

Attorney General makes similar claims in his statutory and common-law capacity to oversee charities.

The court is asked to determine the following issues:

1. Was Golden Temple, Inc., held in trust for charitable or religious purposes?
2. If so, what was the nature of the duties owed by defendant members of the board of managers and board of directors of organizations with control of Golden Temple, Inc., and the duties owed by defendant entities themselves, and to whom were these duties owed?
3. Did defendants violate any duties that they owed to plaintiffs and to the charitable trusts that plaintiffs seek to vindicate?
4. If so, what remedies should the court order?

Defendants raise affirmative defenses, including a challenge to the court's subject matter jurisdiction and a challenge to the private plaintiffs' standing. Other so-called affirmative defenses are more appropriately viewed as counter-arguments to plaintiffs' claims. Most prominently among the latter, defendants assert that the disposition of Golden Temple and KIT-BV was within the sound business judgment of the board of Unto Infinity and Khalsa International Industries and Trades Company, Inc. (KIIT), in a good faith effort to advance the interests of those organizations.

History of Yogi Bhajan Organizations, in summary.

In order to understand the complex and unusual relationship of the actors in the 2007 transaction, it is necessary to review the history of the interrelated organizations founded by a religious leader referred to as Yogi Bhajan.²

¹ The full and accurate name of the corporation was Golden Temple of Oregon, Inc. For brevity's sake, it is referred to here as Golden Temple, Inc.

² For purposes of this opinion, the founder of the relevant organizations is referred to as Yogi Bhajan, a name by which he was commonly known in this country. He is most often referred to by his followers as Siri Singh Sahib, an honorific that the court understands that he gave himself, to refer to his role as teacher in the religion of Sikh Dharma. His full name and title sometimes is given as Siri Singh Sahib

The dispute involves a Russian nesting doll of nonprofit and for-profit entities, organized by and through Yogi Bhanjan beginning in the mid-1970's. Certain organizations were devoted to education; to maintenance of spiritual records; to promotion of religious functions, such as the ordination and instruction of Sikh Dharma ministers, and other nonprofit objectives. Other profit-making organizations were formed by individual adherents, who contributed the ownership of the businesses to provide a source of support, prestige, and employment for the Sikh Dharma community. Yogi Bhanjan, the founder of the Western movement of Sikh Dharma that is involved in this controversy, and a teacher of the related practices of Kundalini yoga, came to the United States from India. A charismatic leader and teacher, Yogi Bhanjan attracted a body of adherents to some or all of the practices and precepts of Sikh Dharma of the Western Hemisphere. This body of adherents is sometimes referred to, here, as the Sikh Dharma community and its institutions as the Yogi Bhanjan inspired organizations. Yogi Bhanjan taught Kundalini yoga and, in that role, introduced many students to his spiritual beliefs as well. Most of the individuals involved in the present controversy initially became interested in Sikh Dharma through seeking to learn the practice of yoga, on or near college campuses, as young men and women during the 1970's and 1980's.

During his lifetime, Yogi Bhanjan maintained exclusive central authority over the organizations he created to advance the world view and practices he taught. An early corporate holder of the assets developed in this process was a California entity, Siri Sikh Sahib of Sikh Dharma, (SSS of SD) a California corporation sole. Such an organization is uniquely and by legal definition religious, as an entity that exists to serve as the repository of assets held by a religious officer solely in his or her role as prelate in the religious organization, and not in a private or personal capacity.

Later, the seat of the corporate network shifted to Oregon and New Mexico entities, including

Harbhajan Singh Khalsa Yogiji. The convention adopted, here, is intended to provide consistency and clarity.

nonprofit and for-profit entities held by the nonprofits. (SSS of SD, the California corporation sole, was designed to terminate at Yogi Bhajan's death, and its assets to be transferred to an Oregon religious corporation.) In the design and conduct of many or most of these later-founded organizations, Yogi Bhajan was assisted by Roy Lambert, a Portland lawyer with the firm of Schwabe, Williamson & Wyatt. After Yogi Bhajan's death, Lambert continued to serve as legal counsel for many of the Yogi Bhajan inspired entities, including Unto Infinity, LLC, and KIIT, defendants here.

Yogi Bhajan also designated an inner circle of trusted lieutenants to occupy positions in the control and administration of his interlocking organizations, but he maintained all the reins of ultimate power and direction in his own hands until his final incapacity and death.³

The Yogi Bhajan affiliated organizations included for-profit enterprises including, most importantly, a private security company, Akal Security, Inc., and a manufacturer and distributor of tea and cereal products, Golden Temple, Inc. The for-profit enterprises were formed by Sikh Dharma adherents and contributed to Yogi Bhajan inspired non-profit entities (initially, Akal was contributed to Sikh Dharma-NM, and Golden Temple, Inc., to Sikh Dharma, Inc.). Their profits provided substantial support to the non-profit activities of the Sikh Dharma affiliated organizations.

In addition to appointing lieutenants to roles in the supervision of his organizations, Yogi Bhajan maintained personal attendants, a group of women upon whom he became dependent for day-to-day and hour-to-hour support and companionship in his home as his health declined toward death

³ Actually the earliest of the American Sikh Dharma corporations seem to have been organized on somewhat different lines. The Sikh Dharma Brotherhood, a non-profit in California, organized in 1973, included as members persons initiated by a minister of Sikh Dharma and vowing to live according to the principles of Sikh Dharma. Ex. 28 (Article II). Similarly the Restated By-Laws of Sikh Dharma-NM, a non-profit corporation of New Mexico, reflects similarly that membership is extended to all adherents found to meet the conscientious qualifications of the religion and vowing to live to those principles. (Ex. 27). The Yogi Bhajan inspired entities that are the primary organizational actors in this controversy were, however, never so broadly based.

from complications of diabetes and kidney failure. In the fall of 2004, this personal staff lived with him in a New Mexico residential compound called the Ranch. They served rotating shifts so that one of them was with him at all times of the day and night. During Yogi Bhajan's life, his personal retainers and administrative staff served at very modest compensation; however, it was widely understood that he had assured these personal assistants life-long compensation. This promise was known as the Yogi Bhajan Assurances. In his will, Yogi Bhajan planned to fulfill the promise by creating a trust called the Staff Endowment, to which he gave a half interest in royalties earned by the license of his name and likeness for use on the products of Golden Temple, Inc. The beneficiaries of the Staff Endowment were the former personal retainers and staff, and the income derived by that trust was intended to fund their promised life-time income.

However, after the death of Yogi Bhajan in 2004, the widow of Yogi Bhajan (referred to as Bibiji) challenged the gift of intellectual property rights. As a result, the funding stream for Staff Endowment was cast into doubt. It became questionable whether the funds ever would be paid, because of the claims by Bibiji, still unresolved as of the time of the trial of this matter in 2011.

In 2003, anticipating the need to organize the affiliated entities to function after his death, Yogi Bhajan created Unto Infinity, LLC, an Oregon nonprofit LLC, to act as the administrative center of the organizations comprising his nonprofit and for-profit network of entities. The Organizational Agreement of Unto Infinity provides that the sole original member of Unto Infinity was Yogi Bhajan. Its board of managers was made up of Yogi Bhajan and four of his trusted lieutenants. In a "Proclamation" signed by Yogi Bhajan in June 2004 (when he understood that he was dying, and had discontinued any but palliative care) he stated:

"Whereas the Siri Singh Sahib [the title held by Yogi Bhajan] has the responsibility of promulgating and stating the rules and procedures of the Sikh Dharma,
And

"Whereas there is a need for the orderly and just administration of the Dharma,

“Therefore, I hereby proclaim that Unto Infinity, LLC, is the entity authorized by me to continue to exercise the administrative authority of the office of the Siri Singh Sahib of Sikh Dharma once I no longer occupy that office, in all those cases where authorization by the Siri Singh Sahib [*i.e.*, Yogi Bhajan] is required in the articles, bylaws, or any contractual commitment of a Sikh Dharma affiliated organization.

