

Judgment

NORTH HOLLAND COURT

Civil law

Court place Alkmaar

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

Judgment of September 4, 2024

In the case of

1. The foundation
LINH SON TEMPLE FOUNDATION,
established in Heerhugowaard,
2. **XEM DO**,
residing in Canada,
3. **FRANK ONNO VISSER**
residing in Hoorn,
plaintiffs,
lawyer mr. M.A. Mak in Alkmaar,

against

1. **THI KIM LOAN NGUYEN**,
2. **THI GNOC SUONG TRUONG**,
3. **NGOC HIEN LAM**,

all residing in Purmerend,

Defendants,

lawyer mr. E. Doornbos in Badhoevedorp.

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

The case in short

This case involves a clash of fundamental rights. On the one hand the right of the Foundation et al. not to be affected in their honor or reputation, on the other hand the right of Nguyen et al. to freedom of expression and the interest that they should be able to express themselves in public in a critical, opinion-forming and cautionary way about abuses that affect their religious community.

In these proceedings, the Foundation et al. claim an injunction regarding the public suggestion that there is, in short: 1. The unlawful taking of money from the Foundation by Do and/or Visser and 2. Sexual abuse by Do and/or Visser. In addition, the Foundation et al. claims rectification and damages.

The Court rejected the claims of the Foundation et al. regarding Truong and Lam. The Foundation et al. did not substantiate sufficiently concretely that Truong and Lam published unlawful statements or that Lam was the instigator of making unlawful public statements.

Regarding the claims against Nguyen, the Court finds that a translation by a sworn translator of the statements made by Nguyen is lacking. The court gives the Foundation c.ds. the opportunity to still submit such a translation. The court reserves any further decision.

1. The proceedings

1.1 The course of the proceedings is evidenced by:

- The summons also containing provisional claims (ex. Section 223 Rv) of December 18, 2023, with exhibits 1 to 23,
- The statement of reply in the incident, with productions 1 and 2,
- The judgment in incident of 21 February 2024,
- The statement of reply,
- The interlocutory judgment of April 17, 2024, whereby an oral hearing was scheduled,
- The deed of amendment of claim, also deed of submission of productions 24 through 34 of the Foundation et al,
- The deed of submission of production 1 through 3 by Nguyen et al,
- The oral hearing of July 22, 2024, of which notes were made by the clerk and speaking notes were submitted by Mr. Mak, do and Visser.

1.2 Finally, the judgment was rendered.

2. The facts

2.1 On March 27, 2015, the Linh Son Temple Foundation was established. The Foundation aims to spread and teach Mahayana Buddhism. In particular, the Foundation focuses on the Vietnamese community in the Netherlands. It owns a temple in Oudendijk (hereinafter: the temple).

2.2 When the Foundation was established, 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 April 2022, the board of the Foundation asked Visser to (have) the Foundation's finances audited by Boekhoudburo West-Friesland (hereafter: BWF). BWF came up with its findings in June 2022. These findings included, *“During the years 2015 through 2020, the ending balance of the bank accounts is higher than can be expected according to the cash flow statement. This would imply, for example, that in the years in question there ended up being more income than was accounted for in the foundation's original documents. The dispute primarily focusses on 2015 through 2017. Over 2018 through 2020, the differences are negligible. The loans are otherwise reconciled.”*

2.8 Lam, in turn, had AccountAd investigate the Foundation's finances. AccountAd prepared a “report of factual findings” dated Sept. 5, 2022.

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

2.10 In summary proceedings dated October 10, 2022, this court ordered Lam, inter alia, to allow the Foundation's board access to the temple and prohibited him from trespassing on (the grounds of) the temple without the board's permission. Lam did not appeal this order.

2.11 During the hearing of the interlocutory proceedings between the parties, Lam was found to have transferred €63,000.00 from the Foundation's account to his private account in September 2022. The Foundation placed a garnishee order on Lam's account. Lam subsequently repaid the money. By default judgment dated November 23, 2022, Lam was ordered to pay the Foundation €63,000.00, plus interest. Lam was also ordered to pay the attachment and litigation costs.

