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YOUR REF :

25 May 2012

The Registrar
The Supreme Court of Singapore
1 Supreme Court Lane
Singapore 178879

BY EFS

Dear Sir

CIVIL APPEAL NO. 126 OF 2010/J

Introduction

1. We act for the Appellants in the captioned Appeal. M/s Lee & Lee act for the Respondents.
2. The Appellants are representatives of Far Eastern Bible College ("FEBC"). The 1st Respondent is Life Bible-Presbyterian Church ("LBPC"), and the rest of the Respondents are persons aligned with LBPC. For the sake of convenience, we shall refer to the relevant parties as FEBC on the side of the Appellants and LBPC on the side of the Respondents.
3. In this letter, we adopt the same abbreviations and defined terms used in our letter to Court dated 11 May 2012.
4. On 11 May 2012, FEBC and LBPC submitted their respective proposals as regards the TOR to govern the resolution of the outstanding issues in this matter.
5. Pursuant to the directions issued by the Honourable Court of Appeal on 11 April 2012, we now write to record FEBC's comments and/or objections in relation to LBPC's proposal.
6. We seek Your Honour's kind assistance in placing this letter before the Court of Appeal.

LBPC's proposal is not a TOR in the form and manner requested by the Court of Appeal

7. As a general overarching point, it is highlighted that LBPC's proposal is not a TOR in the form and manner requested by the Court of Appeal.
8. At the 11 April 2012 hearing, the Court of Appeal was presented with 2 proposals:-
 - (a) In broad terms, LBPC's proposal was that it would allot certain parts of the Premises for FEBC's use whilst retaining overall control and custody over the Premises. LBPC therefore sought to persist in its view that it is the "legal owner" of the Premises and that

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FEBC's rights should stand subordinated to its own. LBPC's approach was, in a sense, to treat FEBC's rights as being akin to that of a mere tenant allowed to use and occupy the Premises on LBPC's sufferance. In support of this proposal, LBPC sought to make reference to certain past arrangements.

(b) FEBC took issue with LBPC's approach on the grounds that it was inequitable, problematic and will likely give rise to future controversy concerning the use and occupation of the Premises. It was also highlighted that it would be inappropriate and unhelpful to have reference to past arrangements because the present circumstances are drastically different (i.e. it is no longer possible to view FEBC and LBPC as having allied interests). Further, in the course of the *inter partes* discussions preceding the 11 April 2012 hearing, it became clear that LBPC was not keen on treating FEBC with an even hand. Given the circumstances, it was submitted that the most appropriate solution would be to allow FEBC full and exclusive use and occupation of either the Land or Beulah House (with the remaining property reserved for LBPC's full and exclusive use and occupation).

9. The Honourable Court of Appeal indicated that both proposals would not be appropriate. Instead, the Court of Appeal intimated that a more nuanced approach may be what is called for, and it was suggested to parties that the matter should be referred to a third party, such as a High Court Judge, for determination. Parties agreed to this suggestion by the Honourable Court of Appeal. Parties were then directed to submit their respective proposals in respect of the TOR which should guide the High Court Judge to whom the matter is referred to.
10. A perusal of the proposal submitted by LBPC will show that it is not anything close to what the Honourable Court of Appeal had in mind when it directed parties to submit their respective proposed TORs.
11. It cannot properly be said that LBPC's proposal is in the nature of a draft TOR to guide the High Court Judge on the issue(s) to be resolved. Rather, it is in the nature of written submissions aimed once again at pushing through essentially the same proposal LBPC presented to the Court on 11 April 2012 – a proposal that has already been rejected. Indeed, it is disappointing, to say the least, that LBPC has failed to properly heed the guidance provided by the Honourable Court of Appeal.
12. For these reasons alone, it is respectfully submitted that LBPC's proposal should not be adopted.

LBPC proposal also fails to adhere to other important points of guidance from the Court of Appeal

13. LBPC's proposal also fails to adhere to several important points of guidance enunciated by the Honourable Court of Appeal at the hearing on 11 April 2012.
14. At paragraph 8 of LBPC's proposed TOR, LBPC has sought to rely on the reference to itself in the '1970 Agreement' as the "*sole steward for the College [i.e. FEBC] property*" to justify the position that it should be the sole custodian of the Premises with the responsibility of allocating areas within the Premises for FEBC's use. In doing so, it is clear that LBPC has paid scant regard to the Court of Appeal's view that the past arrangements are no longer appropriate. In

this regard, we refer also to paragraphs 8 and 9 of Dr Jeffrey Khoo's 2nd Affidavit filed on 5 April 2012.

15. At the hearing on 11 April 2012, along with the indication to parties that either of the proposals presented before it would not be appropriate, the Court of Appeal also suggested that some measure of "give-and-take" would be necessary in order that a 'middle ground' may be arrived at. However, it is clear that LBPC's latest proposal evinces no such attitude of compromise. Worse still, it seeks to tie the hands of the High Court Judge to whom the matter is to be referred such that the said 'middle ground' would not be an option open to the Judge.

16. At paragraph 11 of LBPC's proposed TOR, it is asserted as follows:-

"... in respect of No 10 Gilstead Road [i.e. Buelah House], only 16% of the funds for acquisition and 9.8% at best of the total aggregate funds for acquisition and redevelopment thereof are impressed with the Charitable Purpose Trust."

17. This assertion is made purportedly in support of LBPC's claim that its proposal is "fair and generous". Leaving to one side the question whether the proposal is truly "fair and generous", it is clear that LBPC's assertion is (i) contrary to the Court of Appeal's findings (as contained in its Judgment dated 26 April 2011) and (ii) contradicted by LBPC's admissions during the trial of this matter before the High Court. In this regard, we refer to the matters discussed at paragraphs 11 to 16 of Dr Jeffrey Khoo's 2nd Affidavit filed on 5 April 2012.

18. At the hearing on 11 April 2012, the Court of Appeal agreed with our submission that it would be improper for LBPC to seek to re-open such evidential issues at this stage of the proceedings. It is therefore troubling that LBPC has nevertheless seen it fit to persist in making the said assertion.

19. Overall, one is left with little doubt that LBPC has completely failed to pay due regard to the views of the Court of Appeal. This further supports our submission that LBPC's proposed TOR should not be adopted.

Other relevant observations about LBPC's proposed TOR

20. Certain other matters contained in LBPC's proposal also merit discussion.

21. LBPC's latest proposal seeks to claim against FEBC for past maintenance costs. In this regard, we refer to paragraphs 5(b)(i) and 5(b)(ii) of LBPC's proposed TOR. This claim by LBPC is clearly outside the scope of the issues which are pending resolution in these proceedings. It goes without saying that LBPC has no basis to make any such claim, much less under the guise of its proposed TOR. LBPC did not pursue any such claim at trial or on appeal. This is the first time LBPC is raising this issue in these proceedings. LBPC also did not raise any such issue when it made its earlier proposal at the hearing on 11 April 2012.

22. Most importantly, paragraph 111 of the Court of Appeal's Judgment dated 26 April 2011 contemplates the adoption of new arrangements to govern matters moving forward (not matters of the past).

23. At paragraph 7 of LBPC's proposed TOR, it is stated that the "*Court of Appeal Judgement acknowledged and referred to the 1970 Agreement as the primary reference for parties to draw up a more comprehensive new agreement*". In as far as this is an attempt by LBPC to rely on the '1970 Agreement' in support of the terms of its proposal, it is submitted that LBPC's assertion is misconceived. A careful reading of paragraph 111 of the Court of Appeal's Judgment dated 26 April 2011 will show that it was never intended that the '1970 Agreement' should be the "*primary reference*" for parties to draw up a more comprehensive new agreement. Paragraph 111 of the Court of Appeal's Judgment states (in material part) as follows:-

"In order to avoid further controversies, the parties may consider it necessary to draw up a more detailed arrangement than that set out in the 1970 Agreement, as to how the Premises are to be maintained and used by the parties."

If anything, this passage reinforces the point that the '1970 Agreement' is, given the present circumstances, not adequate to properly govern the respective rights of FEBC and LBPC vis-à-vis the Premises.

24. Finally, at paragraph 9 of LBPC's TOR, it is stated as follows:-

"... Jeffrey Khoo in paragraph 55(c) of his Affidavit even states that Parties are at present cordial towards each other, which goes to show that the past and present needs of [FEBC] have been well catered for."