“This Proclamation is hereby adopted under the authority granted to me as the Siri Singh Sahib of Sikh Dharma, I set my hand and seal this 30 day of June, 2004,

[signed] “Siri Singh Sahib Bhai Sahib
 “Harbhajian Singh Kalsa Yogiji”

This proclamation stated that the purpose of Unto Infinity was to serve as the “administrative authority” of the chief office of the religious movement, and consequently to be integral to the religious organizations (although it does not have the effect of altering the corporate documents of the various affected corporations and companies).

An undated Amended and Restated Operating Agreement (Ex. 66) reflects that Yogi Bhajan was replaced as the sole member of Unto Infinity by the Siri Singh Sahib Corporation (SSSC). SSSC is an Oregon nonprofit religious corporation that had been formed to serve as the sole member of Sikh Dharma, Inc., after Yogi Bhajan's death or incapacity. Subsequently, it apparently was given the same role in Unto Infinity. SSSC itself has no members.

Pursuant to the 1997 Articles of SSSC, after the death or incapacity of Yogi Bhajan, the directors of SSSC were to be those persons he had previously designated in a written directive given in confidence to Lambert, as corporate attorney, and to the Siri Sikdar Sahib (or Sahiba) of Sikh Dharma (designated to that post by Yogi Bhajan as his spiritual successor), who would also become a permanent member of that board. However, after the death of Yogi Bhajan, a succession of Restated Articles for SSSC were filed, each certified by Sopurkh Kaur Khalsa (also a member of the board of Unto Infinity) as president of SSSC as having been adopted by Yogi Bhajan on October 1, 2, and 3

respectively -- the three days leading up to his death.⁴ The restated Articles designate the remaining managers of Unto Infinity LLC to serve as the board of SSSC, to succeed Yogi Bhajan in that role if no other designation is made. Exs. 104, 105, 106. Parties in this litigation have not asked the court to determine the validity of those changes, and the court therefore does not pass on their validity.

Lambert denied that Yogi Bhajan had left any designation of a successor board that was sufficiently formal to satisfy the terms of the SSSC articles, and accordingly, in lieu of such a designation, the four-member Unto Infinity board assumed complete control of SSSC after Yogi Bhajan's death. Because SSSC was the sole (but powerless) member of Unto Infinity, the board of Unto Infinity obtained comprehensive and unchecked control (directly or indirectly) of all other Yogi Bhajan inspired nonprofit and for-profit companies and corporations.

SSSC, the sole member of Unto Infinity, has no operations or property. Its existence, as a member, is a legal requirement for Unto Infinity's existence as a limited liability company. ORS 63.001(17).

In this somewhat convoluted manner, the sole successors of Yogi Bhajan, as the ultimate and unlimited managers of the entire network of nonprofit and for-profit affiliated entities, became the members of the Unto Infinity board. The Unto Infinity board members upon Yogi Bhajan's death were Siri Ram Kaur Khalsa and defendants Peraim Kaur Khalsa, Siri Karm Kaur Khalsa, and Sopurkh Kaur Khalsa. (Siri Ram Kaur Khalsa resigned from the board after the 2007 transaction that is the center of this controversy but before the complaints were filed in this case. She is not a defendant.)

⁴ Sopurkh Kaur Khalsa asserted that she acted pursuant to a power of attorney granted to her by Yogi Bhajan. However, the power of attorney in question conveyed only the authority to execute documents relating to the transfer of real property in New Mexico and provided no authority to her, to execute corporate documents. She also asserted that Yogi Bhajan conveyed his approval of these successive changes from his death bed, in private interviews with Sopurkh Kaur Khalsa, on each of three successive days, October 1, 2, and 3. None were recorded until some months after his death, and then they were recorded over a period of time, in the order dated, as follows: on November 15, 2004 the version signed October 1 was recorded (although it had immediately been superseded on October 2); on November 19, 2004, the October 2 version was recorded (although it, in turn, had been immediately superseded on October 3); and finally, after a two month break in the action, the October 3, 2004 version was filed on January 11, 2005.

In 2005, the Unto Infinity board members exercised their power to place defendant Kartar Singh Khalsa on the board as a full voting member. (He had previously served as an ex-officio member.) Kartar Singh Khalsa was also the chief executive officer of Golden Temple, Inc.

The 2007 Operating Agreement of Golden Temple of Oregon LLC.⁵, approved by the Unto Infinity board, and drafted by its attorney, recites:

“All of KIIT’s outstanding stock is owned by Unto Infinity, LLC, an Oregon limited liability company. Unto Infinity, LLC is a disregarded entity for income tax purposes and is a division of Siri Singh Sahib Corporation, an Oregon nonprofit corporation ...”

Ex. 386. The recital is accurate. Unto Infinity, LLC is and was a division of SSSC, an Oregon religious corporation. Ex. 62.

Although SSSC is the sole member of Unto Infinity, it can neither appoint nor dismiss board members of Unto Infinity (Unto Infinity’s board appoints and dismisses its own members), alter the operating agreement of Unto Infinity, or in any other respect control Unto Infinity. To the contrary, SSSC is limited to act subject to the approval of the Unto Infinity board. For all intents and purposes, Unto Infinity (and its subsidiary KIIT, which has the same board for the transactions relevant here, and which acted jointly with Unto Infinity, by simultaneous decisions of their synonymous boards) is self-governed by a board which is self-perpetuating and self-directed. It is the ultimate authority over Golden Temple and KIIT. The board members are compensated by self-determined amounts drawn from the for-profit organizations. Primarily because of the success of Akal Security and Golden Temple, the funds available to Unto Infinity have increased sharply since the death of Yogi Bhajan. The compensation of the Unto Infinity managers has also increased (since 2005) to a level at all times in six figures, and as high as \$185,000 per year. The board members of Unto Infinity/KIIT meet a handful of times a year, usually by telephone, but, on occasion, in person.

To summarize the identities of the organizations chiefly involved:

a) Khalsa International Industries and Trades Company, Inc. (KIIT), is a holding company

organized under Nevada law, having no operations and created in order to receive and hold the shares in Golden Temple of Oregon, Inc., an operating company in the manufacture and distribution of foods in Eugene, Oregon; and Akal Security, Inc., a New Mexico security company which contracts with governmental agencies. KIIT is a wholly owned subsidiary of Unto Infinity.

b. Unto Infinity, LLC (Unto Infinity) is a nonprofit Oregon limited liability company organized to act as the administrative authority of the office of the religious leader of the movement established by Yogi Bhajan. Unto Infinity owns all shares of KITT and has the power and authority to appoint the boards of the religious corporations and nonprofits established by Yogi Bhajan.

