

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2011] SGCA 18

Civil Appeal No 126 of 2010/J

Between

1. **DR JEFFREY KHOO**
(NRIC No. S1647835J)
2. **DR QUEK SUAN YEW**
(NRIC No. S1315479A)
3. **DR PRABHUDAS KHOSY**
(NRIC No. S2686004J)
4. **DR TOW SIANG YEOW**
(Malaysian ID No. S71106-01-5089)
5. **DR TIMOTHY TOW SIANG HUI**
(NRIC No. S1073136D)
6. **DR BOAZ BOON**
(NRIC No. 2550198E)
7. **WEE HIAN KOK**
(NRIC No. S0438219F)
8. **REV KOA KENG WEE**
(Malaysian ID No. 290512-06-5085)
9. **REV STEPHEN KHOO**
(NRIC No. S0050228F)

...Appellants

And

1. **LIFE BIBLE PRESBYTERIAN CHURCH**
(ROS No. 0190/1986)
2. **KHOO PENG KIAT**
(NRIC No. S1066740B)
3. **TAN HOCK JIN GEOFFREY**
(NRIC No. S0347184E)

4. **LOO LAM HUA**
(NRIC No. S1410329E)
5. **LIM TECH CHYE**
(NRIC No. S0273345E)
6. **TOW SIANG HUI**
(NRIC No. S1073136D)
7. **TAY BIN THONG**
(NRIC No. S0143884J)

...Respondents

JUDGMENT

[Charities]

[Unincorporated Associations and Trade Unions]

This judgment is subject to final editorial corrections approved by the court for publication in LawNet and/or the Singapore Law Reports.

Jeffrey Khoo
v
Life Bible Presbyterian Church

[2011] SGCA 18

Court of Appeal — Civil Appeal No 126 of 2010
Chao Hick Tin JA, Andrew Phang Boon Leong JA, V K Rajah JA
3 December 2010

26 April 2011

Judgment reserved.

Chao Hick Tin JA (delivering the judgment of the court):

Introduction

1 The dispute in the present case raises several questions of law relating to the principles that govern the operation of unincorporated associations and religious charitable trusts. In particular, it raises the thorny question of what happens when a religious charity is alleged to have deviated from the fundamental principles upon which it was founded.

2 The Appellants are nine individuals who are the members of the board of directors of the Far Eastern Bible College that was, on 26 January 2004, registered as a charity under the Charities Act (Cap. 37, 2007 Rev Ed) (“Charities Act”) (“the 2004 College”). The core of the present dispute relates to the question of whether the 2004 College is the same entity as the bible college that was first established in 1962 (“the College”). The Respondents are the Life Bible-Presbyterian Church (“the Church”) and its trustees. Both the Church and the College were until 2004 located at the same premises at 9,

9A, and 10 Gilstead Road (“the Premises”), on which the Church has a lease (held through trustees). From 2007, the Church sought to exclude the 2004 College from functioning at the Premises. The Church is still operating at the Premises.

3 Two suits were instituted following from this purported exclusion. In Suit 648 of 2008 (“Suit 648”), one of the Respondents, the Church, sought the following reliefs:

- a) a declaration that the 2004 College was a different entity from the College;
- b) an injunction to prevent the Appellants from using the Premises, and to deliver vacant possession of the same to the Church and its trustees; and
- c) an account of the moneys held by the College as at the date of the registration of the 2004 College and to pay over the said amount to the Church.

4 Subsequently, the Appellants felt it necessary to institute Suit 278 of 2009 (“Suit 278”) where they sought these reliefs:

- a) a declaration that the funds donated for the purchase and/or construction of the buildings located on the Premises were impressed with a charitable purpose trust for the construction of buildings for the use of the Church and the 2004 College (which they aver is the same entity as the College), and that consequently, the registered proprietors of the Premises hold them on a charitable purpose trust for the joint benefit and use of the Church and the 2004 College;
- b) an order for schemes be settled in respect of the charitable purpose trusts over the moneys donated for the purchase and/or construction of

the buildings located on the Premises, and that such schemes provide for trust deeds to be executed by the registered proprietors of the said properties to set up the trust over the said properties for the joint benefit and use of the Church and the 2004 College.

