

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

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 KOSHY
(NRIC No. S2686004J)
4. DR TOW SIANG YEOW
(Malaysian ID No. 271106-01-5089)
5. DR BOAZ BOON
(NRIC No. S2550198E)
6. WEE HIAN KOK
(NRIC No. SO438219F)
7. REV KOA KENG WOO
(Malaysian ID No. 290512-06-5085)
8. REV STEPHEN KHOO
(NRIC No. S0050228F)

...Appellants

And

1. LIFE BIBLE-PRESBYTERIAN CHURCH
(ROS No. 0190/1986)
2. KHOO PENG KIAT
(NRIC No. 51066740B)
3. TAN HOCK JIN GEOFFREY
(NRIC No. S0347184E)
4. LOO LAM HUA
(NRIC No. S1410329E)
5. LIM TECK CHYE
(NRIC No. S0273345E)
6. TAY BIN THONG
(NRIC No. S0143884J)

...Respondents

In the Matter of Suit No. 648 of 2008/J

Between

LIFE BIBLE-PRESBYTERIAN CHURCH
(ROS No. 0190/1986)

...Plaintiff

And

1. DR JEFFREY KHOO
(NRIC No. S1647835J)
2. DR QUEK SUAN YEW
(NRIC No. S1315479A)
3. DR PRABHUDAS KOSHY
(NRIC No. S2686004J)
4. DR TOW SIANG YEOW
(Malaysian ID No. 271106-01-5089)
5. DR TIMOTHY TOW SIANG HUI
(NRIC No. S1073136D)
6. DR BOAZ BOON
(NRIC No. S2550198E)
7. WEE HIAN KOK
(NRIC No. SO438219F)
8. REV KOA KENG WOO
(Malaysian ID No. 290512-06-5085)
9. REV STEPHEN KHOO
(NRIC No. S0050228F)

...Defendants

Consolidated with Suit No. 278 of 2009/A

Between

1. KHOO ENG TECK JEFFREY
(NRIC No. S1647835J)
2. QUEK SUAN YEW
(NRIC No. S1315479A)
3. BOON YEAN LEONG (BOAZ BOON)
(NRIC No. S2550198E)

...Plaintiffs

And

1. LIFE BIBLE-PRESBYTERIAN CHURCH
(Registration 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 TECK CHYE
(NRIC No. S0273345E)

6. TOW SIANG HUI
(NRIC No. S1073136D)
7. TAY BIN THONG
(NRIC No. S0143884J)

...Defendants

(Consolidated by Order of Court dated 27 March 2009)

RESPONSE TO APPELLANTS'
PROPOSED TERMS OF REFERENCE

Dated this 25th day of May 2012

MR ANG CHENG HOCK, S.C.
MR THAM WEI CHERN
MR RAMESH KUMAR

MR QUEK MONG HUA
MR NICHOLAS POA

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SOLICITORS FOR THE APPELLANTS

SOLICITORS FOR THE 1ST, 2ND, 4TH, 5TH
AND 6TH RESPONDENTS

RESPONSE TO APPELLANTS'
PROPOSED TERMS OF REFERENCE

A. Introduction

1. As directed by this Honourable Court, Parties exchanged their respective proposed Terms of Reference (“TOR”) on 11 May 2012.

2. The Respondents maintain that their proposed TOR is in compliance with paragraph 111 of the Court of Appeal Judgment dated 26 April 2011 and is also in line with the nature, principles and practice of the Charitable Purpose Trust. The Respondents have set out the reasons why this is so in their proposed TOR.

3. On the other hand, the Appellants’ rationale and basis of their proposed TOR is evidently an attempt at altering the Charitable Purpose Trust and is based on a distorted reading of the effect of the Court of Appeal Judgment. To that extent, and in so far as the Appellants’ proposed TOR is premised on the need to alter the nature, principles and practice of the Charitable Purpose Trust and also to totally disregard important finding of facts by the trial judge that have not been reversed on appeal, the Respondents cannot agree with the Appellants’ proposed TOR.

B. The Court of Appeal’s Decision Does Not Alter The Nature of The Trust

4. The Appellants have alleged that the Respondents have sought to evict FEBC. This is totally untrue. The Respondents had never made FEBC a party to the proceedings and had commenced the action only against the 8 Appellants. The Respondents contended that the entity created by the 8 Appellants was a different college from FEBC. This was accepted by the trial

judge but was subsequently overturned by the Court of Appeal. It is submitted the Court of Appeal did not and could not have by its Decision intended to alter the substance and nature of the Charitable Purpose Trust.

5. More poignantly, the Appellants are now trying to assert rights that FEBC never had. These include the assertion of equal or equivalent status and rights between the Appellants and the Church with regard to the Properties. In so doing, they have even sought to totally disregard the 1970 Agreement which they themselves relied on throughout the proceedings as the very basis for the Charitable Propose Trust.