c. Siri Sikh Sahib of Sikh Dharma (SSS of SD), is a California corporation sole, a religious corporation holding title to property held in the official capacity of the leader of a church or other religious body. With the death of Yogi Bhajan, SSS of SD was designed to dissolve and to transfer its assets to SSSC. (It has not done so, as a strategic move related to ongoing litigation with Bibiji regarding her claims as heir and widow of Yogi Bhajan)

c. Siri Singh Sahib Corporation (SSSC) is an Oregon religious corporation, organized to act as the successor legal organization to the SSS of SD, the California corporation sole, after the death of Yogi Bahjan and for religious, charitable and educational activities, and to act as “guardian of those assets of the SSS of SD which are conveyed to it, and Unto Infinity, LLC.” Restated Articles of Incorporation, Pl. Ex. 25. SSSC is the sole member of Unto Infinity, but with no authority over it. SSSC has never had a board of directors and is governed by the Unto Infinity board as an “executive board.”

d. Sikh Dharma, Inc. (SDI) is a nonprofit religious corporation under the California Nonprofit Religious Corporation Law, of which the sole member is Unto Infinity, organized to advance the religion of Sikh Dharma and as an association of religious organizations teaching principles of Sikh

Dharma, including by ordination of ministers of divinity and operation of places of worship. It has been active in the promotion of the religion, and its then-directors initiated the private plaintiff's lawsuit before Unto Infinity exercised its authority to discharge all of them and replace them with directors who withdrew SDI's support of the lawsuit. It was then named as a nominal defendant because the private plaintiffs seek relief including payment of damages to it.

e. Golden Temple, Inc., is a for-profit, Oregon corporation in the food products industry with operations in Eugene, Oregon, and sales nationally. At relevant times, it has manufactured and distributed herbal teas and cereal products. All of the shares of Golden Temple, Inc., were passed (through intermediate steps explained below) through various religious institutions and by 2007 held by Unto Infinity's holding company, KIIT.

f. Akal Security, Inc. (Akal), is a for-profit New Mexico corporation in the business of providing security services to governmental entities. Akal was founded by a member of the Sikh Dharma community, one of the private plaintiffs, Gurutej Singh Khalsa, and he donated it to Sikh Dharma of New Mexico, Inc., (an affiliate of Sikh Dharma, Inc.) on Yogi Bhanjan's assurances that Akal would be held to further Sikh Dharma. All Akal shares were transferred (as explained below) ultimately to KIIT.

The valuable assets controlled by Unto Infinity include other assets, such as real property. The complaint as originally framed by private plaintiffs attacked dealings by defendants as to all these assets; however, the controversy developed at trial focused on actions taken with respect to Golden Temple, Inc., and Golden Temple's European affiliate, KIT-BV, a Netherlands corporation (KIT-BV).

Ownership History of Golden Temple, Inc.

The stock of Golden Temple, Inc., came into the possession of KIIT, Inc. in 2003 by a series of linked transactions. These linked transactions were steps in a single, unified transaction.

On December 10, 2003, the board of SDI adopted resolutions to transfer, among other property that it held at that time, all the shares in Golden Temple, Inc., “as a gift and without consideration” to SSS of SD, the California corporation sole, based on the resolution that the transfer “is consistent with and promotes this corporation’s religious purposes.”

Then, on December 31, 2003, Sopurkh Kaur Khalsa as attorney in fact for SSS of SD “assigned, transferred and contributed, without consideration” all shares in Golden Temple, Inc. (among other stock holdings) to Unto Infinity. Pl. Ex. 18. The transfer of the shares to Unto Infinity, as a “division” of the religious nonprofit corporation, SSSC (Ex. 74, p. 1), was without consideration.

SSSC, the Unto Infinity parent corporation, was itself formed to be the successor of the SSS of SD, “as successor ...be the guardian of those assets of the Siri Singh Sahib of Sikh Darma which are conveyed to it, and Unto Infinity, LLC (an Oregon limited liability company of which the corporation will then become sole member) will be the sole member of Sikh Dharma, a California nonprofit religious corporation.” Ex. 25.

On the same day (December 31, 2003), and in the same document as Unto Infinity accepted the “contribution” of the stock from SSS of SD, Unto Infinity, by unanimous consent (executed by the Board of Managers including Sopurkh Kaur Khalsa), transferred that stock in an initial subscription to all the shares of KIIT Holding Co., Inc. Ex. 19. Before this transfer, KIIT had no assets. The stock gained value only by, and after, this very transfer of shares; hence, the transfer of KIIT shares for Golden Temple, Inc. shares was not a transfer of new value for Golden Temple stock but a mere change in the manner in which Unto Infinity controlled the Golden Temple asset. KIIT was formed specifically to hold Golden Temple (and subsequently Akal Security) shares. Ex. 141. A year after the Golden Temple shares were placed in KIIT, the Akal Security stock was given “as a gift” from Sikh Dharma of New Mexico, a New Mexico nonprofit (religious) corporation to Unto Infinity, and

simultaneously Unto Infinity “contribute[d]” the stock to KIIT Holding Co., Inc., without consideration. Pl. Ex. 20.

These transactions are to be viewed and understood together. Taken as a single transaction, these swift gratis transfers moved the assets from one religious entity (SDI), through SSS of SD, another religious entity, to a division of the related religious corporation (SSSC) that had been formed to serve as the “guardian” of assets formerly in SSS of SD. The court concludes that the transfers were not intended to change, but to enforce, the dedication of the assets to the religious purposes of SDI, the Oregon religious corporation, and the Yogi Bhajan inspired nonprofits. Furthermore, no change in the character or purpose of the possession of the assets was intended by Unto Infinity’s placement of the assets in a holding company, KIIT, formed only for the purpose of holding title to assets as the agent of Unto Infinity, which controlled KIIT in all respects.

KIT-BV, the affiliated European tea company, followed a similar route except that the shares came to rest with Unto Infinity and were not subsequently transferred into the holding company, KIIT.

History of Golden Temple LLC Transaction at issue.

Before the death of Yogi Bhajan in October 2004, Yogi Bhajan poured a large part of his personal income from teaching and from royalties derived from his work into the support of the nonprofit organizations that he had formed. With his death, this stream of contributions dried up. At the same time, however, the business of Akal Securities (primarily or solely, the provision of security services to governmental entities including the United States government) burgeoned and its contributions to the Yogi Bhajan affiliated organizations rose rapidly, to \$766,709 in 2003, (which more than offset the gap left by the end of Yogi Bhajan’s contributions), \$1,625,704 in 2004 and \$1,468,301 in 2005. In 2007, however, the finances for the nonprofit community suffered another

blow when Akal Securities compromised a claim by the United States government by an agreement requiring Akal to make payments over a period of five years that would preclude its continued substantial contributions to the nonprofits, at least through that time.

The Akal financial crisis had implications beyond the support of the activities of the nonprofit service organizations of the Yogi Bhajan group. Akal also had been tapped for a number of years for administrative costs and board salaries of the Unto Infinity board of managers.

Golden Temple, Inc., also, provided contributions to the support of the non-profit Yogi Bhajan affiliated organizations at a liberal, but lower, level. In addition, the nonprofit organizations obtained personal contributions from adherents. However, the loss first of funds from Yogi Bhajan, then the cessation of Akal donations, left the Unto Infinity managers and Unto Infinity's attorney, Lambert, looking for a means to generate a large sum of money on a yearly basis, while at the same time cutting expenses for the various organizations.

At the same time, most of the individuals on the Unto Infinity/KIIT boards faced a difficult financial issue with personal ramifications.