2.12 On behalf of Lam, the NFO commissioned forensic investigations into the loan agreements that were in the records based on which Do lent money to the temple. The investigation report dated Oct. 20-Oct. 2023 shows that the agreements from the period 2015-2021 were likely made shortly after each other and signed on the same paper with the same pen.

2.13 In petition proceedings before this court, Lam sought, inter alia, annulment of his resignation as director. By order dated July 24, 2023, the application was denied. In this order, the court also considered that AccountAd's report did not show that there was (had been) financial mismanagement within the Foundation. Lam appealed to this order. During the hearing of this appeal, it became apparent that new loan agreements from Do to the Foundation had been made and several loan agreements had been backdated. To date, the Court of Appeal has not yet rendered a judgment in those proceedings.

2.14 On August 27, 2023, a manifestation was held on the temple grounds displaying banners with offensive texts with pictures of Do.

2.15 In another proceeding before this Court between the Foundation and Lam, Lam was ordered, inter alia, to pay €40,445.03 to the Foundation by judgment dated October 25, 2023.

2.16 Nguyen posted many messages and videos in Vietnamese and Dutch about Do and/or Visser on her social media in the period between June 4 and September 20, 2023. Truong posted several messages and videos about Do and/or Visser in Vietnamese on her social media in September 2023.

2.17 By judgment in incident dated February 21, 2024, the court prohibited Nguyen - by way of injunctive relief - from suggesting, during the course of these proceedings, on Facebook and/or through other media and/or otherwise publicly during the proceedings, that Do and/or Visser were sexually abusive and/or had taken money away from the temple, under penalty of a fine.

2.18 Afterwards, Nguyen made several statements on social media. Among other things, by email dated April 19, 2024, the Foundation et al.'s attorney summoned Nguyen to pay the forfeited penalty payments ordered by the Bailiff on April 16, 2024, as the Foundation et al. believes that the February 21, 2024, judgment has not been complied with. Nguyen has disputed their indebtedness.

2.19 Subsequently, the parties continued to correspond with each other on this, as well as on the aforementioned loan agreements and money flows - either through their lawyers or otherwise. This did not lead to an agreement.

3. The dispute

3.1 The Foundation et al., after amending its claim by judgment, in so far as possible enforceable:

- (i) prohibit Nguyen, Truong and Lam each individually from publicly suggesting on Facebook and/or through other media and/or otherwise directly or indirectly (through others) that Do and/or Visser were sexually abusive and/or had taken money away from the temple under penalty of forfeiture of a fine,
- (ii) prohibit Nguyen, Truong and Lam each individually from publicly and unnecessarily grievously harassing Do and/or Visser on Facebook and/or through other media and/or otherwise directly or indirectly (through others) including but not limited to using swear words in connection with Do and/or Visser (jointly or individually) including referring to them as *Asshole; Dirty Dirty Dog; Filthy Dog; Castrated Dog; Hungry Dog; Mad Dog; Dog; Virus; Fucking Fuss; Fuck Up; Depressed Frank Virus; Borderliner; Manipulative and Narcissistic Personality; Imbecile; Crook; Stupid Thing; Thằng and Con chó* and posting disapproving emoticons (such as a vomiting emoticon, a poop emoticon, a devil-eared emoticon) under penalty of forfeiture,
- (iii) to order Nguyen, Truong and Lam individually to send a written rectification - in letter form addressed to Do and Visser p/a Linh Son Temple Foundation - within four days of the service of this judgment, containing only the following

Text, or in a text to be determined in good justice, in Dutch, English and in Vietnamese rendered normally:

In English

Dear Mr. Do and Mr. Visser,

I confirm that the District Court of Noord Holland has ordered me by judgment of 22 January 2025 to confirm to you that my statements about you both amongst which the accusation that Mr. Do with the support of Mr. Visser defrauded the Linh Son Temple and committed sexual abuse as well as my naming and shaming of you both have been considered by the District Court to be tortious since there is no evidence for my accusations and certain words I used in my accusations have been considered to be abusive. The District Court ordered me to cease and desist this behavior and to send you this letter. You have the right to make this letter public on your website and to communicate the same to other interested parties.