5 In essence, by Suit 648 the Church wants the 2004 College to vacate the Premises while by Suit 278 the 2004 College wants recognition that the Premises are trust property and that the latter are held for the joint benefit of the Church and the 2004 College. The trial judge (“the Judge”) ruled in favour of the Church and its trustees in both suits. The Judge held that the 2004 College was a different entity from the College, and therefore not entitled to enjoy the property that was for the benefit of the College.

6 Being dissatisfied with the rulings of the Judge, the Appellants have appealed to this Court.

The Background

Formation of the Church and the College

7 In 1955, the Church was formally constituted as a member of the Bible-Presbyterian Church of Singapore. In 1986, it obtained independent registration as a society under the Societies Act (Cap 311, 1985 Rev Ed), and was registered as a charity in 1987.

8 On 19 September 1960, at a meeting of the Presbytery of the Bible-Presbyterian Churches of Singapore, a formal decision was taken to establish a college to train young Christians as evangelists, pastors and teachers. A three-man committee consisting of Rev Timothy Tow, Rev Quek Kiok Chiang and Dr Tow Siang Hwa was elected for the purpose of drafting a constitution and

prospectus for the college. In November 1961, a board of directors (“the Board”) for the College was constituted, with Rev Timothy Tow at its helm. The Board unanimously adopted the constitution (“the Constitution”) drafted by the three-man committee. The College was duly established the following year.

The close relationship between the Church and the College

9 Right from its inception, the College shared a special relationship with the Church. This was primarily due to two reasons. First, the pastor of the Church, Rev Timothy Tow, was the person who had mooted the idea of setting up the College. He was part of the 3 man committee who drafted the Constitution and who later assumed the chairmanship of the Board when the College was first constituted. He also served as the first principal of the College.

10 Second, the College and the Church had always shared the Premises, over which the Church has a lease held through trustees.

11 At this juncture, it would be necessary for us to set out briefly how the Church came to be in possession of the Premises and how the College came to operate from the same premises. :

- a) Soon after its formation, the Church started a building fund in order to purchase its own premises. In August 1957, the trustees of the Church purchased a 99 year lease over 9 and 9A Gilstead Road.
- b) Following the decision made by the Bible-Presbyterian Churches of Singapore in 1960 to establish the College, it was also decided that the College would be housed at 9 and 9A Gilstead Road. Thereafter, the building fund of the Church was renamed the Life

Church and Bible College Fund. Donations to the Church and the College were placed into this common fund.

- c) The College was the first to move into 9 and 9A Gilstead Road, on 17 September 1962, occupying the annex to the church building (“college annex”). The Church moved into the church building the following year, after a dedication service on 16 February 1963.
- d) Originally, it was agreed that in exchange for a contribution of \$75,000, the College would own half of the college annex. The College had initially paid \$20,000 towards this sum, using a loan from two churches. However, when the two churches asked for the return of the sum paid, a new agreement was reached under which the Church would return the money on behalf of the College and the premises at 9 and 9A Gilstead Road would be legally held by the Church which would also pay for all physical expenses, while the College would be responsible for the maintenance of the same.
- e) In 1965, a second fund named the “Church and College Extension Fund” was started for the purpose of building an extension on 9 and 9A Gilstead Road, as the premises were then inadequate for the needs of both the Church and the College. Like the Life Church and Bible College Fund, the moneys collected came mostly from tithes and offerings of the Church members, with a smaller amount originating from other Christians who were mostly from the Bible-Presbyterian community.
- f) In 1970, a committee comprising of representatives from the Church and the College was set up to draft an agreement regarding the College’s occupation and use of 9 and 9A Gilstead Road. Two representatives each from the Church and the College executed an agreement entitled “Agreement between the [Church] and the

[College] on the sharing of the use of the Church and College Property at 9 and 9A Gilstead Road”.