The four women who were members of the board of Unto Infinity and KIIT had served Yogi Bhajan, to the exclusion of more conventional careers, for decades before his death. From curious students of Yogi Bhajan's yoga teaching, they had become totally immersed in the operations of the interlocking Yogi Bhajan organizations and risen to roles as chief lieutenants and personal assistants of Yogi Bhajan. Sopurkh Kaur Khalsa's association with Yogi Bhajan and the enterprises he inspired has lasted for almost 40 years, Peraim Kaur Khalsa for about 30 years, and Siri Karm Kaur Khalsa, 35 years. Siri Ram Kaur Khalsa also had a long-standing role with the management of the organizations. (Kartar Singh Khalsa had a similarly lengthy association with the Yogi Bhajan organizations but did not rise to the top leadership role of Unto Infinity manager until after Yogi Bhajan's death.) These

women were among the personal staff to whom Yogi Bhajan had assured life-long income (Yogi Bhajan Assurances), and three were beneficiaries of the Staff Endowment. (Siri Karm Kaur Khalsa, was omitted from the trust by error and Lambert understood that she should be added to that group.)

In 2006 and 2007, it was very uncertain whether money would ever be available to fulfill the Assurances or fund Staff Endowment, because of the claims of Bibiji, Yogi Bhajan's widow. Hence, the four women on the Unto Infinity board, all mature individuals, faced the possible loss of a life-long income that they had been promised most of their working lives, as they were reaching a stage in their lives when the availability of a long-promised permanent retirement income would have imminent significance.

Through late 2006 and continuing into 2007, the Unto Infinity board had assigned to its attorney, Lambert, the effort to solve the difficult problems facing the organization: specifically, replacing the funding previously derived from Akal Securities and solving the problem of funding the Yogi Bhajan Assurances. He spent a great amount of time on both of these issues, as his time sheets reflect.

Kartar Singh Khalsa, unlike the others on the Unto Infinity and KIIT board, had operating obligations within Golden Temple, Inc., as its chief operating officer, and received a salary and bonuses specifically for that work. Despite executive salary increases intended to raise his income to market level, Kartar Singh Khalsa asserted a desire to obtain an equity interest in the Golden Temple business as well.

Beginning in early 2007 (and before the Akal settlement but while the claim against it was pending), and in response to Kartar Singh Khalsa's requests, Lambert began to explore the possibility of a management buy-out of Golden Temple. Lambert advised Kartar Singh Khalsa that, because of tax ramifications, a sale of the Golden Temple stock to Khalsa (and other members of management)

would be impractical. He suggested a structure that he said would have the same practical effect as a management buyout: the reorganization of Golden Temple Inc., as a limited liability company in which a new management organization (which ultimately was organized as Golden Temple Management, LLC (GTM)), comprised of Kartar Singh Khalsa and the executive management group, would be the 90 percent majority (and controlling) member, and KIIT would be a minority member, its contributed capital to be retired over a period of years with few, and readily extinguishable, rights.⁶

That structure, suggested by Lambert in April 2007, expressly because it is the functional equivalent of a management buyout, remained the germ of the transaction that ultimately concluded in August 2007. (Lambert originally contemplated a similar disposition of Akal Security. Ex. 153.)

Despite the fact that Kartar Singh Khalsa was to hold the greatest interest in the acquiring group he also was a board member of Unto Infinity and KIIT, the opposite parties to the transaction. Lambert worked and advised the buying management group and also acted on behalf of Unto Infinity/KIIT, the opposite party, in developing the details of the transaction. In May 2007, Lambert sent Kartar Singh Khalsa a statement of the steps to be taken to work for a “proposed joint venture LLC to operate the Golden Temple, Inc. business” (Ex. 164), including obtaining an evaluation of Golden Temple, from an appraiser, Cogence Group. That appraisal was obtained, but despite the fact that Golden Temple, was a corporation worth many millions of dollars by any estimation, Unto Infinity authorized only a low-cost, limited appraisal rather than one as thorough as it would have been if given an adequate budget, including a thorough review of the relevant market developments and trends. Ex.

⁶ Once KIIT’s unreturned capital account (established by the \$23,000,000 appraisal at the outset) was paid, KIIT’s economic rights would be limited to the profit distributions within GTM’s discretion and the parties did not foresee such distributions occurring. GTM’s control over the company, and the decision to distribute profits, is comprehensive. Furthermore, the management group, GTM, retained the authority to force the buy-out of KIIT’s 10 percent interest if KIIT failed to approve GTM’s decision on any of the small list of extraordinary actions requiring supermajority approval (such as dissolution), and in that case, or in a dissolution, KIIT’s return would be measured by its capital account. Exh. 862, §§ 10.2 (c), 8.2. Should GMT choose, therefore, once the unreturned capital account had been fully repaid to KIIT, GTM could simply elect dissolution and whether KIIT objected or not, KIIT would not receive any significant – or perhaps, any – compensation for its residual interest in the company.

138. Lambert's representation of all parties to the transaction continued until, realizing the conflict, Lambert referred the executive group to Lewis Horowitz in the summer of 2007 to serve as its counsel. By that time, the major features of the transaction already had become fixed. The deal did not change, except in details, although discussions continued regarding the fine points of phrasing, and adjustment of financial numbers, up to the final days before the transaction was approved in August 2007.

Until the late summer of 2007, the only board members who had information about the evolving disposition of the interest in Golden Temple were Kartar Singh Khalsa and Sopurkh Kaur Khalsa. As the deal came together, Lambert prepared an August 17, 2007, document entitled “Presentation to Unto Infinity Board – Proposed Golden Temple Joint Venture” relating the advantages of the transaction, and he supplied it to Kartar Singh Khalsa for inclusion in the “economic analysis in the last section” of a presentation to the board. Ex. 163. In this summary, Lambert states that the benefits include “fulfillment of YB [Yogi Bhajan] assurances” and that “Management entity participation will accommodate its fulfillment of YB assurances.” The memo contrasts that result with an alternative of continuing the status quo which “does not fulfill YB’s assurances” and sale of Golden Temple and Akal stock on the open market, which would incur corporate gain for tax purposes and “YB’s assurances would remain at risk with such sales.” It concludes, with respect to the joint venture arrangements (for Golden Temple and Akal Security), “These arrangements offer increased support for the nonprofits and fulfillment of YB’s assurances” because “the desire and willingness of the Management LLC to fulfill YB’s assurances (without dilution of KIIT’s interest) will reduce the financial burden on the nonprofits by \$__ million annually.” In making those statements, Lambert acted as the attorney for Unto Infinity and KIIT and the purposes and understanding expressed by him expressed the intents and purposes of the organizations he represented.

At the time of Lambert’s August 17 e-mail describing the virtues of the proposed transaction

with respect to the Yogi Bhajan Assurances, the then-current draft agreement was the third amended draft, Exhibit 73. (For timing, see Ex. 157, e-mail of Horowitz to Lambert August 15, 2007, referring to the 3rd “Stage” Operating Agreement of Golden Temple of Oregon LLC.⁷) That draft’s only provision that could be the basis for Lambert’s remarks is the provision of section 6.3 g (ii) of that draft, which provides for the admission as members of the LLC, of persons listed on an exhibit, or persons to be benefited by “Staff Endowment, LLC [the entity set up to provide for the staff life-time stipends]...or any combination thereof, provided the aggregate Percentage Interest in the Company granted to these grantees does not reduce KIIT’s Percentage Interest ... or otherwise adversely affect KIIT’s economic interest in the Company.” Ex. 73. Those provisions are consistent with Lambert’s emphasis that the provision for the Yogi Assurances would come “without dilution of KIIT’s interest.”

