

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

**[2019] SGHC 256**

Originating Summons No 1499 of 2018

Between

The Ngee Ann Kongsı

*... Plaintiff*

And

Teochew Poit Ip Huay Kuan

*... Defendant*

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**JUDGMENT**

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[Civil Procedure] — [Conversion]

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**The Ngee Ann Kongsi**  
**v**  
**Teochew Poit Ip Huay Kuan**

**[2019] SGHC 256**

High Court — Originating Summons No 1499 of 2018 (Summons 955 of 2019)

Andrew Ang SJ

14 March, 29 May, 30 May 2019

30 October 2019

Judgment reserved.

**Andrew Ang SJ:**

1 This is an application by Teochew Poit Ip Huay Kuan (“THK”) in Summons 955 of 2019 to convert Originating Summons No 1499 of 2018 (“OS 1499”) into a writ action. The Ngee Ann Kongsi (“NAK”) is resisting the application.

2 NAK seeks an order in OS 1499 that THK deliver up possession of the Teochew building that sits on 97 Tank Road (“the Teochew Building”).<sup>1</sup> THK in turn alleges, *inter alia*, that the said building is held upon trust for its benefit, a declaration that it is entitled to continue to occupy the Teochew Building, and an account of monies derived from NAK’s use of the building.<sup>2</sup>

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<sup>1</sup> NAK’s Submissions dated 14 March 2019.

<sup>2</sup> Woo Chee Chay’s 1<sup>st</sup> Affidavit, para 8.

### **Background facts**

3 Before dealing with the issue of conversion, it is necessary to set out the background of the relationship between the parties, as well as the history leading up to the present dispute. Although parties are presently mired in litigation, this was not always the case. Both parties share a common history, which they in turn share with the history of the Teochew community in Singapore. It is sad to see the two organisations unable to resolve matters amicably, despite what I find to be a clear history of fraternal relations between them.

### ***The parties***

4 THK is the apex organization,<sup>3</sup> comprising 5000 Teochew members, representing the Eight Districts (this refers to the districts from the Kwangtung Province of China).<sup>4</sup> It is one of the few organisations representing the Teochew community in Singapore. Before it assumed its present name, THK was originally known as the Teochew (Eight Districts) Public Property Preservation Association (“TPPPA”). The TPPPA was founded in 1928.<sup>5</sup> One of TPPPA’s purposes, as alleged by THK, was to oversee the management of certain properties which were held by the predecessor entity to NAK, Ghee Ann Koon (“GAK”).<sup>6</sup>

5 NAK is a body corporate that was established in 1933, pursuant to the Ngee Ann Kongsi (Incorporation) Ordinance (Cap 370, 1985 Rev Ed) (“the

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<sup>3</sup> Woo Chee Chay’s 1<sup>st</sup> Affidavit, para 21.

<sup>4</sup> Woo Chee Chay’s 1<sup>st</sup> Affidavit, para 18.

<sup>5</sup> Woo Chee Chay’s 1<sup>st</sup> Affidavit, para 18.

<sup>6</sup> Woo Chee Chay’s 1<sup>st</sup> Affidavit, para 18.

Ordinance”). Like THK, it is a Teochew organisation.<sup>7</sup> It was first formed in 1845 by a group of prominent Teochew leaders who arrived from the “Ngee Ann” county in Guandong province in China.<sup>8</sup> During the 19<sup>th</sup> century before its incorporation, NAK had two main aims: first, to promote and observe the rites, customs and religious beliefs of the Teochews in Singapore, and second, to look after the welfare of poor Teochew immigrants.<sup>9</sup> Right from its genesis, NAK was conceived as an organisation with charitable aims. When NAK became a body corporate in 1933, these charitable aims were widened to include the education of members of the Teochew community in Singapore.<sup>10</sup> It set up Ngee Ann Girls School (now known as Ngee Ann Primary School) in 1940, and Ngee Ann Polytechnic in 1963.<sup>11</sup>

### ***Management of the Teochew Properties and the Ordinance***

6 According to Mr Woo Chee Chay (“Mr Woo”), the Honorary Secretary of THK,<sup>12</sup> after the establishment of THK, seven of THK’s members negotiated with GAK on the issue of the management of the properties belonging to the Teochew community in Singapore.<sup>13</sup> Of the seven, six became part of NAK as well. They were Lim Nee Soon, Lee Wee Nam (“Mr Lee”), Lim Woo Nam, Yeo Chan Boon (“Mr Yeo”), Tan Chew Char and Goh Yang Pheng.<sup>14</sup> THK

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<sup>7</sup> Woo Chee Chay’s 1<sup>st</sup> Affidavit, para 13.

