

# Judgment

## NORTH HOLLAND COURT

Commercial, cantonal and guardianship  
Place of session Alkmaar

Case number: C/15/347928 / HA ZA 24-30

### Judgment in incident of 21 February 2024

In the case of

1. The foundation  
**LINH SON TEMPLE FOUNDATION**,  
Located in Heerhugowaard,
2. **XEM DO**,  
Residing in Heerhugowaard,
3. **FRANK ONNO VISSER**  
residing in Hoorn,  
claimants in the main action,  
claimants in the incident,  
Lawyer M.A. Mak in Alkmaar,

Against

1. **THI KIM LOAN NGUYEN**,  
residing in Purmerend,
2. **THI GNOC SUONG TRUONG**,  
residing in Purmerend,
3. **NGOC HIEN LAM**,  
residing in Purmerend,  
defendants in the main action,  
defendants in the incident,  
lawyer Mr. E. Doornbos in Badhoevedorp.

Claimants will hereinafter be referred to separately as the Foundation, Do and Visser and jointly as the Foundation et al. Defendants will be referred to as Nguyen, Truong, Lam and jointly as Nguyen et al.

#### 1. The proceedings

- 1.1 The course of the proceedings is evidenced by:
  - The summons also containing provisional claims valid during the proceedings (Article 223 Rv) dated December 18, 2023, with exhibits.
  - The statement of defense in the incident, with exhibits.
- 1.2 Finally, judgment was rendered in the incident.

## **2. Facts**

2.1 The purpose of the Foundation is to spread and teach Mahayana Buddhism. The Foundation focuses particularly on the Vietnamese community in the Netherlands. It owns a temple in Oudendijk.

2.2 When the Foundation was established in 2015, Do was appointed head of the temple and chairman of the board. Do is a monk and spiritual leader of four temples worldwide.

2.3 Nguyen is a follower of the temple.

2.4 Lam had been a disciple of Do since 2017. He had been the temple's treasurer since the foundation's inception.

2.5 Truong is Lam's mother.

2.6 In late 2021, a rumor arose that Do had financially disadvantaged the Foundation and that there were major irregularities in the Foundation's financial records. Lam then urged Do to resign as director.

2.7 In 2022, the Board of the Foundation asked Visser to audit (or have audited) the Foundation's finances. The third party hired by Visser found no irregularities.

2.8 Lam in turn had AccountAd investigate the Foundation's finances.

2.9 The Foundation received a new board in August 2022 consisting of (among others) Do and Visser. The new board dismissed Lam as a director.

2.10 By summary judgment dated October 10, 2022, this court ordered Lam, among other things, to allow the Foundation board access to the temple and prohibited him from entering (the grounds of) the temple without permission.

2.11 In proceedings initiated by application before this court, Lam sought, inter alia, annulment of his dismissal. By order dated July 24, 2023, the application was denied. In this order, the court also considered that the AccountAd report did not show financial mismanagement within the Foundation.

## **3. The claim in the main proceedings**

3.1 In summary, the Foundation et al. claim that the court should order Nguyen et al.

I. to prohibit them from.

(i) publicly suggest that Do and/or Visser were sexually abusive, or at least took money from the temple, and

(ii) publicly address Do and Visser in an unnecessarily hurtful manner, including through the use of swear words and disapproving emoticons, under penalty of a fine.

II. that a written rectification be sent to the Foundation and to be posted on their

Facebook page.

- III. each separately to pay € 75,000 in damages to Do and € 10,000 to Visser.
- IV. each separately to pay damages of € 4,000 to the Foundation, from June 1, 2022, until the rectification is posted.
- V. to pay the costs of the proceedings.

#### **4. The dispute in the proceedings**

4.1 The Foundation et al. claims that the District Court by judgment, in so far as possible enforceable notwithstanding any remedy:

- I. prohibits Nguyen et al. each individually from publicly suggesting on Facebook and/or through other media and/or otherwise directly or indirectly (through others) during the proceedings that Do and/or Visser would be sexually abusive and/or have taken money away from the temple, on penalties of a periodic penalty payment.
- II. prohibits Nguyen et al. each individually from making any unnecessarily hurtful remarks on Facebook and/or through other media and/or otherwise directly or indirectly (through others) publicly during the proceedings including but not excluding through the use of swear words and the posting of disapproving emoticons, under penalty of a periodic penalty.
- III. order Nguyen et al. to pay the costs of the proceedings.