This is *non sequitur*. The current *status quo* subjects FEBC to severe space constraints. This is particularly because FEBC continues to be excluded from **any and all** use of Beulah House. In truth, it is to FEBC's credit that, in spite of this, there has been a measure of cordiality between parties. It is therefore completely inappropriate, if not mischievous, that LBPC should seek to turn this on its head to suggest that FEBC is comfortable with the current state of affairs.

25. In the light of the foregoing, it is clear that LBPC is intent on distorting the facts in a bid to subject FEBC to unfair prejudice. At the hearing on 11 April 2012, it was submitted that LBPC's unwillingness to treat FEBC with an even hand underlies the basis for FEBC's insistence that it should be allowed autonomy of those parts of the Premises allotted for its use and occupation. It is respectfully submitted that LBPC's approach with regard to its proposed TOR reinforces the point and the need to ensure that FEBC's rights vis-à-vis the Premises are properly protected.

Concluding remarks

26. FEBC is anxious to ensure that any arrangements to be adopted with regard to the use and occupation of the Premises are such that they will properly protect FEBC's rights vis-à-vis the Premises. In this regard, it is respectfully submitted that it is imperative that FEBC's rights must not in any way be unfairly subordinated to LBPC's.
27. Whilst FEBC is fully cognisant of the Court of Appeal's earlier indications, FEBC believes that, in the light of LBPC's approach with regard to its proposed TOR, the complexion of things now is such that it may not be altogether inappropriate for it to respectfully urge the Court of Appeal to reconsider FEBC's earlier proposal (i.e. that, at LBPC's choice, LBPC shall have exclusive use and occupation of either the Land or Beulah House, with the remaining property reserved for

FEBC's exclusive use and occupation). An arrangement along these lines, which is within the ambit of section 21(1) of the *Charities Act* (Cap 37), would certainly not be unprecedented: see *Varsani v Jesani* [1999] Ch. 219; and *White v Williams* [2010] EWHC 940.

28. If, however, the Court of Appeal remains of the view that FEBC's earlier proposal is inappropriate, FEBC will stand guided. In which case, FEBC respectfully proposes, for the Court of Appeal's consideration, certain amendments to the proposed TOR which it had earlier submitted. These proposed amendments, which are aimed at ensuring FEBC is allowed a necessary measure of autonomy in relation to the areas to be allotted for its use, are set out in red in the document enclosed herewith.
29. We will be happy to supplement the foregoing with any clarification and/or explanation the Court of Appeal may require in relation to matters addressed above.
30. We thank Your Honours for your kind attention to this matter.

Yours faithfully



Allen & Gledhill LLP

enc.

cc. M/s Lee & Lee
Attention: Mr Quek Mong Hua
Ref: 2008002401.QMH.EST

BY EFS

REVISED PROPOSED TERMS OF REFERENCE

Background and purpose

1. Pursuant to the Court of Appeal's decision in *Khoo Jeffrey and others v Life Bible-Presbyterian Church and others* [2011] 3 SLR 500 (the "**CA Judgment**"), it has been determined that the following properties (hereinafter, collectively referred to as the "**Premises**") are impressed with charitable purpose trusts for the joint use and benefit of Life Bible Presbyterian Church ("**LBPC**") and Far Eastern Bible College ("**FEBC**"):-
 - (a) 9 and 9A Gilstead Road (lot no. TS28.1468K with a lot area of 4,851.7 m² held under a 99-year lease expiring on 31 July 2056); and
 - (b) 10 Gilstead Road (lot no. TS28.99468K with a lot area of 2,696.6 m² held as an estate in fee simple).

