

Yu v Ho Poon Leung
2022 NY Slip Op 33433(U)
September 30, 2022
Supreme Court, New York County
Docket Number: Index No. 150919/2022
Judge: Laurence L. Love
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE L. LOVE PART 63M

Justice

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JUSTIN YU, JERRY SHIAO, HO MAU LAM, XUE YUAN
DENG,

Petitioners,

INDEX NO. 150919/2022

MOTION DATE April 25, 2022

MOTION SEQ. NO. 001

- v -

HO POON LEUNG, LIN SING ASSOCIATION, INC. A/K/A
MEI TONG LUAN SHING ASSOCIATION, SU HUAN
GUANG, LUI YI BIN, YAN WEI JI, ZHENG SHI, LI YONG
HE, TONY CHU, LINDA CHAN, LEUNG WAH JU

**DECISION + ORDER ON
MOTION**

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Upon the foregoing documents, it is

The following reads on:

an Order to Show Cause (NYSCEF Doc. No. 22) where Respondents were to show cause to “(1) compel[] the production of the complete, corrects and non – sanitized books and records of Lin Sing, including but not limited to, membership lists and records, minutes of proceedings (General Membership Meetings of Lin Sing and Meetings of Ling Sing’s Senators), and corporate and financial books and records of Ling Sing, which are and have been in the custody, possession and control of Respondent Leung; (2) declar[e] the election of certain directors and/or officers of Lin Sing held on October 6, 2021 null and void, *ab initio*, and set aside; (3) declar[e] that the Respondents do not hold the offices that they claim to hold as a result of the purported October 6, 2021 election; (4) declar[e] any action taken by Respondent as directors and/or

officers of Lin Sing subsequent to their purported election on October 6, 2021 null, void and set aside; (5) order[] a new election of directors and/or officers, including for the office of President, of Lin Sing to be held in conformity with Lin Sing’s Bylaws and the requirements of the [Not-for-Profit Corporation Law]; (6) pending the new elections, all offices of directors and/or officers are declared to be held by the persons rightfully holding such offices prior to October 6, 2021.”

The Order to Show Cause also “ordered that Petitioners, along with the other directors, officers, and committee members of Lin Sing Association, Inc. a/k/a Mei Tong Luan Shing Association (“Lin Sing”) shall be empowered to run Lin Sing in accordance with Lin Sing’s Bylaws and the [Not-for-Profit Corporation Law];” along with:

Respondents’ cross – motion to (1) “dismiss[] this special proceeding with prejudice because maintenance of the proceeding is barred by the doctrine of ‘res judicata’ [CPLR 3211(a)(4); or (2) dismissing the special proceeding with prejudice because the issues at bar are not ripe for adjudication; or (3) dismissing the special proceeding with prejudice as a penalty for defrauding the Court [CPLR 5015(a)(3)]” (see NYSCEF Doc. No. 39).

A Petition was filed on or about February 1, 2021 that sought the above relief stated in the Order to Show Cause, and “declaratory relief requested herein under [Not-for-Profit Corporation Law] § 618]” (see NYSCEF Doc. No. 1 Par. 5). Respondents submitted a Verified Answer (see NYSCEF Doc. No. 37).

A virtual Microsoft Teams appearance was held on April 25, 2022 where both sides were represented.

Per the affidavit of Justin Yu, “one of the four Co – Petitioners” affirms, “Petitioners further seek ... a declaration that the October 6, 2021 meeting, election and ballot violate the

ByLaws of Lin Sing, and are null and void. [T]he Petition sets forth in great detail for this Court, the basis for the relief requested” (see NYSCEF Doc. No. 3 Pars. 4, 8).