4.2 The Foundation et al. bases its claims on the fact that Nguyen et al. has acted unlawfully towards her within the meaning of Section 6:162 sub 2 of the Dutch Civil Code, by posting (inter alia) on Facebook messages in which she falsely accused Do and Visser of sexual abuse, theft and fraud. These accusations violate Nguyen et al.'s legal obligation to refrain from libel and slander. Even if the allegations were well-founded, the manner in which they are made in the circumstances is unnecessarily grievous and therefore unlawful against Do and Visser. The statements about Do and Visser are also unlawful against the Foundation because the public will identify them as board members with the Foundation.

4.3 Nguyen et al. put forward a defense. The Foundation et al. does not have an urgent interest in the claims because the messages to which the Foundation et al. refers are no longer publicly available and these messages are now outdated. Nguyen et al. is entitled to freedom of expression. It is her duty to make known abuses affecting her fellow believers, such as suspected money siphoning and failure to follow rules of conduct. Moreover, Do and Visser have in turn blackballed Nguyen et al. themselves. Nguyen et al. cannot agree with the translations of the Foundation et al. to the posts on Facebook. The messages are all of a different nature, so that in general it cannot be said that they are unlawful. Finally, the claims brought are not specific enough, according to Nguyen et al.

#### **5. The assessment of the proceedings**

5.1 Pursuant to Article 223 of the Code of Civil Procedure (Rv), during a pending action, any party may request that the court grant an interim measure for the duration of the proceedings, provided that it is related to the main proceedings and lends itself to being granted as an interim measure. The

general requirement for admissibility, that the claimant has an interest in its claim, added to the limited duration of interim measure under Article 223 of the Dutch Code of Civil Procedure, leads to the conclusion that the interest in the relief sought must be urgent in the sense that the Foundation et al. cannot be required to wait for the outcome of the main proceedings.

5.2 The interim measure sought in this case is related to the main claim and may be granted for the duration of the main proceedings. The court will therefore assess below whether the interest of the Foundation et al. in granting it is urgent as referred to above. In doing so, the court must weigh the parties' interests against the expected remaining duration of the main action and the litigation sides therein.

*Article 7 Constitution and 10 ECHR versus Article 10 Constitution and 8 ECHR*

5.3 Nguyen et al. relied on the right to freedom of expression. Under Article 7 of the Dutch Constitution (Gw) and Article 10 of the European Convention on Human Rights (ECHR), everyone is entitled to freedom of expression. Opposed to this right in this case is Do's and Visser's right to protection of privacy, including the protection of honor and reputation, enshrined in Article 10 Gw and Article 8 ECHR.

5.4 Granting the claimed prohibitions leads to a limitation of the right to freedom of expression of Nguyen et al. It follows from Article 10 sub 2 ECHR that this right can only be limited if this is provided by law and is necessary in a democratic society, for instance to protect the good name of others. There is a restriction provided by law if the statements made by Nguyen et al. towards Do and Visser are unlawful within the meaning of Section 6:162 of the Dutch Civil Code. To assess whether this is the case, mutual interests must be weighed against each other. In this weighing of interests (among other things) the purpose of the statements, their nature, the extent to which the statements find support in the factual material available at the time, and the seriousness of the expected consequences for Do and Visser play a role.

*Statements*

5.5 In support of its claims, the et al. Foundation referred to.

- Various posts about Do and/or Visser posted on Facebook by Nguyen between June 4, 2022, and September 20, 2023.
- Four videos posted by Lam on Facebook of offensive banners with pictures of Do being set on fire (date unknown).
- Texts and videos related to Do and Visser that Truong posted on September 2023 on Facebook.
- A demonstration held on August 27, 2023, led by Nguyen on the temple grounds, during which a number of people including Lam, displayed banners containing photos of Do with hurtful texts.

In the subpoena the messages were translated. Nguyen et al. did not substantiate which translations would not be correct. The court therefore assumes the accuracy of those translations.

- 5.6 Granting the motion does not require that each of the utterances be unlawful. It must be assessed whether a basis exists to prohibit Nguyen for the duration of the proceedings in the main proceedings to:
- (i) publicly suggest that Do and/or Visser are sexually abusive, and that they took money away from the temple, and
  - (ii) publicly inflict unnecessarily hurtful treatment on Do and Visser, including through the use of abusive emoticons.

The court will discuss these claims separately below.