Sincerely yours,

[Name]

In Dutch

Geachte heren Do en Visser,

Ik bevestig dat de Rechtbank Noord-Holland mij bij vonnis van 22 januari 2025 heeft bevolen om aan u te bevestigen dat mijn verklaringen over u beiden, waaronder de beschuldiging dat de heer Do met de steun van de heer Visser de Linh Son Tempel heeft opgelicht en seksueel misbruik heeft gepleegd, alsmede mijn naming and shaming van u beiden, door de rechtbank als onrechtmatig zijn aangemerkt, aangezien er geen bewijs is voor mijn beschuldigingen en bepaalde woorden die ik gebruikte in mijn beschuldigingen zijn beschouwd als beledigend. De rechtbank heeft mij bevolen dit gedrag te staken en u deze brief te sturen. U heeft het recht om deze brief openbaar te maken op uw website en deze mee te delen aan andere geïnteresseerden.

Hoogachtend,

[NAME]

In Vietnamese

Kính gửi ông Đỗ và ông Visser,

Kính xác nhận rằng Tòa án trực thuộc vùng miền Bắc Hòa Lan đã ra lệnh cho tôi theo phán quyết của [...] phải xác nhận với hai vị rằng những lời tôi đã viết về hai vị, bao gồm cả cáo buộc của tôi rằng ông Đỗ, với sự hỗ trợ của ông Visser, đã lường gạt tiền của Phật Tử Chùa Linh Sơn Hòa lan và Ông Đỗ đã phạm tội lạm dụng tình dục, cũng như việc tôi đã nêu tên và bôi nhò danh dự của hai vị. Tôi đã bị Tòa án phạt rằng việc làm của tôi là bất hợp pháp, vì tôi không có bằng chứng nào để chứng minh cho lời buộc tội của tôi và một số từ ngữ tôi đã sử dụng cản trở hành vi này và gửi cho hai vị bức thư này. Hai vị có quyền công khai bức thư này trên trang nhà của mình và truyền đạt thư này tới những người khác mà hai vị quan tâm đến.

Trân trọng,

[NAME]

and to post the above letter on their Facebook pages for one month in a regular and clearly visible manner with the message pinned so that it remains at the top during this period, under penalty of forfeiture of a penalty,

(iv) to order Nguyen, Truong and Lam each separately to pay Do the sum of €75,000.00 in damages and €10,000.00 to Visser, whereby if one has paid the other has been discharged,

(v) to order Nguyen, Truong and Lam each separately to pay damages to Temple of € 3,000.00 per month from June 1, 2022, until the rectification is posted whereby when one has paid the other has been discharged,

(vi) to order Nguyen, Truong and Lam each separately to pay the costs of these proceedings.

3.2 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 (2) of the Dutch Civil Code (hereafter: DCC) by posting messages on Facebook (inter alia) in which she falsely accuses Do and Visser of sexual abuse, theft and fraud. These accusations are in violation of the legal obligation of Nguyen et al. to refrain from libel and slander. Even if the allegations were founded (which they are not), 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. Finally, even after the February 21, 2024, incidental judgment, Nguyen did not stop making her accusations, for example, she again posted several texts and videos regarding Do and Visser on social media between March 24, 2024, and May 25, 2024.