- g) In 1989, a third fund – the Extension Building Fund – was initiated for the purpose of acquiring 10 Gilstead Road. Moneys for this Fund were raised in much the same way as they had been for the Church and College Fund ie, from the Church’s own members, as well as members of other Bible-Presbyterian churches. The acquisition of 10 Gilstead Road was completed on 30 April 1990 and held, as in the case of 9 and 9A Gilstead Road, by the trustees of the Church.
- h) In 2000, a fourth fund- the Beulah House Fund- was set-up for the purpose of developing 10 Gilstead Road into a bible college with hostel facilities (“the Beulah Tower”).

The dispute between the Church and the College

12 In 2002, tensions developed between the College and the Church when the College’s board endorsed a doctrine known as “Verbal Plenary Preservation” (“VPP”) over the “Verbal Plenary Inspiration” (“VPI”), a doctrine accepted by the Church. Within the Church, there was mounting tension between those who believed in VPP and those who believed in VPI.

13 On 20 August 2003, during a session meeting of the Church, certain members of the Church expressed strong views against Rev Timothy Tow’s endorsement of the VPP doctrine and he therefore resigned as the pastor of the Church. He and a number of the other members of the Church congregation split from it and founded the True Life Bible-Presbyterian Church (“True Life Church”). On 19 November 2003, the Board of the College informed the Church of its intention to register the College itself as a charity.

14 On 26 January 2004, the members constituting the board of the College obtained registration of a charity called “Far Eastern Bible College” pursuant to the *Charities Act* under a new constitution (“the 2004 Constitution”) as they could not then locate the Constitution. We should at this juncture observe that subsequent to the registration of the Far Eastern Bible College, the Constitution was found.

15 Matters came to a head on 17 July 2004 when the Church wrote to the 2004 College stating that it would no longer allow the 2004 College to use its properties as the 2004 College had been registered as a separate and independent entity and, therefore, ceased to be a ministry of the Church. Further letters were sent out by the Church on 28 January and 1 March 2008 stating that the 2004 College could only continue to occupy the Premises if it gave an undertaking not to teach the VPP doctrine. When efforts at reconciliation between the 2004 College and the Church failed, Suit 648 was instituted, followed shortly by Suit 278.

The Judge’s decision

16 Contrary to the assertion of the Church, the Judge held that the College was not a ministry of the Church and had never been operated as such. In her opinion, the College was an unincorporated association that was independent of the Church. Furthermore, the Premises had been acquired and renovated with donations that were solicited in the names of and specified to be for the joint benefit of both the College and the Church. Therefore, they were impressed with a charitable purpose trust in favour of both the College and the Church.

17 However, the Judge held that the 2004 College was a different entity from the College. She observed that the 2004 Constitution was materially different from the Constitution, and that the effect of the Appellants adopting the 2004 Constitution was to create a new unincorporated association. In her opinion, the 2004 College was not a beneficiary of the charitable purpose trust impressed on the Premises and had no right to occupy the same. In any event, the Judge held that the Appellants had not proven that they were the directors of the Board of the College and thus had no locus standi to bring an application for a declaration of trust on behalf of the College.

Our analysis of the Judge's decision

18 We will now turn to examine the issues on which the Judge had made her rulings. To recap, they are the following:

- a) Is the College a ministry of the Church?
- b) Is the College an unincorporated association or a charitable trust?
- c) Are the Premises impressed with a charitable trust in favour of the joint use of the College and the Church?
- d) Are the Appellants the current directors of the Board of the College?
- e) What is the legal effect arising from the Appellants' act of registering a college in the College's name but with a different constitution?

A. Is the College a ministry of the Church?

19 It is eminently clear that the Judge was correct to have held that the College is not a ministry of the Church. We will now examine the main reasons why she so held.