The identical provision identified by Lambert in the draft Operating Agreement as addressing the Yogi Bhajan Assurances survived unchanged in the eventually adopted document. The list of the persons who could be admitted without dilution of KIIT’s interest and without further approval by KIIT or Unto Infinity, included all of the board members of Unto Infinity and KIIT, other than Kartar Singh Khalsa: Sopurkh Kaur Khalsa, by virtue of being a member of Staff Endowment, LLC, Siri Karm Kaur Khalsa, Peraim Kaur Couture (aka Peraim Kaur Khalsa), and Siri Ram Kaur Khalsa. (Exhibit 6.3 (g) (ii) to GTO LLC Operating Agreement.)

In the evolution of the transaction, Lambert worked first with Kartar Singh Khalsa and then with Sopurkh Kaur Khalsa as well. In August 2007, before the August 27 and 28, 2007 meeting at which the transaction was approved, Lambert met at length regarding the planned transaction with certain members of the Unto Infinity/KITT board. His time records contain entries regarding those meetings: nine days before the board meeting, three hours in conference with Siri Karm Kaur Khalsa

⁷ The full and accurate name of the limited liability company is Golden Temple of Oregon, LLC. It will be referred to as Golden Temple, LLC, to distinguish it from the predecessor corporation, and from Golden Temple Management, LLC

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and Sopurkh Kaur Khalsa; seven days before the board meeting, a full day revising the agreement and in conference with Kartar Singh Khalsa, Sopurkh Kaur Khalsa, Peraim Kaur Khalsa, and Siri Karm Kaur Khalsa regarding the proposed transactions; six days before the board meeting, with Kartar Singh Khalsa regarding the securities aspects; five days before the meeting, conference again with the same group regarding the transaction. Then, four days before the meeting, Lambert booked time preparing consent minutes and resolutions for the approval of the transaction.

In the days leading to the board meeting, Lambert's work on related issues included deflecting concerns about a rumored “insider sale” of Akal. He reported to Kartar Singh Khalsa and Sopurkh Kaur Khalsa that he had reassured a member of the Sikh Dharma community named Guru Terath that no Akal sale was planned. Lambert reported to them that he had revealed nothing of the imminent Golden Temple transaction, although, after the transaction, it would have to be explained. In the same communication, he mentioned the Yogi Bhajan Assurances “aspect of the transaction” while reminding Kartar Singh Khalsa and Sopurkh Kaur Khalsa that the board members were as yet uninformed of this connection – although the e-mail saying this was, of course, directed to two members of the board. This was just three days before the Unto Infinity meeting, the sole topic of which was the Golden Temple transaction. Ex. 363.

One board member, Siri Ram Kaur Khalsa, was not included in these pre-board-meeting conferences, and indeed, was intentionally kept in the dark about the proposal. In an e-mail, Sopurkh Kaur Khalsa reported to Kartar Singh Khalsa her success in misleading Siri Ram Kaur Khalsa to think all the members were to hear the plan at the same time and only at the meeting. Immediately before the meeting, however, Lambert took Siri Ram Kaur Khalsa to coffee in a meeting that he explained he could not have at the law office, in order to tell her that the plan she was about to learn about would not

(which is referred to as GTM).

interfere with the payment of the Yogi Bhajan Assurances, of which she was a beneficiary. He impressed upon her that nothing in the plan that was to be unveiled at the meeting would jeopardize the Yogi Bhajan Staff Endowment in any way, that Yogi Bhajan's wishes for the staff and the Staff Endowment would still be honored.

On August 27 and 28, 2007, the board of Unto Infinity and KIIT was scheduled to meet in Portland. The notices calling the meeting disclosed nothing that identified the subject matter to be the disposition of a major asset: Golden Temple, Inc.

At the opening of the meeting, Lambert told Peraim Kaur Khalsa that she should not vote on the issue to be decided at the meeting because she had an intimate personal relationship with Kartar Singh Khalsa. She did not vote although she did participate in discussions of the issue at the meeting. Kartar Singh Khalsa announced a conflict and neither voted nor contributed to the discussion.

At his board presentation advancing the transaction, Lambert advocated the transaction and neither he, nor any other person, presented any alternative to it other than failure to take any measure at all regarding the problems confronting Unto Infinity and KIIT. The board members did not inquire regarding any other alternatives. A representative of the Cogence firm, hired to provide a 'fairness' opinion for purposes of avoiding adverse income tax treatment, presented a computation showing the value to KIIT of its interest in Golden Temple LLC, assuming a payout of profit share, as equivalent to the value that Cogence had computed for the equity in Golden Temple, Inc. when held entirely by Unto Infinity/KIIT. The board members voted without dissent to approve the transaction, although, after the transaction Siri Ram Kaur Khalsa still did not understand that it involved conveying away the great majority of ownership interest in the Golden Temple business. None of the board members inquired regarding the value of what Kartar Singh Khalsa's group, GTM, received or whether the prospects for growth in the value of the Golden Temple business was estimated consistently with the estimates of

growth formerly prepared by management of Golden Temple. (In fact, management had projected the future growth of the company for internal purposes as likely to be distinctly greater than the intentionally conservative estimates utilized by the Cogence group to estimate value.) The board members failed to understand, and were not told, that the so-called ‘fairness opinion’ did not express any view whatsoever of the fairness of the terms of the transaction but merely compared inferred values for the contributed asset and the hypothetical income from the transaction over a period of years, and found them to be equivalent.

At the close of the meeting, the board of KIIT/ Unto Infinity approved the transaction as presented. As an integral part of the transaction, Unto Infinity extended an option to Golden Temple, LLC, to acquire from Unto Infinity its share of the European affiliate, KIT-BV. The shares were valued at 6 Million Euros, subject to upward adjustment based on an appraisal of fair market value.⁸ On September 1, 2007, the parties signed a First Amended and Restated Operating Agreement of Golden Temple, LLC concluding the transaction as planned. Ex. 862.

After the board meetings on the 27th and 28th, and the approval of the Golden Temple transaction, Lambert met with Kartar Singh Khalsa and Sopurkh Kaur Khalsa “re Staff Endowment and re communicating joint venture arrangements with Guru Terath.” Ex. 371, p. 7. The court finds that Golden Temple Management (GTM) (the management group that acquired a 90 percent interest in Golden Temple LLC through the August 27 transaction) provided, in advance of the transaction, it commitment that it would, after the transaction, honor the Yogi Bhajan retirement assurances of life-long income to the people who were to be benefited by the Staff Endowment. (Lewis Horowitz, attorney for GTM, alluded to GTM’s undertaking to honor those commitments after problems caused

⁸ The intent was that Unto Infinity would contribute the KIT-BV stock and become an additional member of Golden Temple LLC. (Ex. 509) See, First Amended and Restated Operating Agreement 6.3 (g) (i). The option agreement provides that if the transaction occurs after the conversion of the corporation to a limited liability company (which is what occurred) the purchase price would be “paid” by issuance to Unto Infinity of an interest in the Golden Temple LLC.

Golden Temple LLC to discontinue use of the Yogi Bhajan images on products, and Lambert, in his notes for communication with the Unto Infinity and KITT board stressed that GTM would undertake to make good on these assurances, whereas an unrelated buyer of the company would not do so.) The court finds that this assurance was a material motivating feature of the sale to GTM.

Terms and Nature of the Transaction.

The mechanics of the transaction called for, first, the liquidation of Golden Temple, Inc., into KIIT Company, and then the contribution of the business of Golden Temple by KIIT into a new limited liability company, Golden Temple, LLC. KIIT received a 10 percent membership interest in Golden Temple, LLC, and certain rights to payments from Golden Temple LLC as described below. GTM became the 90 percent member of Golden Temple, LLC, in consideration of a contribution of \$100.