3.3 Nguyen et al. raises a defense. Nguyen et al. has a right to freedom of expression. It is her duty to make known abuses affecting her fellow believers, such as the suspicion of money being stolen and not following the rules of conduct. Moreover, Do and Visser have in turn vilified Nguyen et al. themselves - unnecessarily grievously. In addition, Nguyen et al. cannot agree with the translations of the messages on Facebook brought into the proceedings by the Foundation et al. These messages were not translated by a sworn translator and, moreover, lack context. The messages are all of a different nature, so that it cannot be said in general terms that they are unlawful, according to Nguyen et al.

3.4 The parties' contentions are discussed in more detail below, to the extent necessary.

4. The assessment

Assessment framework

4.1 This case involves a clash of fundamental rights: on the part of the Foundation et al. the right to respect its honor and reputation (guaranteed by Article 10 of the Constitution and Article 8 of the ECHR) and on the part of Nguyen et al. the right to freedom of expression.

4.2 Granting the relief claimed under 3.1 under I e II would entail a restriction of the right of Nguyen et al. to freedom of expression enshrined in Article 7 of the Constitution and Article 10 (1) of the ECHR. This right may be restricted only if provided for by law and necessary in a democratic society, for example to protect the good name and rights of others (Article 10(2) ECHR). A restriction di provided by law exists if the statements of Nguyen et al. mentioned under I and II infringe the honor and reputation of the Foundation et al. to such an extent that they must be regarded as unlawful within the meaning of Section 6:162 of the Dutch Civil Code.

4.3 For the answer to the question which fundamental right - the right to freedom of expression or the right to protection of honor and reputation - weighs more heavily in the concrete case, the mutual interests must be weighed. Which of these fundamental rights, which are in principle equivalent, should carry the most weight depends on the concrete circumstances of the case. Relevant factors include:

- The nature of the published remarks and the seriousness of the expected consequences for the person to whom the remarks relate.
- The gravity - viewed from the public interest perspective - of the wrongdoing that has been exposed
- The extent to which the statements are supported by the available factual material.
- The creation and introduction of the remarks.
- The authority that the medium in which the statements were published enjoys, and.
- The social position of the person(s) involved.

The aforementioned circumstances do not all carry equal weight. Which circumstances apply and what weight should be attached to them depends on the specific case.

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

- various posts about Do and/or Visser that Nguyen posted on Facebook 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 posted on Facebook by Truong in September 2023.
- a demonstration held on August 27, 2023, led by Nguyen on the temple grounds, during which several people including Lam, displayed banners containing photos of Do with hurtful texts,
- texts and videos relating to Do and Visser that Nguyen posted on social media between March 24, 2024, and May 25, 2024.

The court will discuss the claims separately below.

Truong

4.5 The subpoena shows that Truong posted several texts and videos related to Do and Visser in September 2023. Among other things, Truong called Do and Visser thieves and wrote, among other things, the following: “The master did not fulfill his responsibilities”, “He destroyed the temple's property and people's money for tickets and gifts”, “The teacher abuses people's resources”, In addition, under a compromising video of Visser, in which the latter addresses Lam about the transfer of € 63. 000.00 from the Foundation's account to his private account, posted among other things the following, “Something is wrong with you”, “I see you are greedy, like to sleep and like to spend money”, “Don't make money by doing cruel things on people's backs, by cheating us”.

4.6 Furthermore, Truong posted the following under a video dated September 20, 2023, showing individuals removing items from Do's bedroom:

“Tri Thoat, you saw that everyone took out all the edibles from the bedroom. These are the edibles that have been brought to the temple by us to make offerings to the temple and to cook for the Buddhists who come to eat. You are not supposed to hide them in your bedroom until they are past their date and moldy. You challenge Minh Tu (court addition: read Lam) in court to claim compensation for those edibles and the renovation costs of your room, including toilet, all totaling €63,000. You hid edibles in your room in 2017. It stinks because of that; they decided together to open your bedroom door and build an extra toilet for the Buddhists. At a celebration, people come to stay, it is difficult to walk downstairs. A few people have fallen. It is very dangerous for older people. It is for large crowds, not just for someone. Your bedroom still has a toilet, the bathroom has become a little smaller, but it is clean. Are you suing Minh Tu to have €63,000 paid as compensation? Do you think money will fall from the sky or have you already used that to make money in this way with the blood of others? I advise you to use your hands to make money and not lie to gain people's trust.

I am disgusted with you and your faithful. You are just like a worm. If you like money, love to eat and sleep, then you should go to work so your parents won't be ashamed of you for bringing you into the world.”

4.7 In conclusion, the following emoticons were placed:



4.8 And under another video dated Sept. 22, 2023, she posted the following comment on Facebook:

“This is a mean and dirty act by Tri Thoat and Dong Nguyen in the year 2015. In 2016, Tri Thoat and Dong Nguyen organized a meeting of Buddhists. They planned to buy a piece of property to build a temple on it. When they found a site, the current temple, the bank did not want to lend the money. The house sold for 515,000 euros, so we could all bear the burden together. Together we collected the money. Together with three other people, Minh Tu, Nguyen Quy and Nguyen Kim are on the board. Actually, these three people have no understanding of money, everything controlled Dong Nguyen and Dong Thang. When it came to money and transferring money, Dong Thang did it. She has a very good command of Dutch, so she was both treasurer and accountant for the temple. Nguyen Quy has moderate command of Dutch, so he knows nothing about the money and transferring money. The money is not transparent. For example, 7 of our relatives contributed almost two hundred thousand VND to buy the temple. My relatives. Dieu Van, Minh Tu, Dieu Hoang em Hen Minh contributed 98 thousand Euro. You guys are not transparent. All of you spent the money, which there is no record of and because it was not deposited in the bank. A lot of money that Buddhists donated, without keeping it in file. We asked about it many times and Tri Thoat replied that everything was noted, but really that was not the case. We asked Tri Truong again why he abused our trust and cheated our money? You are accomplices of each other are truly incompetent.”

4.9 The Foundation et al. have argued that these texts and videos constitute libel and slander and are also unnecessarily hurtful, so that a ban on similar statements is appropriate. The Court ignores this, not only because the statements date from some time ago and were limited to a very short period (a few days in September 2023), but also because the statements are not unlawful in nature. The Foundation et al. has not sufficiently substantiated that Truong published unlawful remarks concerning sexual abuse or theft by Do and/or Visser.

4.10 In assessing Truong's statements, the Court assumes presumptively that the translation of the aforementioned messages presented by the Foundation et al. is correct. The Court notes that Truong's tone here and there is not very subtle, but that does not make her statements unlawful. Furthermore, the court took into consideration that there is no indication that the remarks are factually incorrect and that the remarks, as mentioned, are incidental in nature. After all, the messages were all posted in the period from 202 to 23 September 2023. Regarding the other statements quoted and reproduced in the subpoena, it is also true that in each case these are clearly views of Truong that, while critical and unfriendly in tone, do not cross the line of illegality. The fact

that the statements could possibly be experienced as hurtful does not automatically result in these statements being unlawful from a legal point of view and thus justifying a restriction of freedom of expression.

4.11 The Court therefore concludes that Truong has not acted unlawfully towards the Foundation et al. This means that the prohibitions claimed under 3.1 under I and II, the rectification claimed under III and the damages claimed under IV and V with respect to Truong will be rejected by final judgment.

Lam

4.12 The Foundation et al. take the position with respect to Lam that he is the source of the unlawful public communications by inducing others to make these communications. According to the Foundation et al., this inducement is also unlawful against the Foundation et al. because it also violates criminal provisions and, moreover, is unbecoming vis-a-vis the injured parties. Because Lam incited Truong and Nguyen to make public announcements, he acted unlawfully against the Foundation et al.

Lam submits a reasoned defense to this.

4.13 In the District Court's opinion, Foundation et al. has not substantiated sufficiently concretely that Lam incited others to make unlawful statements concerning sexual abuse and/or the taking of money by Do and/or Visser. The single six-line paragraph under margin number 3.9 of the summons and the reference to production 30 brought into the case by her - which consists of messages dating from the spring of 2022 in the private chat group 'Hoi niem Phat chua Linh Son' - from which it should appear that Lam is the instigator of all kinds of malicious messages, is completely insufficient for this purpose. There is nothing to show that he has composed these messages himself or that he has fulfilled the instigator role that the Foundation et al. ascribe to him. In this respect the Court considers that the Foundation et al., when asked, stated at the oral hearing that its statements regarding Lam are based on a suspicion and it acknowledges that there is little evidence for this. The mere suspicion (expressed on page 1 of production 30 (that Lam has made his account available and (thus) is the source of more unlawful public communications does not provide a sound basis for the prohibition mentioned under I e II. This means that also regarding Lam the claimed under 3.1 will be rejected by final judgment.

Nguyen

4.14 The following applies to Nguyen. The Foundation et al. have claimed and substantiated with photos, videos and posts that Nguyen has made many statements on social media. However, the defense put forward by Nguyen et al. First is that these posts were incorrectly translated. In fact, according to Nguyen et al., the posts by Nguyen et al. are so poorly translated that the qualifications in the translation submitted by the Foundation et al. are much more serious than what was originally written by Nguyen. By Nguyen et al. all messages have also been translated themselves which translation has been submitted with deed of production as production 1.

4.15 When asked, the Foundation et al. stated at the oral hearing that it translated the statements made by Nguyen et al. with the aid of Google Translate and that subsequently Visser's wife patched these translations. Nguyen et al. in turn stated that the translation she brought into the proceedings was also not prepared by a sworn translator, but by Nguyen herself.

4.16 The Court considers the following in this regard. Because a translation prepared by a sworn translator is lacking and Nguyen et al. disputes the translation by the Foundation et al. with reasons, the Court cannot determine whether the public statements made referred to under margin number 2.37 (1 through 19, pages 16 through 28) of the summons by Nguyen are unlawful towards the Foundation et al. With Nguyen et al. the Court is of the opinion that a translation obtained based on Google Translate is insufficient in a situation such as this, in which what matters most is an accurate reproduction of the original. To adequately assess the claims brought against Nguyen, the Court needs to have access to a translation whose quality is not in dispute. The Court will give the Foundation et al. the opportunity by deed to still bring into the proceedings a translation of the public communications by Nguyen in the Dutch language, prepared by a sworn translator.

Conclusion

4.17 The case is referred to the roll of October 16, 2024, for deed on the side of the Foundation et al. to give the Foundation et al. the opportunity to bring the translation referred to under 4.16 into the proceedings, after which Nguyen et al. will be given the opportunity to respond by (reply) deed.

Any further decision will be reserved.

Summons of the Court to the parties

4.18 In view of the continuing impasse that exists between the parties and its impact on the community, the District Court, as previously done in the order of December 22, 2022 (paragraph 4.25 of the judgment), once again expressly urges the parties to consider, under the guidance of the Buddhist advocacy organization or otherwise, resolving their differences amicably.

4.19 As already considered in the decision of December 22, 2022, the parties all claim to be pursuing the interests of the Foundation and the community. None of the parties involved would benefit from allowing the situation that has now arisen to continue any longer and/or from repeatedly instituting new lawsuits with all the negative consequences and costs thereof. The Court therefore calls upon the parties to assume their responsibility to the community and to contribute to restoring unity.

5. The decision

The court

5.1 refers the case to the roll of October 16, 2024, in order that the Foundation et al. may, by deed of the public communications made by Nguyen, provide a Dutch translation, as further

Described in r.o. 4.16 of this judgment, shall be brought into the proceedings, which has been prepared by a sworn translator for the Vietnamese language.

5.2 reserves any further decision.

This judgment was rendered by Mr. A.D. Haverkate, Judge, assisted by Mr. M.M. de Keizer, Registrar, and pronounced in public on September 4, 2024.