20 First, although the Church, through Rev Timothy Tow, was the proponent of setting up the College, the final decision rested with the Presbytery of the Bible-Presbyterian Churches of Singapore, of which the Church was a member. This explains why the intended purpose of the College, as stated in Art II of the Constitution, was a general one, namely, to “train consecrated men and women and thoroughly furnish them to meet the need of the Church of Jesus Christ, particularly in Singapore, Malaysia and other Far Eastern countries, for church pastors, missionaries and other Christian workers.” This undoubtedly suggests that the College was intended to be a joint enterprise between the churches that belonged to the Presbytery of the Bible-Presbyterian Churches of Singapore, rather than a ministry of any particular church.

21 Second, the founders of the College took special care to ensure that the College was to be an independent association. This is clearly reflected in Article V(1) of the Constitution which provided for the College to be “an independent body not subject to ecclesiastical control”, and which further specified that the relationship between the College and the various bodies sponsoring it was only “one of wholehearted co-operation and desire to see consecrated men and women well trained”. While it is true that Article V(2) of the Constitution also stated that the College is “closely connected” to the Church, this is hardly sufficient to establish that the College was meant to be a ministry of the Church.

22 Third, the Constitution contained specific rules on how the members of the Board of the College was to be elected, and in turn on how the executive committee that run the College was to be elected from the Board. There is no provision that allows the Church to have any say at all in the running of the College. Factually, the management of the College might have been in the hands of Rev Timothy Tow, who was both the president of the Board and principal of the College, as well as the founding and controlling pastor of the Church. However, this does not mean that the College and the Church were in law a single organisation.

23 Fourth, the College was not funded exclusively by the Church. Consistent with its character as a joint enterprise of the churches belonging to the Presbytery of the Bible-Presbyterian Churches of Singapore, it was also funded by donations from other churches and well wishers. Furthermore, the financial accounts of the Church and the College were carefully kept separate and distinct. All financial transactions which took place between the Church and the College were described as “gifts” or “loans” rather than internal transfers which would have been the case if the Church and the College were part of the same entity.

24 Fifth, the sharing of the Premises by the Church and the College was done in a formal manner by way of an agreement signed by representatives of both parties (see [11] above). This again unequivocally suggests that the representatives of both the Church and the College regarded themselves as representing different organisations.

25 In the light of the foregoing considerations, we do not think that there is any basis to seriously argue that the College is a ministry of the Church.

B. Is the College an unincorporated association or a charitable trust

26 Counsel for the Appellants, Mr Ang Cheng Hock, argued that the Judge was wrong in finding that the College was an unincorporated association. Instead, Mr Ang contended that the College was a charitable trust with its board of directors acting as the charity trustees. Mr Ang gave three reasons as to why the College could not be an unincorporated association. First, he pointed out that all members of an unincorporated association would have the right to attend its general meeting. He then referred to the Judge's conclusion that the College's members consisted of its directors, its executive committee and the faculty members, and observed that the Constitution did not give the faculty members the right to attend any general meetings or to elect members to the College's Board. Based on this, he argued that the College could not be an association because the faculty members did not have the right that would ordinarily accrue to members of an association. Second, Mr Ang pointed out that Article IV, section 1(6) of the Constitution required one third of the College's board of directors to retire annually in rotation, and this was inconsistent with the principle that an unincorporated association is an organisation where members can join or leave at will. Finally, Mr Ang argued that none of the College's faculty members were ever asked to affirm their consent to the Constitution, and this was inconsistent with the principle that an unincorporated association is based on a contract with all its members.

27 In our view, in the context of the critical issues in this case, this is hardly a matter of any consequence. Let us explain. A charity may exist in one of several legal structures, with the three most basic forms being the trust, the unincorporated association and an incorporated entity (see Peter Luxton, *The Law of Charities* (Oxford University Press, 2001) at 255). A charitable trust, or for that matter any trust, can only be validly constituted if the three

certainties (certainty of intention, object matter and subject matter) are fulfilled. Even if we assume that the Constitution fulfils the requirements of certainty of intention and object matter, there is nothing in it that states what property is meant to be held by this purported trust. Indeed, at the point in time at which the College was established pursuant to the written Constitution, there was no property that was owned by the College (or its trustees) at all. Of all the criticisms raised by Mr Ang against the Judge's finding that the College is an unincorporated association, he is correct in one respect, *i.e.*, the Judge was wrong in regarding the faculty members as members of the unincorporated association. The faculty members were simply staff hired by the College to carry out its objects, just as any unincorporated association can hire non-members, or even members, as its employees. This is borne out by Article IV section 4(b) of the Constitution which provided that the Board would have the power "to appoint the Principal and other members of the teaching staff ... and to determine their terms of employment". Being employees, the faculty members would not, *per se*, be entitled to attend general meetings, or elect the management of the College, unless they should also happen to be a member of the Board. However, with regard to Mr Ang's contention that an unincorporated association must necessarily be an organisation that a member could join or leave at will, while that may ordinarily be the case it does not follow that an unincorporated association ceases to be so when its rules provide otherwise. There is no principle of law which preclude an association's constitution from stipulating that some of its current members should leave the association annually for renewal purposes. Moreover, Mr Ang's third argument falls apart once we accept that the College's members consisted of its Board of directors, because the Board members were required to affirm their consent to the Constitution under Article IV, section 1(2).

28 In our judgment, the College is really an unincorporated association, the members of which are delegates from other separate organisations (primarily the representatives of the Bible-Presbyterian Churches in Singapore), which have decided to cooperate to establish the College in order to achieve a common purpose.

29 Finally, we wish to say that even if Mr Ang is right that the College is a charitable trust with its board of directors as the charity trustees, it will not make any real difference to the outcome in relation to the other issues which will be decisive *vis-a-vis* the action. Whether a charitable trust has arisen depends not on how it came into being but its objects. As mentioned in [27] above, a charity can take the form of an unincorporated association.

C. Are the Premises impressed with a charitable trust for the joint use of the Church and the College

30 The facts outlined above clearly show that the Premises were acquired/renovated through fund raising events which were undertaken in the names of both the Church and the College (see above at [11]). As the Judge correctly pointed out, where the purpose of a fund raising effort is charitable, the funds raised will be impressed with a charitable purpose trust for that purpose: see *Attorney General of Queensland v Cathedral Church of Brisbane* (1977) 136 CLR 353, *Neville Estates v Madden and Ors* [1962] Ch 832.

D. Are the Appellants the current members of the Board

Significance of the issue

31 We turn now to the question as to whether the Appellants are the current members of the Board, an issue which was only cursorily raised and argued by the respective parties during the trial. The Judge merely held at [81]

of the GD that “[t]hey [the Appellants] have not shown that they are the directors of the College.” Essentially, the Judge decided this issue by treating it as a matter of burden of proof which the Appellants had failed to discharge.

32 In this regard, we would point out that even if the Judge was correct to have found that the Appellants were not the members of the Board, and therefore not entitled to use the Premises in the name of the College, she should not have granted the Respondents’ third prayer in their Statement of Claim, which required the Appellants to give the Respondents an account of the money held in the accounts of the College as at the date of the registration of the 2004 College. The Respondents’ entire case was premised on the basis that the College was a ministry of the Church and was thus entitled to the accounts of the College. However, as shown above (at [19] to [25]), this argument was soundly rejected by the Judge, who found that the Church and the College were two different entities. Given that none of the Respondents had claimed to be a member of the Board, there is no reason why they should be entitled to an account of the property that is held on behalf of the College.

33 A distinction must be drawn between a charitable purpose and the institutional form (be it an unincorporated association, individuals, or a company) through which the charitable purpose is effected or administered. The dissolution of the institutional form does not terminate the charitable purpose as long as that purpose is still capable of being carried out: *Re Vernon’s Will Trusts* [1972] 1 Ch 300. If the Judge was of the opinion that the members of the Board (who are the members of the College as an unincorporated association) cannot be ascertained, she should have ordered that the College be dissolved under the equitable jurisdiction of the High Court: *Re Lead Workmen’s Fund Society* [1904] 2 Ch 196. The property that is held for the purpose of the College (ie, that part of the Premises that is

impressed with a charitable trust in favour of the College, and the money in the College's accounts) should then either be applied cy-pres, handed to the Public Trustee, or turned over to the Commissioner of Charities (sections 21, 23 and 26B of the *Charities Act* respectively).

Was the College's board dissolved in 1989

34 Counsel for the Respondents, Mr Quek Mong Hua ("Mr Quek"), had argued during the trial that the Appellants could not be the directors of the Board because it had been dissolved in 1989, following the resignation of Mr Tow Siang Hwa as President. Mr Quek based this argument on a statement contained in the minutes of the Church's Session meeting on 20 December 1989 stating that:

Rev Tow mentioned that the College's Board of Directors had been dissolved after Dr Tow S.H. resigned as President. Rev Tow said that he had been trying to revive the Board of Directors and in the future years he envisaged that the dual role of the Pastor of our Church as principal of FEBC would be maintained.

35 There are two observations we would like to make on these minutes. First, it is far from clear what this statement actually meant. Second, these minutes should be viewed in the light of the testimonies of the individuals who were the members of the College's Board in 1989. Mr Tow Siang Hwa, who was the President of the Board until his resignation in 1989, testified on behalf of the Appellants that the Board was not dissolved following his resignation¹:

Court Do you remember any incident in 1988 to 1999
when the board of the College was dissolved?

¹ ROA, Vol 3 Part 7, p 2389-2390.

Witness The board of the College was never dissolved.
 Your honour

Court Yes

Witness I am speaking from knowledge and experience. I
 resigned, the College carried on with a new
 president.

Court When you resigned, who took over as
 president?

Witness My younger brother.

...

Court So you resigned and the College---the board
 carried on---

Witness Yes

...

Court Right. So when you resigned, nobody---

Witness No

Court --also resigned along with you?

Witness No, no. No one else was involved in the, er,
 discussions that we went before the
 resignation.

36 On the other hand, the Respondents' own witness, Mr Khoo Peng Kiat, was ambivalent as to whether the College's Board had in fact been dissolved in 1989. During cross examination, Mr Khoo Peng Kiat stated that he had been a director of the College for 24 years from 1979 to 2003 and that the College's Board had never been dissolved.²

Q Right. And you were a director of FEBC [the
 college] for 24 years, right?

A That's correct, your honour.

...

² ROA Vol III, Part 7, p 2290-2293.

- Q And you were continuously a member of the board of directors until you resigned in 2003, correct?
- A Correct, that's correct.
- ...
- Q Yes. And do you recall that when Tow Siang Haw stepped down from the board, it was sometime in nineteen---1989 or so?
- A 1989, that's correct.
- Q And then when he stepped down, there were a few other board members that also stepped down and new board members were elected and brought in to replace them, correct?
- A Correct, your honour.
- ...
- Court And you remember it was 1989 when there was quite a big change.
- Witness Er, I think 1988, this I—I remember clearly, there was the dissolution of the senate. Then, one year later, I think, Dr Tow stepped down as president of FEBC—
- Court Yes.
- Witness --after which, the baton was passed on to Dr Tow Siang Yeow, his younger brother.
- Court But the board,--any—the board continued?
- Witness The board continues.

37 However, during re-examination by Mr Quek, Mr Khoo Peng Kiat gave a different version of events. Essentially, he testified that the Board was “dissolved” following the resignation of Mr Tow Siang Hwa but it was later reconstituted.³

³ ROA Vol III, Part 7, p 2337-2339.