Per the Verified Petition,

“Lin Sing’s objectives are, *inter alia*, to ‘liaise for affinity between members, ..., to enhance the welfare of members and to serve the interests of the [Chinese] community.’ On or about May 16, 2020, as a result of a court – ordered election, Mr. Leung was elected as President of Lin Sing. On September 3, 2021, pursuant to 621(b) and (c) of the [Not-for-Profit Corporation Law], Petitioners, ..., tendered a written ‘Demand for inspection and examination of minutes and list or records of members of the Lin Sing Association, Inc. (see NYSCEF Doc. No. 1 Pars. 8, 16, 28

The affirmation of Respondents states, “(a) the claims in the Petition are not ripe for adjudication; (b) relief by special proceeding is barred to the Petitioners by the doctrine of *res judicata*.” Petitioners have glaringly left out several related cases in the [Request for Judicial Intervention], cases in which Petitioners have been a party too, and are aware of. These cases, all filed in New York Supreme Court, are Liu v. Lin Sing, Index # 650803/2020 and Tak Wong v. Lin Sing, Index # 651348/2020. Petitioners only listed on the [Request for Judicial Intervention] the case brought by Lin Sing against them, with Index # 161138/2020 likely because they are using this to collaterally attack the Plaintiff in this case, to likely have said cases against them stopped. The elections conducted on that date complied in every respect with the Association’s By – Laws, as attached here at [NYSCEF Doc. No. 43]. The Petitioners personally appeared at the scheduled election and were afforded a full and fair opportunity to nominate alternative candidates for office. The Petitioners publicly announced at the scheduled meeting that they were ‘abstaining’ at the time Members were asked to vote for officer candidates (see NYSCEF Doc. No. 40 Par. 3, 8 – 10, 17, 46 – 47).

The affidavit from Respondent – Ho Poon Leung affirms, “I am the duly elected President of Lin Sing Association, the election took place on May 16, 2021 pursuant to and in accordance with the two orders of Judge Nock [see NSYCEF Doc. No. 60]. I am the first duly elected President of the Lin Sing Association in over 20 years, as Presidents in the previous 20 years have been appointed [...], not elected, despite bylaws requiring an election. My election took place pursuant to a pending Court Order [Index # 650803/2020] but the scheduled date for the election was delayed until May, 2021 because of the COVID – 19 lockdown and because of the impact of the COVID – 19 pandemic on the Chinese – American community. The election took place on May 16, 2021 pursuant to and in accordance with the Order of Judge Nock. The election took place pursuant to and in accordance with the Lin Sing Bylaws. I was elected President of the Association on that date, by 350 votes” (see NYSCEF Doc. No. 41 Pars. 4,5, 41, 43 – 45).

In opposition to the cross – motion, affidavits have been submitted by named Petitioner – Justin Yu (see NYSCEF Doc. No. 74), Ho Mau Lam (see NYSCEF Doc. No. 85), and Xue Yuan Deng (see NYSCEF Doc. No. 83). Xue Yuan Deng affirms, “I served as President of Lin Sing from 2016 until in or about 2017. My term as President ended early because I was suspected of improprieties and was asked to step down. I knew that I was innocent, but I am a man of honor and agreed to step down for the good of the Association” (see NYSCEF Doc. No. 83 Par. 5).

Affidavits have been submitted from named Respondent – Ho Poon Leung (see NYSCEF Doc. No. 41), Su Huan Guan (see NYSCEF Doc. No. 68), Zheng Shi (see NYSCEF Doc. No. 70), and Yi Bin Liu (see NYSCEF Doc. No. 71), Li Yong He (see NYSCEF Doc. No. 95), Tony Chu (see NYSCEF Doc. No. 96), Yeuh Hwa Chan (see NYSCEF Doc. No. 97).

“[E]lection procedures for not-for-profit corporations are not to be disturbed absent a showing that an election was tainted by fraud or wrongdoing” (see *Davidson v. James*, 172 A.D.2d [1991]).

A review of these affidavits does not show how “an election was tainted by fraud or wrongdoing.”

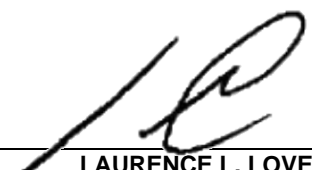
As there does not appear to be any wrongdoing with the court ordered election, this Court will not disturb the election procedures nor circumstances surrounding the Not-for-Profit Corporation Law.

ORDERED that Petitioner’s Order to Show Cause is DENIED in its entirety; and it is further

ORDERED that the Defendants’ cross – motion to dismiss is GRANTED per *res judicata*, and the complaint is dismissed; and it is further

ORDERED that such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).

9/30/2022
DATE


LAURENCE L. LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: