be called exegetical or explanatory. So used the word is equivalent to 'alias' or 'otherwise called', the dictionary examples of this use being generally topographical as in 'Falklands or Malvinas'. However, this use of the word 'or' is possible only if the words or phrases which it joins connote the same thing and are interchangeable one with the other. An [*sic*] there are in fact several cases where the word 'or' has been construed not as introducing an alternative but conjunctively or as introducing words which are synonymous or ejusdem generis.

Similarly, in *Chichester Diocesan Fund and Board of Finance (Incorporated) v Simpson and others* [1944] 1 AC 341 (at 369), Lord Simonds held that an exegetical interpretation of the conjunction "or" is only possible if the words or phrases which the conjunction joins connote the same thing and are interchangeable one with the other.

29 This poses the question whether "home" and "sanctuary" sufficiently overlap in meaning such that "or" can be interpreted exegetically. With regard to "home", Definition 2 (at [26] above) is undoubtedly the most common definition and is probably what comes to mind for most people when "home" is mentioned. However, there is no overlap whatsoever between Definition 2 and "a building or place set aside for worship". This would be fatal to an exegetical interpretation of "or". However, to

my mind, Definition 6 is the definition that is the most apt on the facts here. Definition 6 encompasses Definition 2: the persons who live in an institution which looks after people who need care or have no home of their own would treat the institution as their home in the sense of the institution being the place where they live permanently. The Buddhist Chinese women vegetarians who choose to reside in the Property (with the approval of the trustees) are likely to be compelled by special circumstances such as being orphans, poverty or dysfunctional family situations (such as spousal or parental violence). Put another way, it is unlikely for ordinary persons to choose to reside permanently in the Property.

30 "Sanctuary" should not be interpreted merely as a place set aside for worship, especially since clause 4 of the Declaration of Trust states that "The Chinese women vegetarians of the Buddhist faith who may *reside* in the said Temple..." [emphasis added]. As such, "sanctuary" should be given the more expansive meaning of "a place of refuge and safety".

31 Looking at the Declaration of Trust as a whole, I hold that "home or sanctuary" is to be interpreted exegetically and not conjunctively as true alternatives. "Home or sanctuary" connotes a religious institution where the defined class of persons (of that religion) is looked after and finds refuge or sanctuary. Thus, the use of the Property as a "home or sanctuary" would certainly be religious in nature.

32 The plaintiffs cited English Charity Commission, *The Advancement of Religion for the Public Benefit* (December 2008, as amended December 2011) [\[note: 11\]](#) ("The English Charity Commission Report"), where it is stated (at p 8-9) that:

In general to 'advance' a religion means to promote or maintain or practice it and increase belief in the supreme being or entity that is the object or focus of the religion.

...

It is not enough that an organisation does something in the name of religion in order for it to be a charity advancing religion. It has to be shown that the aim of the organisation is to advance the religion in a way that is for the public benefit, and not to further some other, non-charitable, aim.

The plaintiffs pointed out that using the Property as a "home or sanctuary" would not *advance* religion in any way. While the statement in the above quotation may be true as a general proposition, that it is not enough for an organisation to merely do something in the name of religion for that organisation to be advancing religion, the plaintiffs have not explained why this is the case for the Declaration of Trust here.

33 The English Charity Commission Report, in Annex B at p 24, gives two modes whereby charities can advance religion. The two modes are: seeking new followers or adherents and encouraging and facilitating religious practice by existing followers or adherents. The English Charity Commission Report then goes on to give many examples (at p 24-5) of how religious practice can be facilitated amongst followers. These include passive advancement, meaning leaving religious buildings open for people to enter and benefit from personal spiritual contemplation and the provision of property for retreat. Most pertinently, the report also states (at p 16) that "some charitable religious orders continue to look after ageing members of the order, by, for example providing accommodation and a pension" and that "it may also be the case that looking after those in need could be undertaken as part of the organisation's charitable religious aim."

34 Case law has ascribed a wide meaning to the advancement of religion. In *Keren Kayemeth Le*

Jisroel, Limited v Commissioners of Inland Revenue [1931] 2 KB 465, Lord Handworth MR held (at 477) that:

The promotion of religion means the promotion of spiritual teaching in a wide sense, and the maintenance of the doctrines on which it rests, and the observances that serve to promote and manifest it - not merely a foundation or cause to which it can be related.

In *United Lodge of Ancient Free and Accepted Masons of England v Holborn Borough Council* [1957] 1 WLR 1080, Donovan J held (at 1090) that:

To advance religion means to promote it, to spread its message ever wider among mankind; to take some positive steps to sustain and increase religious belief; and these things are done in a variety of ways which maybe comprehensively described as pastoral and missionary.

35 In *Neville Estates Ltd v Madden and others* [1962] 1 Ch 832, a new clause added to the trust deed authorised the trustees of a synagogue to establish, among other things, halls for religious and social purposes. The plaintiffs sought to argue that the trust in that case was not charitable in nature because the deed allowed halls for social purposes to be built. Cross J disagreed (at 851-2):

But just as today church activity overflows from the church itself to the parochial hall, with its whist drives, dances and bazaars, so many synagogues today organise social activities among the members. ...

...

Here the social activities are merely ancillary to the strictly religious activities.

36 I hold that using the Property as a home or sanctuary for Buddhist Chinese women vegetarians directly advances Buddhism. The persons residing in the Property would certainly have benefited from passive advancement and personal spiritual contemplation as the Property was being used as a place of worship (as was stated in the preamble). Even if using the Property as a home or sanctuary for the aforesaid class of persons does not *directly* advance Buddhism, it would at least be *ancillary* to the religious activities undertaken in the Temple which indubitably advance religion.

37 The strongest argument in favour of the plaintiffs is the fact that the Declaration of Trust stated that the Property shall be used "for all *or any* of the following purposes" [emphasis added]. Looking at this language by itself, the argument could be made that no one purpose is to be construed as being ancillary to another. This argument is however fallacious and does not take into account the rest of the Declaration of Trust. In the preamble preceding the objects clauses, it is stated that the settlors "are desirous of **dedicating [the Property] to charity** and of settling the same in manner hereinafter appearing" [emphasis added]. The settlors clearly had a dominant charitable intention.

38 Further, clause (1) provides that "the trustees shall permit the said land and premises and the buildings now and from time to time erected thereon to be used in perpetuity under the name of "Chee Teck Kwang Imm Tng" (hereinafter referred to as "the said Temple") as and for all or any of the following purposes" before listing the three purposes. The three listed purposes must therefore be read in the light of this all-embracing clause that all the purposes happen within the Temple and under its auspices. Thus, even if Purpose B, read alone, does not strictly constitute the advancement of religion (and I have already held that it does), at the very least, Purpose B is to be construed as ancillary to the overriding charitable intention (to advance religion). In other words, it would

constitute a breach of trust if the Property were to be used entirely as a private residence.

Was there public benefit?

39 It is well-settled that a trust must benefit the public for it to be recognised as being charitable in nature. For instance, Lord Greene MR in *In Re Compton, Powell v Compton and others* [1945] 1 Ch 123 (at 128) cited a passage from *Tudor on Charities* (Sweet and Maxwell, 5th Ed, 1929) (at p 11):

In the first place it may be laid down as a universal rule that the law recognizes no purpose as charitable unless it is of a public character. That is to say, a purpose must, in order to be charitable, be directed to the benefit of the community or a section of the community.

40 In the House of Lords decision of *Gilmour v Coats and others* [1949] 1 AC 426 ("*Gilmour v Coats*"), a sum of money was to be held on trust for the purposes of the Carmelite Priory, which comprised a group of nuns strictly enclosed in their convents. The nuns engaged in no external works and devoted their lives to contemplation (including assisting at mass and intercessory prayer) and penance. It was held that there was no proof of public benefit (which a temporal court of law could adjudicate on). It was insufficient that the Roman Catholic Church regarded prayers as benefiting the public by drawing upon them the grace of God to strengthen religious belief amongst both believers and non-believers and by the religious life of the nuns being a source of great edification to the public.

41 The plaintiffs cited two further cases for the proposition that the Declaration of Trust did not sufficiently benefit the public. The House of Lords case of *Inland Revenue Commissioners v Baddeley and others* [1955] 1 AC 572 ("*IRC v Baddeley*") involved, among other things, a trust deed stating that property may be used for "the provision of facilities for religious services and instruction and for the social and physical training and recreation of" persons resident in two boroughs. The majority held that the language was too general, with the result that the trust was not confined to purposes which the law regards as charitable. Viscount Simonds, *in obiter*, went on to consider the further question of whether a valid charitable trust is invalidated on the ground that the beneficiaries are confined to members of a particular class (on the facts, potential members of a particular church within a limited geographical area). Viscount Simonds observed that there was a crucial distinction between a form of relief extended to the whole community yet by its very nature advantageous to only the few and a form of relief accorded to a select few out of a larger number equally willing and able to take advantage of it. He added (at 592):

Somewhat different considerations arise if the form, which the purporting charity takes, is something of general utility which is nevertheless made available not to the whole public but only to a selected body of the public - an important class of the public it may be. For example, a bridge which is available for all the public may undoubtedly be a charity and it is indifferent how many people use it. But confine its use to a selected number of persons, however numerous and important: it is then clearly not a charity. It is not of general public utility: for it does not serve the public purpose which its nature qualifies it to serve.