GTM was a limited liability company formed for the purpose. It was composed of the management group headed by Kartar Singh Khalsa and Karm Singh Khalsa, the chief financial officer of Golden Temple Inc.

In addition to the 10 percent interest that KIIT would receive for the Golden Temple business, Golden Temple, LLC, was obligated to pay KIIT a Minimum Distribution Amount calculated at 8 percent per annum without compounding on KIIT's Unreturned Capital, set as \$23,000,000. In the event of a sale of the business, KIIT was entitled to return of any Unreturned Capital, and in addition, 10 percent of the net profit over that amount. With a minor exception (not significant) each member agreed that all distributions would come, only, out of the assets of the company, and no member would be entitled to recourse against another member.

GTM has exclusive control of the management of the new limited liability company, except for a few actions (such as admission of new members, dissolution, or merger with another entity) that

require KIIT's concurrence.⁹ GTM has the exclusive right to determine if profits are distributed to members and Lambert, GTM and Kartar Singh Khalsa at all times knew that profits would not be distributed. The receipts KIIT is entitled to receive are an 8 percent Minimum Distribution on the Unreturned Capital Account, 10% of the profit in the ultimate sales price of the company if sold, and (when the company was sold or as GTM elected) the return of the \$23,000,000 capital account. The executives of Golden Temple, who were also the members of Golden Temple Management, continue to receive salaries and bonuses as employees, although increases in their compensation are regulated for the first years.

The executed agreement provides for admission as additional members, without further approval by KIIT or Unto Infinity, of persons who are members of Staff Endowment, LLC, and those listed on an exhibit 6.3 (g) (ii) to the operating agreement. Taken together, this encompasses all Unto Infinity/KITT board members, other than Kartar Singh Khalsa. If admitted, their membership comes out of the GTM share. Otherwise, the agreement is silent with regard to the terms of admission. However, the court finds that the admission of these 6.3(g)(ii) members was to be without cost, or at nominal cost, to them, other than possibly the transfer of their nonperforming interests in the Staff Endowment Trust (for those of the 6.3(g)(ii) member who had such interests – that is, other than KIIT/Unto Infinity member Siri Karm Kaur Khalsa), because the purpose of the provision was to fund the problematic Yogi Bhajan Assurances to these individuals. The provision was negotiated by Lambert, as agent for KIIT and Unto Infinity, and clearly conceived by him to have this effect and to be a primary reason to prefer the insider transaction to any other approach.

Sopurkh Kaur Khalsa also later wrote that the 2007 Golden Temple transaction was a

⁹ If KIIT did not concur, GTM could elect to reduce KIIT's interest by buying out up to 90 percent of KIIT's 10 percent interest at the same rate that would be paid to KIIT out of dissolution, at the then appraised value of the company. Such an action would reduce KIIT's share below the level at

“win/win” because GTM “is required to . . . cover the Siri Singh Sahib’s agreements, and all this comes out of 100% of profits before there is any split.” Ex. 193 (emphasis added).

Recognizing that the Yogi Bhajan Assurances “aspect of the transaction” (as Lambert had characterized it in his e-mail, Ex. 363) constituted a valuable personal benefit to the board members asked to approve the deal and therefore undermined the legitimacy of the transaction, Lambert, Sopurkh Kaur Khalsa, Kartar Singh Khalsa, and other board members who were knowledgeable about the agreement, adopted a conscious policy of secrecy and denial regarding it, which extended to trial testimony that the court found to be unreliable and evasive.¹⁰

The court finds that this assurance existed and originated as an inducement to the contract, and while calculated to be a side understanding, rather than explicit within the documentation, was an essential and motivating feature of the decision to sell the Golden Temple enterprise to an insider group, including board member Kartar Singh Khalsa, rather than seeking investment in the company by an unrelated third party.

The private and secret conference between Lambert and Siri Ram Kaur Khalsa (the outsider in the close, Unto Infinity board of managers, considered unreliable by her colleagues) shows that even to her, a linkage was made if only to assure her that transaction would not impair the satisfaction of the Yogi Bhajan Assurances. She was the least informed board member. The link between the agreement and the retirement assurance was clearly expressed to the most knowledgeable (Sopurkh Kaur Khalsa and Kartar Singh Khalsa). The court infers that in the lengthy meetings (that they denied under oath)

which it could object to GTM’s proposed actions.

¹⁰ The court, in its findings, has necessarily relied on the impression of credibility (or lack of credibility) made by the witnesses. The habitual business practice of the managers and directors of Unto Infinity and KIIT was not one of transparency and candor – to the contrary. The indirection and misleading communications that characterized communications by and in behalf of Unto Infinity and KIIT boards to the community for which the Yogi Bhajan enterprises existed, carried over, lamentably, to sworn trial testimony. For this reason, the court with greater confidence relied on the inference that the economic effects of actions were intended by those involved in the transactions, and that the internal documentation of negotiations and strategy should be understood in their plain meaning and necessary implications.

with Lambert, Peraim Kaur Khalsa and Siri Karm Kaur Khalsa were favored with the information that the agreement achieved the goal of securing the Yogi Bhajan Assurances, which Lambert's time records reflect as an intertwined project, and which he had been charged, by the board to achieve.

Economic Effect of the Transaction.

While the structure of the transaction was meticulously crafted and recast, its essence was simple: a transfer of Golden Temple to GTM at a net price of \$23,000,000, with no money down and the deferred balance bearing interest at 8% per annum, for as long as the buyer wished to delay payment, or until a sale of the business to a third party, with payment to KIIT of an additional 10 percent of profit on such a sale. Although KIIT/Unto Infinity had a 10 percent share of profits, distribution was controlled by GTM and not intended. The “buyer” (in this practical re-casting of the effect of the transaction) was GTM, the management group headed by a member of the Unto Infinity/KIIT board.

The price originated in the management group's calculation of what that group could expect profitably to pay, and subsequently refined to match up with a low-cost, limited Cogence appraisal obtained to support the transaction. The Cogence work was purposefully designed to reach a “conservative” value at least partially to protect GTM's interest in a price that would be fair to GTM. It was not suitable to show Unto Infinity the full potential for optimizing its income from an entrusted asset.

A full appraisal would have included market trend and history analysis, showing a healthy increase in interest in the type of business Golden Temple conducted, and the proliferation of strong investments (strategic purchases) for similar business at much more than the theoretical “market value” derived through the analysis of current and projected profits and sales as contained in the Cogence study. Such a full appraisal would, or should, have alerted board members to the fact that a large

portion of the value of Golden Temple was being surrendered at less than could reasonably have been expected from an actual open market sale. The appraisal, in its conservative approach, assumed the minimal realistic growth and sales rates, rather than reflecting management's view of more probable (and greater) rates of growth, and applied the appraiser's judgmental functions in a matter intended to adopt understated values rather than risk overstating them. The appraisal was intended to reflect the *lowest* defensible value for the company – which was then the basis for pricing the final contract with GTM.

To further support the transaction, Unto Infinity/KIIT obtained an opinion referred to, and by board members as, a “fairness” opinion from the Cogence Group. This was a study comparing the net value of Golden Temple, Inc., as conservatively computed in the Cogence appraisal, to a present value of the benefits to be derived by KIIT from the transaction. The reason for this opinion was to avoid adverse tax treatment for an insider transaction. It had significance, and was only ever intended by its drafter, Mr. Sickler, to have significance, to persuade the Internal Revenue Service that the transaction was not an excess-benefit transaction, resulting in adverse tax consequence under the United States Tax Code. The opinion was not, in fact, intended to make any appraisal whatsoever of the fairness to Unto Infinity and KIIT of the transaction. The board members were not entitled to regard it as certifying that the transaction was appropriate to protect the interests of the nonprofit entities involved. The transaction was not fair to Unto Infinity/KIIT.

The terms of the transaction placed all risk of loss on Unto Infinity/ KIIT, required no contribution by GTM and no personal guarantees, and provided virtually complete flexibility to GTM in deciding the most advantageous circumstances, to it, in retiring the Unreturned Capital Account and hence terminating the stream of income to KIIT. That future stream of income was KIIT's express rationale for entering into the transaction.

The misleadingly termed “fairness opinion” also overstated the return to KIIT in two ways: (1) the analysis assumed regular distribution of profits, which the parties did not in fact contemplate; and (2) projected, without any reasonable grounds for doing so, that GTM would continue to pay 8 percent on the unreturned capital, instead of quickly eliminating that payment by paying off the capital – as, in fact, it did in two and a half years. GTM began within months of concluding the acquisition to seek a method of terminating its interest obligation to KIIT by raising funds to retire the Unreturned Capital Account as quickly as possible.

In considering the plan, the Unto Infinity and KIIT board made no effort to compare what GTM received to what it had paid (a peppercorn). Any such comparison would have required a consideration whether the interest being conveyed to GTM was worth – to some other possible business partner – more than a peppercorn. If so, it would have been obvious that value was being conveyed for nothing, for which an arms-length investor would have paid a much greater amount.

Even the accuracy of the so-called “fairness” opinion in its own terms depended on the accuracy of the Cogence appraisal of the value of KIIT's equity in the business. As earlier explained, the appraisal was intended to state a conservative value. In addition, it was flawed by errors resulting in understating the reasonable value. At trial, there was dispute regarding the degree by which the appraisal was wrong and understated value, but there was no actual dispute about the fact that it was wrong. Although KIIT’s equity was assumed as \$23 million based on the original appraisal of value from \$22 to 24 million, expert testimony provided by defendants was that the actual value was \$27.7 to 32.0 million. Thus, defendants admitted that value of \$23 million value upon which the transaction was based was 4.7 to 9 million dollars low – that is, under the actual value by at least 20 percent and as much as 40 percent. This, however, is only the discrepancy that defendants admitted. In fact, the discrepancy was much greater because of the use of unreasonably low growth projections, assumptions regarding additional compensation to management to equate with market management expenses, and

other facts. The true value of the equity in the company (without regard to its strategic value, which I discuss below), was at that time \$40 million.

Because of industry changes, a market existed among existing, larger companies, seeking to expand into the natural foods market. The Golden Temple business, as an established and successful player in that market, could attract interest from so-called “strategic” buyers, seeking by acquisition to achieve a role in that market niche, and willing to bid up the price of companies, such as Golden Temple, to do so. This established an economic opportunity for KIIT and Unto Infinity, giving the asset a strategic price much higher than the algorithms employed by Cogence would yield. The Cogence analysis did not look beyond the perspective of a buyer that, by definition, lacked a special impetus to purchase. But just such buyers existed – as was readily obvious – and they would pay a strategic price far higher than the \$40,000,000 “fair market analysis” figure discussed above. The strategic value, which depends on characteristics of particular buyers, is inherently difficult to estimate but was, and would reasonably have been known to be, at least \$100,000,000 at the time of the 2007 transaction. The strategic value was partially realized in the sale in early 2010, of the cereal division alone, for \$71,000,000. That sale enabled GTM to repay the capital account of KIIT and Unto Infinity in its entirety, distribute to Kartar Singh Kalsa and the other GTM members millions of dollars in profits, and leave GTM still with the tea business unencumbered by obligations.

This alternative market for the asset, to strategic buyers was known or should have been known to the Unto Infinity/KIIT board upon reasonable inquiry. It was in fact known to Golden Temple’s president and chief financial officer, who had been active for many years in the industry and were acutely aware of industry trend. However, these individuals did not make their information about these alternative opportunities known to the board members because they were interested in causing the board of Unto Infinity and KIIT to conclude the transition with them. Kartar Singh Khalsa, the Golden

Temple president and board member was present at the critical August 2007 board meeting approving the transaction but sat silent while his fellow board members surrendered an asset which was worth many millions of dollars more than Unto Infinity and KIIT would receive in the transaction.

Where the “fair market value” is defined as the price a buyer with no special characteristics would pay, the actual “fair market value” of Golden Temple, Inc. as of August 2007, after deduction of bank debt, was no less than \$40,000,000; but it represented an asset that would in fact be saleable at that time for no less than \$100,000,000, less outstanding debt, or a net value of \$88,300,000, within an existing market of strategic buyers.

The terms of the Golden Temple Operating Agreement sought a tax advantage to increase funds for the Yogi Bhajan nonprofits by allowing KIIT and Unto Infinity to waive their receipt of the 8 percent payment on unreturned capital, provided that Golden Temple, LLC, place equivalent funds at the disposal of a charitable donation committee. The concept was to avoid taxation of this income stream: it would not be taxable income KIIT and Unto Infinity because waived; while at the same time Golden Temple, LLC, could deduct it, because it was required of Golden Temple, LLC, in consideration of KIIT’s contribution of capital. Golden Temple, Inc. could only deduct 10% of profits as charitable contributions, and hence this apparatus was thought to provide a greater amount of charitable deductions without taxation. The efficacy of this tax avoidance scheme was not assured; but its hypothetical success required that KIIT not determine the specific charitable donations to be made with the money. (Otherwise, the income would be attributable to KIIT and Unto Infinity, and would be taxable to them, a result that would defeat the tax avoidance purpose of the arrangement.)

Akal Securities

Lambert, with Kartar Singh Khalsa and Sopurhk Kaur Khalsa, planned that the transaction involving Golden Temple would establish a pattern to be followed in the disposition of Akal Securities

and explored with the principal employees of Akal Security a transaction in which they would acquire the business at an appraised value to be paid to KIIT; however, this plan was not put into effect up to the date of trial.

Communications regarding the transfer.

Prior to the transaction in question, the evolution of the deal was held in closest confidence by board members Kartar Singh Khalsa and Sopurkh Kaur Khalsa, and by Lambert, acting as agent for Unto Infinity and KIIT. Without question, such secretiveness is unexceptional and easily attributed to innocent purposes in commercial settings, before a transaction; but in this case, it continued past the closing of the deal.

Unto Infinity and KITT, and the majority of their boards, assisted by Roy Lambert acted consistently and knowingly after the sale to mislead and misinform persons and organizations who were intended beneficiaries of the charitable and religious purpose of the trust regarding the fact that Unto Infinity and KIIT had surrendered majority ownership of Golden Temple, in a transaction placing control and majority interest in the hands of Kartar Singh Khalsa and the management group. Repeatedly, and at the instruction of Lambert, members of the boards made statements crafted by Lambert to deny that any change in ownership had occurred and to conceal the true nature of the transaction. Indeed, one member of the board, Siri Ram Kaur Khalsa (regarded as too responsive to the interests and concerns of the charitable and religious beneficiaries) was denied access to the transaction documents to further obscure from her what she had been persuaded to approve.

Not only were the public statements prepared by Lambert false, but they were intended by the board members who made the statements to mislead the Sikh Dharma community because the transaction – if fully disclosed – would inspire protest and likely litigation as a violation of trust obligations. All parties understood that the transaction could well constitute such a violation of the

entrustment exclusively for religious and charitable purposes and this was the reason for the deception.

