

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



VOVI International Pty Ltd v VОВI Australia Charity Association Incorporated [2024] QSC 38

Supreme Court of Queensland, Henry J, 15 March 2024

An application for a declaration as the trustee of a charitable trust for religious purposes.

Key words: Charitable Trust, Queensland, Trustee, Spiritual Leader, Appointor, Costs

1. Vovi International Pty Ltd (the Company) is a propriety limited company.
2. The Company was the trustee of the VОВI Charitable Trust (the Trust).
3. Si Hang Luong, known as “the Master” (the Master), was recognised in the trust deed as the Spiritual Leader of the VОВI religion.
4. The VОВI religion had as its central objectives achieving closeness to God through the science of meditation and the adoption of Buddhist principles throughout the world.
5. Clause 4 of the trust deed provides:

The trust fund must be used for the following purposes.

 - (a) Advancing and promoting the VОВI religion in Australia.
 - (b) Providing and building places of worship and meditation for members of VОВI religion.
 - (c) Providing and building places of congregation for members of the VОВI religion.
 - (d) Providing and building places where members of the VОВI religion may meet with their Spiritual Leader.
6. The power of removal and appointment of trustees under the deed is held by the “appointor” or, if there is no such person, the trustee. Under the trust deed, the appointor was the Master or “in the event of his death the Spiritual Leader for the time being of the VОВI religion”.
7. The Master died in October 2009.
8. Ms Khuu Thi Pham claimed to be the Spiritual Leader for the time being of the VОВI religion and purported to remove the Company as trustee through various deeds.

9. Ms Khuu Thi Pham then purported to appoint VОВI Australia Charity Association Incorporated as trustee of the Trust.
10. The Company requested the Court to declare that it remained the trustee.
11. The VОВI Australia Charity Association Incorporated was self-represented by its secretary.
12. The Court examined the trust deed and decided that the appointor was the Master while he was alive. If the Master was deceased, the trust deed gave such power and responsibility to “the legal personal representatives of the last surviving Appointor”.
13. In the absence of a legal personal representative, the power of removal and appointment of the trustee would fall to the trustee.
14. There was no evidence as to who the legal personal representative of the Master was.
15. Neither the deed nor any aspect of the evidence in the proceeding provided any guidance or recognised means of ascertaining whether anyone, and if so, who, became the Spiritual Leader for the time being of the VОВI religion after the Master’s death.
16. Ms Khuu Thi Pham or others who wanted to displace the Company as trustee sought to represent Ms Khuu Thi Pham as the Spiritual Leader of the VОВI religion by having two purported directors of the Company executing a deed of confirmation of her as appointor and spiritual leader.
17. The Court suggested that ASIC was wrongly informed that five serving directors had ceased to be directors, which resulted in the unauthorised execution of the deed on behalf of the Company.
18. The Court noted that (at [22]):

... whether Ms Khuu Thi Pham became the Spiritual Leader of the VОВI religion is a question of fact to be resolved by the state of the evidence. Merely asserting it as a fact in a deed does not make it so.
19. The Court was presented with no evidence that Ms Khuu Thi Pham was the Spiritual Leader of the VОВI religion.
20. The Court found that Ms Khuu Thi Pham was not the Spiritual Leader of the VОВI religion and was not the appointor in terms of the trust deed.
21. The Court declared the Company was the trustee of the Trust.
22. The Court discussed VОВI Australia Charity Association Incorporated's request to appoint a new trustee, but as appropriate notice had not been given to other interested parties who may have wished to be heard on the issue, the request was denied.
23. Although a charity, VОВI Australia Charity Association Incorporated was still required to pay costs to the Company as the successful party.

COMMENT



Some may notice that the Company was a proprietary limited company, which is not one of the usual legal structures for a charity. Such companies may be registered as charities with the ACNC, which has provided [guidance on the issue](#).

The Court indicated that there was other litigation afoot about this matter, and about property held by the Trust. This may have resulted in the Court's comments about the purported replacement of the Company's directors and advice to ASIC and also the [voluntary revocation of the Company's ACNC registration](#) as a charity.

VIEW THE CASE



This case may be viewed at: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QSC/2024/38.html>

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