

CITATION: Jung v. Ye, 2022 ONSC 6296
COURT FILE NO.: CV-22-678457
DATE: 20221107

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: King Yong Jung, Kam-Bor Chung, Kam-Shing Chung, and Kai-Cheong Leung,
Applicants

AND:

Guo Liang Ye, Cheuk Man Yu also known as Tony Cheuk Man Yu, Un-Tat Wong,
Ada Mee-Lai Pak, Hung Zhou, Dart Coon Club of Toronto, 2372908 Ontario Inc.,
and The Chinese Freemasons of Toronto, Respondents

BEFORE: W.D. Black J.

COUNSEL: *Christopher Goldson*, for the Applicants

Richard Worsfold, for the Respondents

HEARD: October 4, 2022

ENDORSEMENT

Overview

[1] This application relates to two organizations: the Chinese Freemasons of Toronto (“CFT”), and the Dart Coon Club of Toronto (“DCT”), (collectively the “Clubs”).

[2] The Clubs are not-for-profit voluntary organizations, established to promote traditional Chinese culture by maintaining a social hub for the Chinese community in Toronto and supporting various cultural and charitable activities.

[3] It appears that at the heart of this proceeding is a power struggle between factions vying for control of the Clubs.

[4] The incident which triggered the application as discussed below, is a relatively modest and arguably innocuous disagreement over a \$20,000 expenditure to replace windows and doors at the Clubs’ Toronto premises in the summer of 2021.

[5] As discussed below, however, that modest dispute has become a sprawling hydra-headed beast, encompassing many complaints and demands, and with the potential to occupy the Court’s time and draw on both sides’ financial resources on an ongoing basis.

[6] I observe at the outset that the Clubs’ funds are undoubtedly better spent on their cultural and charitable endeavors, than on waging war over executive positions in one organization or the other and control of the Clubs.

The Clubs

[7] As noted, the Clubs are not-for-profit corporations. The CFT is described as a “subordinate entity” of the Chinese Freemasons National Headquarters of Canada (the “Canada Freemasons”), governed by the constating documents of that organization. CFT has about 100 members.

[8] The DCT is said to be a “subordinate entity” to the Dart Coon Club Headquarters of Canada (the “Canada DC”), and governed by its constating documents and, for some purposes by the constating documents of the Canada Freemasons. The DCT seems to play an adjunctive support role to the CFT – the Clubs are said to support one another - and is said to have about 30 members. In order to be a member of DCT, one first has to be a member of CFT.

[9] The CFT is governed by an executive committee of 11 members, elected for three-year terms (for a maximum of two terms) which meets every two months. All CFT members are allowed to attend the CFT executive committee meetings. As at the time of the events at issue, the last election for the CFT executive committee had been in January of 2020.

[10] The DCT has its own executive committee whose members are not subject to term limits.

[11] The other committee that is relevant to this matter is the Property Management Committee. This is a five-member committee including members from both the CFT executive committee, and the DCT executive committee and is responsible for management and maintenance of the Clubs’ premises on Dundas Street West in Toronto.

The Club Premises

[12] In that regard, the Clubs occupy the premises at 436 and 438 Dundas Street West. The respondent 2372908 Ontario Inc. (“237”), described as a holding company for the Clubs, is the registered owner of 438 Dundas West, and DCT owns 436 Dundas West (collectively the “Club Premises”).

The Repair of Windows and Doors

[13] The immediate events giving rise to this application commenced in the spring of 2021.

[14] During the pandemic, the activities of the Clubs were considerably reduced and the Clubs’ executive committees decided to take the opportunity to undertake necessary repairs to the Club Premises.

[15] In particular, the doors and windows of the Club Premises were old and damaged and needed to be replaced, and so the executive committees obtained quotes to replace them.

[16] On or about April 3, 2021, the expense proposals for the replacement of windows and doors were submitted to the Property Management Committee and were approved. Specifically, a company called Sunny Windows & Doors Corp. (“Sunny Windows”), which is said to have a good reputation in the Chinese community in Toronto, was selected to do the work for a total price of \$24,295.00.

Alleged Mismanagement and Corruption

[17] On October 1, 2021, the applicant, Mr. Jung, sent a letter to the head of the Canada Freemasons, Mr. Tang, alleging that the renovations to the Club Premises (i.e., the replacement of the windows and doors), had not been properly authorized and at the same time, alleging mismanagement and election fraud relative to the most recent CFT executive elections. The letter unilaterally declared that the CFT Chairperson would be investigated.

The November 17, 2021 Attempted “Coup”

[18] Then on November 17, 2021, without prior warning, Mr. Tang, Mr. Jung, and about 13 other individuals arrived at the Club Premises in the evening, after business hours and demanded to see all records held by the Clubs. This group announced that it was on the scene to conduct a full investigation into allegations of corruption.

[19] As the respondents put it in their factum, “perhaps unsurprisingly, they were told that the records could not be immediately produced for inspection”.

[20] Having been advised that the group’s demands would not immediately be fulfilled, Mr. Tang proclaimed (without apparent authority), that the Chairman and two other members of the executive committees were “immediately suspended”. He also announced that Mr. Jung and his supporters were to take over the Clubs and demanded keys to the Club Premises.

[21] When those on site at the Club Premises declined to turn over the keys, Mr. Tang, Mr. Jung and their supporters in attendance changed the locks to the doors of the Club Premises, apparently attempting to prevent anyone from entering.

[22] Toronto police were then called to the scene and, after making inquiries, the police directed Mr. Tang, Mr. Jung, and their supporters to leave the Club Premises. They initially resisted, arguing that the Club Premises would be “stolen”, but ultimately at about 11 p.m. left the building. In total, the events and standoff that evening lasted about four hours.

Mr. Tang’s Post-Incident “Notices”

[23] In the following days, Mr. Tang released a series of “notices” denouncing the individual respondents and purporting to confirm their suspensions. The notices also contained wide-ranging allegations of impropriety and claimed that the respondents, or one or more of them, had “personally insulted” Mr. Tang.

Response by the Executive Committee and Formal Investigation

[24] On November 22, 2021, five days after the events at the Club Premises, the executive committees of CFT and DCT met to discuss the events and the notices issued by Mr. Tang in their aftermath. The executive committees voted unanimously to revoke the membership benefits of all those involved in what the respondents describe as the “attempted coup”, to recommend permanent removal of their memberships and to write a letter to the Canada Freemasons and the Canada DC to complain about the actions of Mr. Tang.

[25] In the result, the Chair of Canada DC conducted a formal review of the events and the actions of Mr. Tang, Mr. Jung and their supporters, and concluded:

- (a) That the purported unilateral suspensions proclaimed by Mr. Tang against the CFT Chairperson and other members of the executive committees were improper, inconsistent with the Canada Freemasons' charter, and invalid;
- (b) That the chairperson of CFT was restored to her position;
- (c) That the steps taken by the executive committees and the Property Management Committee to replace the windows and doors at the Club Premises were properly undertaken, and the expenditures properly approved, and that there was no evidence of "corruption".

December 2 and 11, 2021 Notices to Members

[26] On December 2 and 11, 2021, the executive committees sent notices to members describing these findings and announcing the revocation of membership benefits and proposed revocation of membership for those involved in the "attempt to overthrow" the CFT.

[27] Some months later, in June of 2022, Mr. Tang was also suspended by the Canada Freemasons and the Canada DC for his role in the November 17, 2021 events.

Mr. Tang's Efforts Not to Relinquish "Power"

[28] The evidence shows that, after his suspension from the CFT and the Canada Freemasons, Mr. Tang continued to hold himself out as the Chairman of the Canada Freemasons, continued to issue "notices" on Canada Freemasons letterhead and using a seal he himself had created to replicate the organization's seal, and purported to issue a suspension of the Canada DC Chair who had conducted the investigation described above.

[29] Mr. Tang even went so far as to organize an unauthorized rival convention in an attempt to draw members away from a real Canada Freemasons convention in Calgary.

Observations

[30] Pausing here and stepping back, and remembering that the Clubs and their members are organized to promote and support Chinese cultural and charitable events and activities, I find remarkable the extent to which allegedly grown adults are prepared to engage in unrestrained and unseemly behaviour with a view to securing "power" and control of community Clubs.

[31] While I cannot pretend to understand the deep-seated internecine motives underlying the behaviour of those responsible for "storming the headquarters" on November 17, 2021, I cannot help but observe that it might have been preferable to raise the issues of concern at a properly convened meeting at which issues, even difficult issues raising alleged concerns about proper management and deployment of Club funds, could have been aired, discussed, and voted upon.

Expanding Scope of Disputes

[32] By instead opting to lay siege to the Club Premises, the applicants, and Mr. Tang (who is not a party to the application), have set in motion an ever-expanding set of proceedings that occupy and left unchecked, will continue to occupy the time and resources of numerous individuals on both sides of the divide, and the time and resources of the Court.

[33] To that end, the application record, reply application record and supplementary application record, comprise hundreds of pages of material. There are corresponding responding records for each such application record and so the overall record now reaches into thousands of pages. None of the material on either side is hyperlinked.

[34] Nor are the allegations and the relief sought any longer confined to the events of November 17, 2021.

[35] The notice of application seeks:

- (a) Production of all financial records, administrative and business records, and data of the Clubs for the past eight years;
- (b) An interlocutory injunction to prevent the respondents from using the Clubs' funds to defend the application;
- (c) An interlocutory injunction to prevent the individual respondents from using their authority to carry out any business for the Clubs or to dispose of any assets of the Clubs, pending a hearing;
- (d) A declaration that the December 2, 2021 notice is null and void;
- (e) A declaration that the December 11, 2021 notice is null and void;
- (f) Further injunctive relief preventing the respondents, or anyone on their behalves, to deal with the Clubs' assets in any way;
- (g) Leave to issue and register a Certificate of Pending Litigation; and,
- (h) A tracing Order.

[36] The evidentiary and/or statutory or other legal basis for various of these items is far from clear in the voluminous record.

What Was Before the Court

[37] In addition, in his opening remarks in response to my request to explain what it was that the applicant was seeking before me, applicants' counsel listed various procedural Orders and directions that the applicants seek, including a request for a (still voluminous) subset of the vast array of documents sought in the application, and a deadline for delivery of same.

[38] I had asked for the proposed lineup in the hearing before me inasmuch as I understood that the hearing before me had been booked for the hearing of the full-blown application, whereas

many of the specific items of relief sought before me were phrased as interim and interlocutory, expressly being asked for “pending further Order of the Court,” or, in the case of the injunction to prevent the respondents from exercising their authority to carry out any business of the Clubs, “pending hearing of this application”.

[39] Counsel’s clarification suggested that the applicants intended to use the appointment for a motion seeking interim relief. Counsel for the respondents on the other hand, confirmed that he understood the attendance to be earmarked for a hearing of the application (consistent with Akbarali J.’s CPC Order of April 6, 2022).

[40] Separate and apart from the applicants’ intentions for the hearing, I also observed at the outset that in my view, the proceeding did not lend itself to being dealt with as an application. There are numerous instances for which, if the matter is to proceed, there are credibility and factual issues to be determined. Given that the parallel defamation claim (about which more below), covers much of the same ground as the application, it would make sense to me in addition, to have that claim and this application tried together (or one after the other).

Parallel Defamation Claim

[41] In addition to the burgeoning relief sought in the application, and as noted above, in response to the notices issued by the executive committees on December 2 and 11, 2021, describing the findings of the investigation by the Canada DC chair and the revocation of member benefits of those involved in the failed coup on November 17, 2021, a set of plaintiffs including but not limited to the applicants, has issued a 26-page, 65-paragraph defamation claim.

[42] This claim, covering much the same ground as the application, will inevitably and has already, started to spawn procedural offspring of its own.

Discussion of Alleged Mismanagement re Windows and Doors

[43] Stepping back again it appears to me that the only allegation for which any appreciable evidence is available in the record is the allegation of misuse of funds and corruption relative to the replacement of the Club Premises’ doors and windows.

[44] Relative to that allegation, my view is that the materials show a reasonable approach on the part of the respondents, including obtaining quotes for the work, putting the recommended vendor’s quote before the relevant committee (the Property Management Committee), obtaining that committee’s decision, and then arranging for the work to proceed.

Discussion of Balance of Relief Sought

[45] If that aspect of the claim falls away, which in my view it must, what is left is an array of allegations and relief sought which lacks any evidentiary basis. For example, the claims suggesting that the most recent CFT executive elections were “rigged” are not coupled with any evidence to suggest that that was actually the case.

[46] It appears that this allegation was only made in any fulsome form in the midst of the heated circumstances of November 17, 2021, and appears to have been a retrospective attempt to beef up the heft of the allegations put in play, but without proof to suggest any merit to the claim.

[47] Similarly, it does not appear that the applicants have any basis to assert an interest in the property on which the Club Premises are situate, and accordingly, no proper right or interest on which to base a Certificate of Pending Litigation.

[48] The proposed injunctions against expenditures of Club resources of any kind, and the related tracing Order, are similarly without foundation. These claims appear to be on the back of the claims about the expenditure on windows and doors. As set out above, there is nothing to suggest that these expenditures were improper, let alone that there has been or is a risk of improper diversion of Club funds.

Authorities Dealing with Proposed Intervention in Governance and Operations

[49] Even in the context of potentially more meritorious claims than these, Courts have repeatedly warned against being too quick to intervene in the operations of not-for-profit voluntary associations, or even for-profit corporations.

[50] For example, in *Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v. Aga*, 2021 SCC 22, 459 D.L.R. (4th) 425, Rowe J., writing for a unanimous Supreme Court of Canada, said, at para. 49:

In sum, courts can only intervene in the affairs of a voluntary association to vindicate a legal right, such as a right in property or contract. Membership in a voluntary association is not automatically contractual. Even a written constitution does not suffice. Membership is contractual only where the conditions for contract formation are met, including an objective intention to create legal relations. Such an intention is more likely to exist where property or employment are at stake. It is less likely to exist in religious contexts, where individuals may intend for their mutual obligations to be spiritually but not legally binding. A voluntary association will be constituted by a web of contracts among members only where the conditions for contract formation are met.

[51] Justice Rowe went on to note that even voluntary associations will exercise legal rights, but carefully drew a distinction between the voluntary association's exercise of legal rights and the putative right claimed by an individual member. He said, at para. 31:

Of course, many voluntary associations will exercise some legal rights, for example, owning property or contracting for services. The question to be answered in a given case is not whether the voluntary association exercises legal rights in general, but whether the particular relief sought by the plaintiff is a vindication of a legal right. If not, then there is simply no cause of action and no basis for relief.

[52] The respondents argue, that while the applicants have certain rights under statute (there is a debate as to whether the *Corporations Act*, R.S.O. 1990, c. C.38, or the *Not-for-Profit Corporations Act*, 2010, S.O. 2010, c. 15, applies to the issues at hand but that determination has

no bearing on these specific observations), the sweeping array of rights and remedies the applicants claim go well beyond any legitimate statutory right they could assert.

[53] The potential scope of the applicants' claims, and the willingness of the Court to intercede on their behalf, is further attenuated by case law in both not-for-profit and for-profit contexts, encouraging latitude for organizational decision-making.

[54] In *CW Shareholdings Inc. v. WIC Western International Communications Ltd.* (1998), 39 O.R. (3d) 755 (Gen. Div.), Blair J., promulgating the "Business Judgment Rule", at para. 57, remonstrated that business decisions made "honestly, prudently, in good faith, and on reasonable grounds" shall not be subject to microscopic examination by the courts, in a way that might usurp a corporate governing body's legitimate function.

[55] To similar effect, the Court of Appeal for Ontario noted, in *Nanef v. Con-Crete Holdings Ltd.* (1995), 23 O.R. (3d) 481 (C.A.), at para. 32, that:

The court should not interfere with the affairs of a corporation lightly. I think that where relief is justified to correct an oppressive type of situation, the surgery should be done with a scalpel, and not a battle axe... .

[56] In *Lee v. Lee's Benevolent Assn. of Ontario*, 2004 CarswellOnt 8790 (S.C.), at para. 12, Nordheimer J. suggested that these concerns to refrain from too-ready intervention are all the more pronounced in a not-for-profit environment. He wrote:

Non-profit organizations such as the Association should not be required to adhere rigorously to all of the technical requirements of corporate procedure for their meetings as long as the basic process is fair. Nor should the court be too quick to grant relief in such circumstances that may only serve to encourage a disgruntled member of such an organization to seek such relief. Absent some demonstrated evidence that any irregularities went to the heart of the electoral process or lead to a result which does not reflect the wishes of the majority, the court should be loathe to interfere in the internal workings of such groups.

Applying Case Law to Facts at Hand

[57] The respondents, in summarizing their position in the second and third last paragraphs of their factum, say:

116. The Application is based on suspicion, speculation and abusive conduct by the Applicants.

117. The Applicants seek remedies to which they have no legal right. They claim to be oppressed, but then propose remedies that make them the oppressors. This Honourable Court's valuable time and scarce resources should not be used for this purpose.

[58] I agree. In light of my findings, I dismiss the application.

Conclusions

[59] I add that in my view, the energies and resources of all of the parties would be better used for the cultural and charitable activities at the heart of the Clubs (and of which some parties at least seem to have lost sight in favour of pursuing personal agendas).

[60] This result does not, of course, extinguish the parallel defamation claim. I encourage the plaintiffs in that action to consider the result here and think long and hard about whether or not to spend more time and money on that claim.

Further Observations

[61] The respondents are not entirely blameless here. They too have fought tooth and nail and not erred on the side of economy of materials.

[62] That said, they were obliged to defend themselves and the draconian relief sought by the applicants could, if permitted, have had the effect of grinding the Clubs to a halt.

Costs

[63] As such, the respondents are entitled to their costs of the application.

[64] It does not appear that either side filed a costs outline as required by the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

[65] As such, I will allow 20 days from the date of this decision for the parties to discuss and hopefully agree as to the appropriate amount of costs for the applicants to pay. In that discussion, my hope is that the parties will be measured, and will reach an agreement that can perhaps serve as the first step in the parties, or some of them, coming together again to continue the good work of the Clubs.

[66] If no such agreement is reached, then within a further 10 days the respondents may submit a costs outline and written submissions, not to exceed four pages in length.

[67] Within a further 10 days, the applicants may file responding submissions, also not to exceed four pages in length. The applicants may also file their costs outline for comparison if they choose to do so.



W.D. Black J.

Date: November 7, 2022