

Tung v China Buddhist Assoc.
2012 NY Slip Op 33698(U)
May 8, 2012
Supreme Court, New York County
Docket Number: 110149/11
Judge: Geoffrey D. Wright
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: GEOFFREY D.S. WRIGHT PART 62
Justice

MING TUNG, WAI CHING CHEN and SHUN YI MON, INDEX NO. 110149/11

Plaintiff/Petitioner MOTION DATE _____

For A Judgment Under Article 78 Of The CPLR
Directing the China Buddhist Association To Conduct
An Annual Membership Meeting

- v -

CHINA BUDDHIST ASSOCIATION, MEW FUNG CHEN, MOTION SEQ. NO. 003
MING YEE and CHIH-CHEN MA, MOTION CAL. NO. _____

Defendant/Respondent(s)

The following papers, numbered 1 to 4 were read on this motion to/for direct the calling of an annual membership meeting

	<u>PAPERS NUMBERED</u>
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1 _____
Answering Affidavits — Exhibits _____	2 _____
Replying Affidavits _____	3 _____
<u>Other</u> _____	4 _____

Cross-Motion: Yes X No

Upon the foregoing papers, it is ordered that this motion/petition by the Petitioner to direct the calling of an annual meeting of members of the China Buddhist Association is granted a/p/o.

Dated: May 8, 2012


GEOFFREY D. WRIGHT
A.J.S.C. J.S.C.

Check one: X FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST

FILED

MAY 31 2012 25

NEW YORK
COUNTY CLERK'S OFFICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
MING TUNG, WAI CHING CHEN and
SHUN YI MON,

Index #110149/11

Plaintiff/Petitioner(s),

Motion Cal. #
Motion Seq. #
DECISION/ORDER

For A Judgment Under Article 78 Of The
CPLR Directing the China Buddhist
Association To Conduct An Annual
Membership Meeting,

-against-

Present:
Hon. Geoffrey Wright
Judge, Supreme Court

CHINA BUDDHIST ASSOCIATION,
MEW FUNG CHEN, MING YEE and
CHIH-CHEN MA,

Defendant/Respondent(s).

-----X

Recitation, as required by CPLR 2219(a), of the papers considered in the review of
this Motion to: compel the holding of a membership meeting

PAPERS	NUMBERED
Notice of Petition/Motion, Affidavits & Exhibits Annexed	1
Order to Show Cause, Affidavits & Exhibits	
Answering Affidavits & Exhibits Annex	
Replying Affidavits & Exhibits Annexed	4
Other (Cross-motion) & Exhibits Annexed	2,3

FILED

MAY 31 2012

NEW YORK
COUNTY CLERK'S OFFICE
Upon the foregoing cited papers, the Decision on this Motion is as follows:

The Petitioners in the above captioned matter are, as set forth in the petition, members of the China Buddhist Association who are affiliated with a temple located on Canal Street in New York County. The Respondents are officials in the Queens County temple of the Association. The Petitioners allege, and the Respondents acknowledge, that seven Presidents have served as leaders of the free world since the last election of officers. The Respondents, during the course of the main argument, and several side arguments, aver that an election of officers was held in May, 2011. Setting aside all other issues, which I deem subordinate to this main issue, if the meeting of May 2011 was properly called, then the petition must be

dismissed as moot. If not, then it must be granted.

Complicating, or easing matters, depending on one angle of approach, is the Respondents' admission that the leaders of the Petitioners have been excommunicated, as evidenced by exhibit the affidavit of Rev. Ming Yee, submitted at my request. This however, does not end the inquiry. Although the leadership of the Petitioners may have been excommunicated, and excommunication may be a strictly religious affair and thus beyond the reach of civil authorities [*BLAUDZIUNAS v. EGAN*, 18 N.Y.3d 275, 961 N.E.2d 1107, 938 N.Y.S.2d 496, 2011 N.Y. Slip Op. 08962, “[R]eligious bodies are to be left free to decide church matters for themselves, uninhibited by State interference,” save for matters that can be resolved through the application of “neutral principles of law” (*First Presbyt. Church of Schenectady v. United Presbyt. Church in U.S. of Am.*, 62 N.Y.2d 110, 116–117, 120, 476 N.Y.S.2d 86, 464 N.E.2d 454 [1984]).”], the calling and holding annual meetings are lay in nature, and the court may take a peek behind the curtain to determine if the rules of the organization have been followed [*BLAUDZIUNAS v. EGAN*, supra “[a]pplication of the neutral principles doctrine requires the court to focus on the language of the deeds, the terms of the local church charter, the State statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of the church property” (*Episcopal Diocese of Rochester v. Harnish*, 11 N.Y.3d 340, 350, 870 N.Y.S.2d 814, 899 N.E.2d 920 [2008] [internal quotation marks and citation omitted]).]

In this case, the meeting of May 2011, was called pursuant to Article Four of the constitution of the China Buddhist Association. That article requires that a notice of the meeting be sent to all members of the Association, and therein lies the rub. There are two groups competing for control of the Association. The Petitioners, based in Manhattan, and the Respondents, based in Queens. Even though the leadership of one contingent may lay claim the authority to excommunicate the others, such authority is not found in the by-laws, at least not in absentia.

Although, as stated above, a civil authority should not become embroiled in matters of faith, it is also a fact that the by-laws make no reference to excommunication, as it only defines membership as “all who are of the Buddhist faith and have been admitted as disciples.” The by-laws contain no mechanism for excommunication. In this case, the Respondents rely on a May 2011 membership meeting for their status as leaders of the temple. However, according to the affidavit of Rev. Ming Yee, the Petitioner’s were all excommunicated by action taken in April 2011, to which they were, on the record before me, not privy. I intuit therefore, that the Petitioners were not given notice of the May 2011 membership meeting, and thus were deprived on their right to attend and be heard. I note further, that no particular lapse of faith to justify the excommunication was given.

I hold, therefore, that the meeting of May 2011, and the business conducted and concluded there, was outside of the rules of the Articles of Incorporation and by-laws. The Respondents are therefore directed to forthwith schedule another general meeting of the membership, Petitioners included, pursuant to the dictates of Article Three and Four of the

by-laws. This order has no effect on the alleged removal of the leadership of the Petitioners, which will await the outcome of the new meeting to be held. To that extent, the petition is granted. As it appears that the Respondents have no real active interest in the Canal Street temple, it is my hope that the two sides will, with the guidance of their faith, find a way to co-exist, at least until the membership meeting is held.

This constitutes the decision and order of the court. All stays issued in accordance with prior orders to show cause are to continue until the holding of the membership meeting that has been directed by this decision.


GEOFFREY D. WRIGHT
AJSC

Dated: May 8, 2012