Bearing this distinction in mind, though I am well aware that in its application it may often be very difficult to draw the line between public and private purposes, I should in the present case conclude that a trust cannot qualify as a charity within the fourth class in [*Pemsel*] if the beneficiaries are a class of persons not only confined to a particular area but selected from within it by reference to a particular creed. The Master of the Rolls in his judgment cites a rhetorical question asked by Mr. Stamp in argument: "**Who has ever heard of a bridge to be crossed only by impecunious Methodists?**" The *reductio ad absurdum* is sometimes a cogent form of

argument, and this illustration serves to show the danger of conceding the quality of charity to a purpose which is not a public purpose.

[emphasis added]

42 The plaintiffs also cited *Nai Seng Hiang v Trustees of the Presbyterian Church in Singapore* [1988] 2 SLR(R) 106, which concerned a trust declared over a property which was to be used amongst "children of all Hakka-speaking Chinese in Singapore". Lai Kew Chai J held (at [4]) that this "may be said to be impracticable and may lack the public element as the class of beneficiaries is too small" [emphasis added]. However, the court ultimately ordered that the property in question be transferred to the trustees, to be held subject to the provisions of the trust deed. This order presupposes that the trust was a valid charitable trust. The use of the word "may" must therefore be construed as a mere possibility and not as an actual holding by the court in that case.

43 *Gilmour v Coats* is distinguishable from the instant facts on at least two levels. The money in that case was expressed to be held upon trust for the purposes of an existing religious organisation (*viz.*, the Carmelite Priory) if the purposes of the organisation were charitable. There was a gift over to another organisation if the purposes of the Carmelite Priory were not charitable. In contrast, the settlors in the instant case appointed themselves as trustees for the time being (with the settlors reserving for themselves the power to appoint and/or revoke additional trustees) and also unequivocally stated that they were "desirous of dedicating [the Property] to charity". The Declaration of Trust in the instant case involves *simultaneously* both the transfer of beneficial interest and the explicit and intentional creation of the charitable enterprise. In *Gilmour v Coats*, the declaration of trust there only involved the transfer of beneficial interest to an existing enterprise whose purposes had not been ascertained to be charitable at the time of declaration.

44 In *IRC v Baddeley*, the objection raised was that an insufficient cross-section of the public benefited. The trustees here are bound by the Declaration of Trust to permit the use of the Property as a temple. I have already mentioned that the three purpose clauses must be read in the light of the settlors' declared charitable intent. Using the auspices of the temple to provide a home or sanctuary under Purpose B for the class of persons defined is capable of conferring public benefit even though the class is confined by religion, gender and race. Being vegetarian is merely part and parcel of being Buddhist. The definition is capable of capturing a sufficiently broad segment of the public. Buddhism is one of the main religions in Singapore and Chinese women form a significantly large class of the population. If it turns out that there are few people in this category that require a home or sanctuary, that just speaks well for society at large. Take the case of a charitable trust declared in favour of the National Kidney Foundation. It would be absurd for such a gift to be struck down on the basis that only sufferers of kidney disease benefit, that such sufferers form a very small percentage of the population and that therefore an insufficient cross-section of the public will benefit. In our modern world, I think the concept of public benefit ought to be given a broad meaning so as to encompass anything capable of conferring something good for the public generally.

45 Finally, in the case of *In re Hetherington, Decd.* [1989] 2 WLR 1094, Sir Nicolas Browne-Wilkinson V.C. (as he then was) held (at p 1100) that a trust for the advancement of education, the relief of poverty or the advancement of religion is *prima facie* charitable and assumed to be for the public benefit. This presumption of public benefit can be rebutted by showing that the particular trust in question cannot operate so as to confer a legally recognised benefit on the public. This presumption of public benefit fortifies the points made in the foregoing paragraphs.

46 I therefore concluded that the Declaration of Trust did confer sufficient public benefit.

Does Purpose B relieve poverty?

Does Purpose B relieve poverty?

47 The defendant agreed with the plaintiffs that Purpose B is not for the relief of poverty. However, I took a different view. As I have already stated at [29], the Buddhist Chinese women vegetarians who choose to reside in the Property (with the approval of the trustees) are likely to be compelled by special circumstances such as being orphans, poverty or dysfunctional families (such as spousal or parental violence). These are likely to be people with nowhere to go to and no one to turn to. The use of the Property as a home or sanctuary thus also has the effect of relieving poverty. If it is for reasons other than poverty, then there would be public benefit in any event, as discussed earlier.

Conclusion

48 I thus held that the Declaration of Trust is not void and unenforceable. Purpose B is charitable in nature. It advances religion and confers sufficient public benefit. It is also my view that it is capable of relieving poverty.

49 The defendant submitted that costs and disbursements be fixed at \$5000.00 and be borne personally by Koh. I agreed and ordered accordingly as Koh, described by her lawyer as "about 96 years old, still clear-minded to give instructions", was the one who wanted to be declared the sole beneficiary of the Property and who made the main factual assertions.

[note: 1] Available at <<http://www.charitycommission.gov.uk/media/95013/pbreligiontext.pdf>> (accessed 12 July 2013).

Copyright © Government of Singapore.