6. Furthermore, the Respondents have already cited many FEBC's well documented admission at all times that the Respondents are the owners of the Properties and that FEBC had totally depended on the Church for the provision of the amenities and other support.

7. The Court of Appeal in its Grounds of Decision also advised Parties to work out an arrangement more detailed than the 1970 Agreement for the continued sharing of the use of the Property.

8. The Appellants have no basis to dispute or disregard the Respondents' account of how the respective properties were acquired and the buildings developed, because these were findings of fact by the Trial Judge which were not reversed by the Court of Appeal. Yet they seek to invite this Honorable Court to disregard those facts to suit their own agenda. By doing so, they

are effectively asking this Honourable Court to rewrite and redefine the terms and nature of the Charitable Purpose Trust.

9. The Court of Appeal has directed that a more comprehensive agreement than the 1970 needs to be drawn up to regulate their usage of the Premises and the Respondents have complied with that. In this respect, the Respondents submit that the previous arrangements are highly relevant for the following basis:

- a. The previous arrangements reflect the nature of the Charitable Purpose Trust and how it was given effect in reality. This has worked effectively even after the dispute had arisen in 2008 and Parties had agreed to maintain the *status quo* till to-date;
- b. The previous arrangements are very helpful indicators of the level of usage and need each Party had and forms a reasonable basis for the anticipated future needs.
- c. To ignore the previous arrangements or to say they are no longer appropriate is to say that the Charitable Purpose Trust is no longer operable and require it to be dissolved.

10. It must also be highlighted that whilst the Respondents are resolved to abide by the decision of the Court of Appeal and are fully prepared to comply with the form and spirit of shared usage as provided under the Charitable Purpose Trust, the Appellants have repeatedly insisted that because of the doctrinal differences between them and the Church, it is no longer possible to have shared use as under the Charitable Purpose Trust.

C. The Appellant's proposal that the Judge be allowed to alter the constitution of the trustees is without basis and should be rejected

11. The Appellants have in Clause 11 of their Proposed Terms of Reference suggested that "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."

12. There is no basis for such a suggestion as it is indisputable that the Respondents have always held the Premises in the names of trustees appointed solely by the Respondents and have always been acknowledged as the owners of the Premises

13. Furthermore, it is also indisputable that even the 1970 Agreement which the Appellants have relied on heavily in establishing their case states that the Church is the "*sole steward*" for the "*College Property*" and that the "*apportionment of the premises for the proper functioning of the College shall be made with due consideration to the Church and its related bodies.*"

14. In fact, it was also commonly accepted at all material times prior to the legal proceedings, including not least by the College who had on many occasions prior to 2008 openly acknowledged that the Church was the "*legal owner*" and that the College did "*not own an inch*" of the Premises.

D. The Respondents' further and alternative proposal for the Terms of Reference

15. The Appellants have persisted in taking the position that they find it no longer possible to continue with shared usage of the Premises with the Respondents under the Charitable Purpose Trust.

16. In the circumstances, the Respondents urge this Honourable Court to add as a further and alternative term of reference that if indeed the Appellants persist in their stance that they find it unacceptable to continue shared use and occupation of the Premises as provided under the Charitable Purpose Trust, the Trial Judge be empowered to declare that the said Charitable Purpose Trust on the Premises be dissolved on the basis that the original purposes, in whole or in part, have since they were laid down ceased to provide a suitable and effective method of using the property available by virtue of the gift, having due regard to the spirit of the gift.

17. In which event, the Judge be empowered to declare the Charitable Purpose Trust dissolved and to make consequential orders on the following terms:-

- a. The value of the Premises be assessed on the basis of its current approved use of Church & College;
- b. The respective entitlement of LBPC and FEBC be determined as the Court deems fit, taking into account the current usage and reasonable future needs of the respective

Parties and that the Judge be permitted to take into account the findings of facts about the fund raising at the trial and the necessary implications thereon, which were not reversed on appeal;

- c. LBPC being the owner of the land at 9 & 9A Gilstead Road and also the principal contributor and user of the Premises, be given an option to be exercised within three months of the Court's order, to pay to FEBC the value of their entitlement as determined by the Trial Judge in exchange for FEBC to vacate the Premises and that the completion of the transaction be within a reasonable time frame to be decided by the Trial Judge.

18. We humbly submit the above as our response to the Appellants' Proposed Terms of Reference and will be happy to clarify and/or explain further as the Court of Appeal may require.

Dated this 25th day of May 2012

LEE & LEE

Quek Mong Hua/ Nicholas Poa

Messrs Lee & Lee

Solicitors for the Respondents