2. As LBPC and FEBC are both independent charitable institutions, separate and distinct from each other, it is necessary that there should be a clear set of rules to govern the respective rights and obligations of LBPC and FEBC in relation to the use and occupation of the Premises. This is particularly so in the light of the following matters:-
 - (a) FEBC and LBPC have always subscribed to the same system of doctrine based on the Westminster Confession of Faith (together with the Larger and the Shorter Catechisms) and used the King James Version Bible ("**KJV**").
 - (b) In or about 2003, FEBC promoted the Hebrew/Aramaic Old Testament and the Greek New Testament (the "**Apographs**") underlying the KJV as infallible and inerrant transcriptions of God's Word.
 - (c) LBPC rejected this view and maintained that only the original manuscripts of the Bible (the "**Autographs**") (upon which the Apographs were based) were infallible and inerrant. Whilst both LBPC and FEBC accept the verbal and plenary inspiration of the Autographs, LBPC rejects the view that the Apographs underlying the KJV constitute a verbal and plenary preservation of the contents of the Autographs.
 - (d) This difference in doctrinal views eventually led LBPC to take steps to evict and/or improperly exclude FEBC from the Premises, culminating in the legal proceedings which formed the subject matter of the CA Judgment.
 - (e) Given the circumstances, the previous arrangements concerning the respective rights and obligations of LBPC and FEBC vis-à-vis the Premises are no longer appropriate.
 - (f) To prevent a recurrence of such or similar controversy concerning FEBC's rights vis-à-vis the Premises and to ensure that FEBC's rights are properly protected, it is necessary that there should be a new and clear set of rules to govern the respective rights and obligations of LBPC and FEBC in relation to the use and occupation of the Premises.

3. To this end, a High Court Judge (the "**Judge**") shall be appointed to settle a scheme (the "**Scheme**") to govern the respective rights and obligations of LBPC and FEBC in relation to the use and occupation of the Premises.

Remit

4. The overall objective of the Scheme shall be to provide for a set of rules to govern the use and occupation of the Premises so as to:-
 - (a) equitably cater to the present and foreseeable future needs of LBPC and FEBC without unfairly subordinating the interests of one institution to the interests of the other;
 - (b) fairly apportion between LBPC and FEBC the obligations and responsibilities pertaining to the maintenance, upkeep and upgrading of the Premises; and
 - (c) prevent future disputes concerning the use and occupation of the Premises.
5. The terms of the Scheme shall govern relevant matters as of and from the date the Scheme is ordered. Matters predating the date of the Scheme shall fall outside the scope of the Scheme.

Powers

6. Subject to clause 7 below, the Judge may, in respect of the issues set out under clause 4 herein, direct parties to produce such evidence as may be relevant and necessary in such form as the Judge may deem appropriate.
7. Insofar as any fact or matter has been covered by the evidence adduced in Suit 648 of 2008/J (consolidated with Suit No. 278 of 2009/A) ("**Suit 648**"), no party shall be allowed to adduce any evidence that purports to contradict or vary the substance of:-
 - (a) the evidence already adduced in Suit 648; and/or
 - (b) the findings contained in the CA Judgment pertaining to the nature and scope of the charitable purpose trusts over the Premises.
8. Upon the application of any party, and insofar as may be necessary, the Judge may order cross-examination in respect of any evidence that is produced pursuant to clause 6 above.
9. Subject to clauses 6 to 8 above, the Judge may issue any direction or order as may be necessary and appropriate for these terms of reference to be carried out fairly and expeditiously.
10. With regard to clause 4(a) above, the Judge ~~shall~~ **may** apportion the Premises such that:-
 - ~~(a) Certain parts of the Premises are reserved for FEBC's or LBPC's exclusive use and occupation.~~
 - (a) In respect of those parts of Those parts of the Premises which, based on the respective needs of FEBC and LBPC, ought reasonably to be available for use by both FEBC and LBPC, that are not reserved for either institution's exclusive use and occupation in accordance with the preceding sub-clause (a) the said parts of the Premises may be used by either FEBC or LBPC in accordance with such arrangements as the Judge may deem equitable and appropriate.
 - (b) All other parts of the Premises shall be apportioned between FEBC and LBPC for their respective exclusive use and occupation.

11. The Judge may, if it is deemed appropriate, also alter the constitution of the trustees in whose names the properties constituting the Premises are registered in order to facilitate the proper administration of the Scheme and to achieve the objectives referred to in clause 4 above.

Appeal

12. Any part(ies) aggrieved with any part(s) of the Scheme devised by the Judge shall have the right to appeal to the Court of Appeal for those parts of the Scheme to be reviewed. The part(ies) so aggrieved shall, within one (1) calendar month of the date the terms of the Scheme is delivered by the Judge, exercise such right by writing to the Court of Appeal with a statement setting out the grounds upon which it is contended that the relevant part(s) of the Scheme is unacceptable and the variations thereto that are proposed.
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