- (i) *Prohibition suggesting sexual abuse and taking away money*

*Nguyen*

Do

5.7 The Foundation et al. have claimed and substantiated with photographs and videos that on August 27, 2023, Lam and others, led by Nguyen, held a manifestation at which they displayed banners with photographs of Do including the texts “A horny monk,” “A stammer, a robber, a thief,” and “You literally and figuratively fucked up the faith and culture.” The Foundation et al. further argued that on the aforementioned date, Nguyen posted a message on Facebook with a video of the event accompanied by the text, “What do you think of your pictures of your fornication? Are they pretty?”

5.8 Nguyen does not dispute that the manifestation was held under her leadership and that she subsequently posted a message about it on Facebook stating (among other things) “What do you think of your pictures of your fornication?” She invokes the right of freedom of expression and her duty to make known abuses, such as the suspicion of siphoning off money and not following rules of conduct. With the aforementioned post “How about your photos of your fornication?” Nguyen suggests that Do has been guilty of sexual abuse. The text on (among other things) the banner “A stammer, a robber, a thief” suggests that Do is a thief. These are accusations of criminal acts that are sufficiently plausible that they are harmful to Do and therefore to the Foundation, which Do heads. In the court's opinion, Nguyen has not, up to this point, made it plausible that the accusations in question are well-founded. Under these circumstances, the Court is of the preliminary opinion that (in any case) these statements are unlawful.

5.9 The fact that (part of) the publications have been removed in the meantime does not stand in the way of granting the prohibition, because this is precisely intended for the future. Nguyen had (in any case) made frequent statements about Do until shortly before the summons. In view of the seriousness and nature of some of the statements, the Court is of the opinion that the Foundation et al. cannot be required to wait for the outcome of the proceedings in the main case. After all, it will be some time before the outcome of these main proceedings is known, since only the writ of summons has been issued. However, the Court sees reason to grant the claimed injunction to a somewhat limited extent.

Visser

5.10 The subpoena shows that on January 23, 2023, Nguyen posted a video on Facebook in which she addresses Visser and says to him, among other things, “Do slept in mother's bedroom (...) on my bed. That's actually not allowed according to our culture, remember, a monk stays with a nun in the bedroom during the day. (...) But anyway, you via Instagram, you looked me up (...) “Are you lying there nicely?” Of course, I was really lying there with nice weather. Definitely nice! While you were inside...” and: “Probably I already gave my word and of that € 63,000 euros, that over to private account ... You work at the bank huh, you know what it is for your career. “The court finds cause in this message to grant the injunction sought with respect to Visser on the same grounds and in the same manner as described above (under 5.8 and 5.9)

*Truong and Lam*

5.11 In the opinion of the Court, the Foundation et al. has not sufficiently (concretely) stated that Truong or Lam published unlawful statements concerning sexual abuse or theft by Do and/or Visser. There is therefore no basis for granting the prohibition mentioned under (i).

*(ii) Prohibition of unduly hurtful treatment.*

5.12 The Court is of the opinion that this prohibition is insufficiently determined and too broadly formulated to be granted. The mere fact that a statement may be regarded as unnecessarily hurtful does not automatically mean that this statement is also unlawful and thus justifies a restriction of the right to freedom of expression.

*Conclusion*

5.13 The foregoing leads to the conclusion that the District Court will grant the claims against Nguyen.

5.14 The Court sees reason to grant the penalty claimed by the Foundation et al. to a limited amount of € 1,000 per day, with a maximum of € 50,000.

*Legal costs*

5.15 Nguyen will be ordered to pay the costs of the proceedings as the predominantly unsuccessful party. The costs are estimated at € 614 for the Foundation et al. No separate defense has been put forward for the defendants Truong and Lam. The Court will therefore compensate the costs of the proceedings in this incident between Foundation et al. and Truong and Lam, so that each of the parties will bear their own costs.

**6. The decision**

The Court

6.1 prohibits Nguyen by way of preliminary relief from suggesting, during the course of the proceedings in the main proceedings, on Facebook and/or other media and/or otherwise publicly during the proceedings, that Do and/or Visser would be sexually abusive and/or have taken money away from the Temple on pain of a penalty of €1,000 for each violation, with a maximum of €50,000,

6.2 orders Nguyen to pay the costs of the proceedings, assessed on the side of the Foundation et al. to date at € 6145,

6.3 declares this judgment provisionally enforceable notwithstanding any remedy,

6.4 compensates the costs of the proceedings between Foundation et al., Truong and Lam, so that each of the parties shall bear their own costs.

**in the main proceedings**

6.5 determines that the case will return to the court calendar of March 3, 2024, for statement of defense.

This judgment was rendered by Mr. L.J. Saarloos and publicly pronounced on February 21, 2024.