<sup>8</sup> Richard Lee’s 1<sup>st</sup> Affidavit, para 13.

<sup>9</sup> Richard Lee’s 1<sup>st</sup> Affidavit, para 13.

<sup>10</sup> Richard Lee’s 1<sup>st</sup> Affidavit, para 14.

<sup>11</sup> Richard Lee’s 1<sup>st</sup> Affidavit, para 14.

<sup>12</sup> Woo Chee Chay’s 1<sup>st</sup> Affidavit, para 1.

<sup>13</sup> Woo Chee Chay’s 1<sup>st</sup> Affidavit, para 19.

<sup>14</sup> Woo Chee Chay’s 1<sup>st</sup> Affidavit, para 19.

alleges that before NAK was incorporated, the administration and management of the properties of GAK were overseen by these same six persons from THK.<sup>15</sup>

7 The Ordinance which incorporated NAK was passed in 1933. The full reasons for its enactment are not before me. THK, however, contends that the Ordinance came about after THK and NAK (in its unincorporated form) reached an agreement in which NAK agreed that it could “no longer have unfettered discretion in the management of Teochew properties in Singapore”.<sup>16</sup> On the available evidence, it is not entirely clear *when* NAK took over the management of Teochew properties in Singapore from TPPPA, but it appears to be THK’s position that NAK was managing Teochew properties at some time from 1928 (*ie*, the year TPPPA was founded) and the passing of the Ordinance in 1933.

8 It is clear from s 6 of the Ordinance that some of the objects and purposes of the incorporated NAK related to either THK or TPPPA, as the case may be (there being no evidence to show when TPPPA became THK). For instance, two of NAK’s objects, at the time that the Ordinance was passed, were “such other charitable purposes *for the benefit of the Teochew Community in Singapore of the said Eight Districts* as shall be considered desirable [emphasis added]” and “the establishment, maintenance, administration and improvement in Singapore...of any school...controlled from time to time *by members of the Teochew Community of the said Eight Districts* [emphasis added]”. THK, as mentioned above, was originally known as the Teochew (*Eight Districts*) Public Property Preservation Association.

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<sup>15</sup> Woo Chee Chay’s 1<sup>st</sup> Affidavit, para 19.

<sup>16</sup> Woo Chee Chay’s 1<sup>st</sup> Affidavit, para 22.

***The Teochew Building and 97 Tank Road***

9 The land comprising of 97 Tank Road, on which the Teochew Building sits, consists of the following parcels:<sup>17</sup>

(a) The 1953 Properties: Under an Order of Court dated 30 March 1953 in Originating Summons No 70 of 1953, NAK was appointed trustee of all the immovable properties (*ie*, under the Order) to be held upon trust for Tuan Mong School (“TMS”), replacing Teo Eng Hock, Lien Ying Chow, Tan Chin Hean, Ng Khng Seng (“Mr Khng”), Lim Kim Seng (“Mr Lim”), Mr Lee, and Mr Yeo as the former trustees of the said property.<sup>18</sup>

(b) The 1955 Properties: Legal ownership of the 1955 Properties was transferred to NAK under an indenture dated 9 February 1955, “for the construction of schools and the absolute use and benefit of [NAK] in accordance with the objects, rules and regulations of [NAK]” from the trustees, namely, Mr Lee, Mr Yeo, Mr Khng, Mr Lim, and Tan Chin Hean. The 1955 Indenture states that the trustees (referring to the five natural persons) had purchased the 1955 Property as trustees for the “association known as [THK]”.<sup>19</sup>

(c) The 1959 Property: This property was purchased from the Government of Singapore under the State Grant dated 22 July 1959, to be held upon trust for TMS.

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<sup>17</sup> Richard Lee’s 1<sup>st</sup> Affidavit, para 7.

<sup>18</sup> Richard Lee’s 1<sup>st</sup> Affidavit, p 25.

<sup>19</sup> Richard Lee’s 1<sup>st</sup> Affidavit, Exhibit RL-2, p 30.

10 The Teochew Building which forms the subject matter of the present dispute is a four-story building located at 97 Tank Road. It has to date been used for a variety of purposes,<sup>20</sup> in particular, the housing of TMS (which now ceases to exist), and as the site of THK’s office premises. It is worth noting that THK’s office premises have been located in the Teochew Building from the time the building was first constructed in 1963.

11 TMS, like NAK and THK, dates back many years. It was first established in 1906 when Mr Yeo and Liao Chia Heng (“Mr Liao”), together with 24 other Teochews, donated a sum of \$30,000 for that purpose.<sup>21</sup> Both Mr Yeo and Mr Liao were also the founders of THK.<sup>22</sup> According to Mr Woo, there was a meeting held by THK, prior to the transfers of the 1953, 1955 and 1959 Properties, during which the THK directors decided to “convert all the lots in 97 Tank Road into a [four-storey] school building”.<sup>23</sup> After its completion, the Teochew Building hosted the TMS on its upper three floors.<sup>24</sup> THK occupied about an area on the first floor.

12 Three reasons were given by THK for the transfer. First, it was to “ensure the continuity of [TMS]” (as NAK had, in its view, been incorporated specifically to manage Teochew properties in Singapore).<sup>25</sup> Second, it was to facilitate amalgamation of the various parcels of land into a single plot of land

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<sup>20</sup> Richard Lee’s 1<sup>st</sup> Affidavit, para 32.

<sup>21</sup> Woo Chee Chay’s 1<sup>st</sup> Affidavit, para 31.

<sup>22</sup> Woo Chee Chay’s 1<sup>st</sup> Affidavit, para 31.

<sup>23</sup> Woo Chee Chay’s 1<sup>st</sup> Affidavit, para 43.

<sup>24</sup> Woo Chee Chay’s 1<sup>st</sup> Affidavit, para 48.

<sup>25</sup> Woo Chee Chay’s 1<sup>st</sup> Affidavit, para 40.

on which the Teochew Building would sit.<sup>26</sup> Third, it was to eliminate the need for the replacement of trustees from time to time, as would be necessary in the case of natural persons. The original trustees of the 1953 and 1955 Properties were natural persons, and a transfer to NAK, as a body corporate with perpetual succession, would facilitate this.<sup>27</sup> If there were other reasons for the transfer, aside from the foregoing, they have not as yet surfaced.

13 The true reasons why NAK came to hold the three Properties for NAK assume especial significance because THK takes the position that it was the initial purchaser and financier of the 1953 and 1955 Properties.<sup>28</sup> THK maintains that it never intended to make a gift either of the 1953 or 1955 Properties to NAK.<sup>29</sup>

#### ***Events leading up to the present dispute***

14 By 1994, student enrolment in TMS had decreased.<sup>30</sup> The school had to be moved from its 97 Tank Road site and was renamed “Ngee Ann Secondary School”. The cessation of TMS would later become the reason for a *cy-pres* application by NAK. From 1994 to 2017, the Teochew Building at 97 Tank Road was used for a variety of different purposes, but as mentioned earlier, THK continued to occupy a part of it.

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<sup>26</sup> Woo Chee Chay’s 1<sup>st</sup> Affidavit, para 43; Woo Chee Chay’s 3<sup>rd</sup> Affidavit, paras 14 and 15.

<sup>27</sup> Woo Chee’s 1<sup>st</sup> Affidavit at p 670.

<sup>28</sup> Woo Chee Chay’s 1<sup>st</sup> Affidavit at para 45.

<sup>29</sup> Woo Chee Chay’s 1<sup>st</sup> Affidavit at para 45.

<sup>30</sup> Woo Chee Chay’s 1<sup>st</sup> Affidavit, para 51.

15 Sometime in mid-2017, NAK requested THK to vacate the Teochew Building by 30 June 2018. This was because NAK intended to redevelop the Teochew Building.<sup>31</sup> In a letter dated 4 July 2017, THK replied, stating that should THK have to relocate, NAK should for the time being provide a place comparable to the present area occupied by THK in the Teochew Building without cost. It further requested that THK should be given a similar space in the building (after its redevelopment), and be entitled to stay there without cost, as this had been the state of affairs since 1963.<sup>32</sup> THK also asked NAK to provide a “reasonable relocation fee” for it to move out of its premises at 97 Tank Road and later to return to the redeveloped building at the same site.<sup>33</sup> It does not appear that NAK agreed to any of the three requests.

16 On 6 July 2018, the solicitors for NAK formally lodged a *cy-pres* application with the Commissioner of Charities (“the Commissioner”) for the 1953 and 1959 Properties to be applied *cy-pres*. The Commissioner gave public notice under s 29(1) of the Charities Act (Cap 37, 2007 Rev Ed) that he intended to establish a scheme for the administration of TMS, and invited representations to be made to him by 8 November 2018. For some reason, it does not appear from the evidence that the Commissioner was aware of the ongoing dispute between NAK and THK at the time he made the *cy-pres* order on 18 November 2018. It was only after the order had been made, on 28 November 2018, that THK sent a letter to the Commissioner, seeking an extension of time to make representations regarding the scheme. This was not granted. THK also appeals against the *cy-pres* order in separate proceedings, TA 2 of 2019.

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<sup>31</sup> Richard Lee’s 1<sup>st</sup> Affidavit, paras 25 and 26.

<sup>32</sup> Woo Chee Chay’s 1<sup>st</sup> Affidavit, para 75.

<sup>33</sup> Richard Lee’s 1<sup>st</sup> Affidavit, p 14.

17 By this time, it became increasingly clear that the negotiations between THK and NAK had broken down. NAK was not agreeable to THK’s demands set out above at [15] and decided to commence OS 1499 for possession of the Teochew Building.

### **Analysis**

18 Against the background set out above, the sole issue that arises in this case is whether the court should convert OS 1499 into a writ action.

### ***Parties’ cases***

19 THK submits as follows:

(a) It is not necessary that a “substantial dispute of fact [be] likely to arise” before the court may exercise its discretion to convert an originating summons into a writ. Instead, the court is entitled to take into account *all relevant factors*, including the likelihood of a substantial dispute of fact, in deciding whether to exercise its discretion to convert.

(b) Even if there is a threshold condition that a substantial dispute of fact is likely to arise, it has been satisfied. In this regard, THK alleges that there are several areas in which there are substantial disputes of fact (see below at [25] and [26]).

(c) In deciding whether a substantial dispute of fact is likely to arise, the court is entitled to take into account parties’ *arguments* in submissions and not merely what is stated in the affidavits.<sup>34</sup>

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<sup>34</sup> THK’S Reply Submissions at p 15.

20 NAK argues as follows:

- (a) a threshold condition of conversion is that “a substantial dispute of fact is likely to arise”;
- (b) there are no substantial disputes of fact at present, and none is likely to arise;
- (c) converting OS 1499 into a writ will not serve any purpose. A trial will be pointless as THK has not identified specific witnesses whom it will rely on in the event of trial; and
- (d) THK’s case is based primarily on documentary evidence, and *all* of this evidence is already before the court.

***The court’s power to convert under Order 28, rule 8 of the Rules of Court***

21 Order 28 r 8 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (“ROC”) provides:

Where, in the case of a cause or matter begun by originating summons, it appears to the Court at any stage of the proceedings that the proceedings should for any reason be continued as if the cause or matter had been begun by writ, it may order the proceedings to continue as if the cause or matter had been so begun and may, in particular, order that pleadings shall be delivered or that any affidavits shall stand as pleadings, with or without liberty to any of the parties to add thereto or to apply for particulars thereof.

22 The Court of Appeal (“CA”) in *Woon Brothers Investments Pte Ltd v MCST Plan No 461* [2011] 4 SLR 777 (“*Woon Brothers*”) held that a threshold requirement that must be met before converting an originating summons into a writ is that a “substantial dispute of fact is likely to arise” (at [27]):

We now turn to the second issue as to whether the Judge has properly exercised her discretion in converting the OS into a writ. *In order for the court to exercise the discretionary power to convert an OS into a writ under O 28 r 8(1) of the ROC, the threshold requirement required prescribed in O 5 r 2 must be met, namely, that a “substantial dispute of fact is likely to arise”. We note the words “likely to arise”; words which are simple and clear in themselves. No further paraphrasing or elucidation is required. This expression may be contrasted with “will arise” or “have arisen”. The applicant for conversion need not show that there will be or there already existed a substantial dispute of fact, so long as such dispute is likely to arise.*

[emphasis added]

23 In exercising its discretion to convert, the court is permitted to have regard to the writ action as being a more suitable process, given the facts of the particular case before it. On this point, the CA’s comments in *Woon Brothers* at [32] are instructive:

*In the final result, we did not think that the Judge had erred in exercising her discretion to convert the OS into a writ. All considered, the writ was clearly the more suitable process for the present case to continue, having regard to the substantial factual disputes which already presented themselves on the basis of the affidavits filed. The various interlocutory steps which would automatically follow from the filing of a writ would ensure that the Appellant clearly formulates its claim(s), the Respondents know the precise matters which they have to meet, and through the processes of discovery and [interrogatories], issues could be narrowed down and the trial would then focus on the essentials.*

[emphasis added]

24 From the CA’s comments above, it is possible to extract the following principles as applying to a conversion application:

- (a) it is essential that a substantial dispute of fact is likely to arise;
- (b) the applicant for conversion need not show that a substantial dispute of fact *already exists* or that such dispute *will be certain* to arise;

(c) it follows that in the exercise of its discretion, the court is not limited to what is in the affidavit of the applicant. It may, for example, note arguments that have been advanced by counsel which raise potential issues of fact; and

(d) the court, in deciding that a writ process is more suitable, may have regard to the various interlocutory steps following the filing of a writ, and the utility of the processes of discovery and interrogatories, which could narrow down the issues at trial to its essentials.

***Whether a substantial dispute of fact is likely to arise***

25 THK’s case in OS 1499 may be briefly summarised in the following manner.<sup>35</sup> THK has certain “rights” in the Teochew property which precludes NAK from evicting it.<sup>36</sup> These rights can be said to arise from an understanding between NAK and THK at the time the 1953 and 1955 Properties were transferred, or by virtue of a proprietary estoppel stemming from NAK’s representations to it over the years. It is not necessary for me to evaluate the relative merits of these allegations at this time. What matters is whether a substantial dispute of fact is likely to arise.

26 Flowing from this, THK contends that such a dispute is likely to arise , *inter alia*, in relation to the following matters:

(a) the reasons for the transfer of the 1953 and 1955 Properties;<sup>37</sup>

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<sup>35</sup> Woo Chee Chay’s 3<sup>rd</sup> Affidavit, para 5.

<sup>36</sup> Woo Chee Chay’s 3<sup>rd</sup> Affidavit, para 5.

<sup>37</sup> Woo Chee Chay’s 3<sup>rd</sup> Affidavit, para 15.

- (b) the intention of the settlors at the time of the constitution of the trust;
- (c) the intention of the settlors in conveying the 1955 Properties to NAK;<sup>38</sup>
- (d) the circumstances which led to THK occupying the Teochew Property; and
- (e) the intention of the NAK’s representatives, or any other relevant person who had been part of the discussions before THK moved into the Teochew Building upon its completion in 1963.<sup>39</sup>

27 NAK objects to THK’s position that there are substantial disputes of fact, and contends that none is likely to arise. The essence of its position is that there is no factual dispute over what is stated in the documents which THK relies on.<sup>40</sup> Thus, whether the documents are relevant to the determination of the issues in OS 1499 is a question for argument and/or a question of law which can be decided by way of originating summons. A trial will not make a difference to the resolution of these issues.<sup>41</sup>

28 It is worth reiterating that the threshold requirement is that “substantial disputes of fact are *likely to arise*”, and not that there are such disputes at present. The threshold condition is also met so long as I find at least one factual issue in relation to which such dispute is likely to arise.

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<sup>38</sup> Woo Chee Chay’s 3<sup>rd</sup> Affidavit, para 25.

<sup>39</sup> Woo Chee Chay’s 3<sup>rd</sup> Affidavit, para 34.

<sup>40</sup> NAK’s Reply Submissions at para 39.

<sup>41</sup> NAK’S Reply Submissions at para 40.

29 One obvious source of a factual dispute lies in THK’s potential claim in proprietary estoppel. Although THK does not use the expression “proprietary estoppel” on affidavit, it was made clear from its written submissions and through its counsel’s oral arguments that this was a claim which it was planning to make against NAK. There is mention in its affidavit that “[NAK] is not entitled to now go back on their earlier representations by conduct or otherwise, and wrongfully evict THK out of the Teochew Buildings [*sic*]”.<sup>42</sup> To me, this appears to be a clear enough statement that THK believes that NAK has made a representation (be it by conduct or otherwise) giving rise to certain proprietary rights in the Teochew Building. NAK cannot fairly take the position that the factual issue whether it has made a representation is one which can be resolved on the basis of the documentary evidence available before me. Nor can it say that it does not or will not in the future challenge the existence of such a representation as this would strike at the very heart of its claim for relief in OS 1499, which is premised on THK not having any proprietary rights in the Teochew Building. I am also cognisant of the other elements in a proprietary estoppel claim: reliance and detriment on the part of the party seeking to raise the estoppel: *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 at [170]. I bear in mind that THK has been in occupation in the Teochew Building since 1963, and it is likely that a substantial dispute of fact will arise in relation to one or more of these elements of a proprietary estoppel claim.

30 A substantial dispute of fact will also arise in relation to the settlor’s intentions at the time the three Properties were transferred to NAK. THK’s position is that the intention behind the conveyance to NAK “had merely been

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<sup>42</sup> Woo Chee Chay’s 1<sup>st</sup> Affidavit at para 88.

for [NAK] to hold as a corporate body based on the historical arrangement between THK and [NAK]”.<sup>43</sup> In this regard, it submits that the court’s objective should be to give effect to the settlor’s intentions, whether by way of an interpretative exercise or through equitable rectification.<sup>44</sup>

31 NAK relies on *Lam Joon Shu and others v Attorney-General* [1993] 3 SLR(R) 156 at [39] for the proposition that a settlor’s intentions are irrelevant in the construction of a trust deed. It also cites *Syed Yacob Alkaff v Syed Alwee Alkaff* [1990] 2 SLR(R) 482 (“*Syed Yacob*”) at [35] in support of the proposition that extrinsic evidence is not admissible to construe a trust document unless the words in the trust documents are ambiguous.

32 On the recent authorities, it is clear that the court may have recourse to extrinsic evidence, even in the absence of any ambiguity on the face of a document (see *Lim Sze Eng v Lin Choo Mee* [2019] 1 SLR 44 at [62]; *Koh Lau Keow v Attorney-General* [2014] 2 SLR 1165 at [25]; *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 (“*Zurich Insurance*”) at [114]). In light of the modern contextual approach, the position in *Syed Yacob* cannot stand. So long as the extrinsic evidence is relevant, reasonably available to all contract parties, and relates to a clear or obvious context (see *Zurich Insurance* at [127]–[130]), such evidence can be admitted. Thus, even if I disregard the relevance of the settlor’s intentions at the time of constitution of the trusts, the context and surrounding circumstances may assist the court in interpreting the trust documents.

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<sup>43</sup> Woo Chee Chay’s 3<sup>rd</sup> Affidavit at para 25.

<sup>44</sup> THK’s Submissions dated 8 August 2019 at para 42.

33 It is worth highlighting the following documents cited by THK, which suggest that there is a reasonable possibility of other available documents which might shed light on the relevant context at or around the time the trusts were first constituted. THK produced diary records in 1935 extracted from the 50<sup>th</sup> Anniversary commemorative magazine which stated that the office of NAK was to have a combined office with THK, as well as TMS, so as to save costs, *etc.*<sup>45</sup> There were also two noteworthy Chinese newspaper articles. The first was an article dated 23 December 1949 documenting the 5<sup>th</sup> meeting of THK’s directors with Lim Kim Seng, who was the then Honorary Secretary of NAK. This article appears to state that that the 1955 Properties were bought for the purpose of “building [TMS] premises and [THK]”.<sup>46</sup> Another article in 1961 appears to say that the Teochew Building would “house two offices for the [THK] and the [NAK]” and that the “[TMS] will occupy the three upper floors”.<sup>47</sup> Finally, in a 2 March 1967 meeting of the NAK, it was recorded that “the Teochew Building on [97 Tank Road] would not be donated to Ngee Ann College but could be lent for a limited period because *the land occupied by the Teochew Building belonged to [THK] and [TMS]* [emphasis added]”.

***Factors in the exercise of my discretion***

34 After having determined that a substantial dispute of fact is likely to arise (as a threshold condition), I am to consider whether I should exercise my discretion to convert the originating summons into a writ.

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<sup>45</sup> Woo Chee Chay’s 1<sup>st</sup> Affidavit at pp 490-491.

<sup>46</sup> Woo Chee Chay’s 1<sup>st</sup> Affidavit, pp 140-142.

<sup>47</sup> Woo Chee Chay’s 1<sup>st</sup> Affidavit, pp 150-151.

*Absence of witnesses*

35 NAK argues that conversion will not serve any purpose as there are no available witnesses who can give meaningful evidence.<sup>48</sup> This because the persons who were involved in the documents that THK is relying on are no longer alive. Counsel for NAK also points to THK’s failure to identify any relevant witnesses which it would call in the event of a trial.

36 The failure to identify a witness at trial is not a determinative factor. It is but one of the factors which must be considered holistically in the overall circumstances of this case. The present dispute involves matters which span a period of almost 100 years. At this stage of the proceedings, I am not going to pre-judge whether THK will or will not be able to produce evidence (whether oral or documentary) in the event of a trial.

*Relevance of discovery, interrogatories, etc.*

37 THK contends that the resolution of the present dispute will be assisted by the various interlocutory steps which would automatically follow the filing of a writ, and through the processes of discovery and interrogatories, narrow down the issues so that trial could focus on the essential elements of NAK’s claims.<sup>49</sup> This is plainly a consideration which the court is entitled to take into account in the exercise of its discretion: *Woon Brothers* at [32]. NAK’s response to this is that THK is conducting a “fishing expedition” and that in any event, discovery of documents is available in an originating summons.<sup>50</sup> NAK’s

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<sup>48</sup> NAK’s Reply Submissions dated 11 July 2019 at para 14.

<sup>49</sup> THK’s Submissions dated 8 August 2019 at para 41.

<sup>50</sup> NAK’s Reply Submissions dated 11 July 2019 at para 14.

view is that the court should not convert an originating summons into a writ action just so that a party can seek discovery of documents.

38 I do not regard THK as merely conducting a “fishing expedition”. From the manner in which THK conducted its case, I do not get the impression that its application for conversion was based primarily on a need for the discovery of documents. It is of course a well-established rule that a litigant is not permitted to mount a fishing expedition in the hope of finding something to substantiate its plea. This does not appear to be what THK is doing. Instead, THK provided two documents which, in my view, show that the discovery of documents could potentially shed light on the factual issues which arise in this case. The first was a record of the Extraordinary General Meeting (“EGM”) held by NAK on 18 February 1967 which states that “[t]he land and premises of the College currently at [97 Tank Road] (...the premises of the College are the property of [TMS] and [THK] and could only be lent to the College for its use for a limited period of time)”.<sup>51</sup> Subsequent to this, there was a resolution ratified during the same EGM that the “Teochew Building on [97 Tank Road] could not be donated to Ngee Ann College, that Ngee Ann College should not use Teochew Building premises for the long term...”<sup>52</sup>

39 While discovery is also available in an originating summons, there are other procedural advantages in a writ action which make this case appropriate for conversion. For instance, in a writ action, the discovery obligations imposed on parties are wider: under O 24 rr 1 and 2 of the ROC, parties are under a *general* obligation to disclose documents. Their obligations are not limited to responding to applications for specific discovery. I am of the view that the

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<sup>51</sup> Woo Chee Chay’s 3<sup>rd</sup> Affidavit at para 20.

<sup>52</sup> Woo Chee Chay’s 3<sup>rd</sup> Affidavit at para 21.

discovery regime under a writ action would enable a fairer resolution of the present dispute.

*Nature of the factual disputes*

40 The events which form the subject matter of the present dispute span more than 100 years. The present case involves the history of two of Singapore's most prominent Teochew organisations. THK has been residing in the Teochew Building for more than 56 years, without having to pay rent or utilities. After more than 56 years, it has been asked to vacate the premises. I have no doubt that the parties' conduct over the more than 50 years, which will form a crucial plank in any claim for proprietary estoppel, will give rise to the pitting of allegations and counter-allegations, and all manner of substantial factual disputes.

41 NAK's fear that conversion may needlessly protract the resolution of the dispute between the parties could be addressed by the availability of an application to strike out pleadings and endorsements under O 18 r 19 of the ROC or an application for summary judgment under O 14 r 1 of the ROC.

**Conclusion**

42 For the foregoing reasons, I allow THK's application.

43 I will hear parties regarding further directions and costs.

Andrew Ang  
Senior Judge

Davinder Singh SC, Jaikanth Shankar, Tan Ruo Yu, Yee Guang Yi,  
Darren Low (Davinder Singh Chambers LLC) (instructed), Adrian  
Wee, Dominic Chan, Noel Oehlers, Nicole Chee for the plaintiff;  
Tan Chee Meng SC, Josephine Choo, Valerie Quay, Eugene Oh  
(WongPartnership LLP) for the defendant.