Existence of Trust

I find established by clear and convincing evidence that a charitable trust existed and that the assets held by Unto Infinity and its subsidiary holding company, including Golden Temple, Inc. were assets held in trust. The trust was dedicated to support and advance the religious tenets and practices espoused by Yogi Bhajan in Sikh Dharma of the Western Hemisphere. Unto Infinity thus controlled assets (whether through KIIT, as Unto Infinity's subsidiary and agent, or directly) impressed with a charitable trust.

I do not find that the terms of the trust prohibited the sale of the assets to further the trust. It had been the practice of the Yogi Bhajan inspired organizations to sell assets as necessary to advance their religious and charitable purposes; in order (for instance) to generate needed capital, or to dispose of underperforming assets that would present a drag on the organization's resources. Unto Infinity, therefore, was a trustee with the discretion to dispose of assets for the religious and charitable purposes of the trust.

The facts that lead the court to the basic conclusion relating to the trust are not in controversy. Unto Infinity is and was organized as a nonprofit company, acting as a division of SSSC, a religious corporation. (SSSC in fact had no other or separate activities, so that, in effect, Unto Infinity was not only a division – it was the sole division and synonymous for practical purposes with its sole member.) Siri Singh Sahib of Sikh Dharma, a California Corporation sole, transferred the stock in Golden Temple of Oregon, KIT- B.V., and Akal to Unto Infinity for the purposes of the religious movement only. SSSC was created to be the “guardian” of assets transferred to it and Unto Infinity by SSS of SD, as were the shares of Golden Temple, Inc., KITT- B.V., and Akal. No consideration flowed to any donor religious organization for the gift of these (and other assets) to Unto Infinity.

The court finds the express designation of SSSC and its subsidiary Unto Infinity as “guardian” of assets from SSS of SD expresses an intent that Unto Infinity hold the assets subject to a fiduciary duty to use the assets for the religious purposes of SSS of SD. Although “guardian” does not have a technical legal meaning in this context, it designates that the property was not conveyed without restriction. In common parlance, the term means one who holds property for the limited purpose of conserving it, or holding it for another. The term “guardian” is defined as follows: “1. One that guards or secures: one to whom a ...thing is committed for protection, security , or preservation ... 3: One who has or is entitled or legally appointed to the care and management of ...property of another...” *Webster’s Third New International Dictionary* (1986 ed.) p. .

Legally, the concept of guardianship is very closely aligned with the concept of trust, although the terms are technically distinct. Restatement (Second) of Trusts §7, Comment a, p.22 (1959): “The relations between guardian and ward, like the relation between trustee and beneficiary, is a fiduciary relation.” A trustee has title to the property but “a guardian of property does not have title to the property, but has only certain powers and duties to deal therewith for the benefit of the ward, the ward having title to the property.”

The character of the organizations among which the assets were passed was charitable. It is sometimes said by courts that a charitable corporation amounts to a charitable trust, in which the board of directors (or trustees) exercise the duties of the trustee. Restatement (Second) of Trusts § 348 Comment, p. 211 (1959); *id.* § 379 Comment b., p. 271. This view can be seen in Oregon law in *Wemme v. First Church of Christ, Scientist, of Portland*, 110 Or 179, 197, 219 P 618 (1923):

“A charitable corporation is not an association of shareholders ...but is merely an agent or trustee for the administration of the trust funds, * * * A charitable corporation is merely a trustee or agent selected by the donor of the charity for the purposes of administering funds given for charitable purposes, and the beneficiaries of this trust are frequently the public, or parties outside the corporation.”

It is not necessary to determine whether this is always the case, as a matter of law, or as to all property, but in this case it most certainly expresses the manner in which Unto Infinity took the corporate shares it received from SSS of SD.

Standing Implications of Determination that the Assets Were Held as a Charitable Trust

The significance of finding that Unto Infinity and KIIT held Golden Temple, Inc., in trust lies in two areas: the delineation of standards applicable to judge the actions and liability of Unto Infinity, KIIT and board members, and in the determination of the standing of the private plaintiffs to participate in this litigation. (The standing of the Attorney General to police the diversion of assets of charitable trusts or nonprofit corporations to private benefit is well established. *See Evangelical Lutheran Good Samaritan Society v. Department*, 1972 WL 721 (Or Tax 1972); *Wemme v. First Church of Christ*, *supra*, 110 Or at 217.)

The beneficiaries of the charitable trust in this case were, of course, widespread, indefinite, and as changing as the many persons involved in the observation of Sikh Dharma might come and go, and fluctuate in their affinity to the movement. While ordinarily the beneficiaries of a charitable trust do not individually have standing to seek enforcement of the obligations of the trust, in exceptional circumstances those specially interested in the charitable activities of the trust may do so. *University of Oregon v. Oregon Inv. Council*, 82 Or App 145, 728 P2d 30 (1986); Restatement (Second) of Trusts § 391 (1959).

The private plaintiffs are ministers of the Sikh Dharma religion, and former members of the board of Sikh Dharma Inc. (board members at the institution of this action on behalf of Sikh Dharma, Inc., who were thereafter dismissed by Unto Infinity from those positions), and members of the Kharma Council (the chief religious convention of the movement). They have a special and personal

concern beyond those of the great mass of people who might be beneficiaries at some time or another with some program or another supported by assets impressed with a trust for advancement of the doctrines espoused by Yogi Bajan. Each private plaintiff has engaged in significant efforts and time in activities that are devoted to advancing the purposes of the organizations that rely on the assets in question. These efforts will be frustrated to the extent that assets required for their support are depleted. At least in part as a result of the reduction in the assets of the movement, as administered by Unto Infinity, these activities, with which private plaintiffs are intimately involved, have been curtailed and will in the future be greatly reduced by the diversion of wealth otherwise available to support the movement. As a result, the private plaintiffs are appropriate plaintiffs, here, to advance claims and seek remedies protective of the charitable trust, under the special interest standing doctrine described in *Associated Students of University of Oregon v. Oregon Inv. Council, supra*.

Nature of Duties Owed and Violated.

Unto Infinity held assets impressed with a charitable trust for charitable and religious purposes. It continued to control those assets through its holding company, KIIT. KIIT (governed by the same board) necessarily knew that the assets were subject to the trust and assumed control of them, as agent for Unto Infinity. KIIT, like Unto Infinity which controlled KIIT, acted in a trustee capacity with respect to the assets held or controlled by both entities. The obligations of Unto Infinity and KIIT, therefore, were the fiduciary obligations of a trustee, with respect to the assets. These obligations include the obligations of due care and undivided loyalty. *Waterbury v. Nicol*, 207 Or 595, 606, 296 P2d 487 (1956) Modified on Denial of Rehearing (1956); *Lytle v. Payette Oregon Irr. Dist.*, 175 Or 276, 288, 152 P2d 934 (1944); *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints*, 14 Or Tax 244, 250 (1977). Unto Infinity and KIIT violated those obligations by disposing of the asset in an insider transaction at a fraction of its value.

A trustee that, as a result of lack of due care, disposes of an asset for less than could reasonably be obtained in the open market violates its duties. *Hatcher v. U. S. Nat. Bank of Oregon*, 56 Or App 643, 643 P2d 359(1982). Here, as in *Hatcher*, the efforts to determine the value of the asset were “cursory at best” and no attempt whatsoever was made to test the market or to determine what alternative dispositions of the asset would have realized for trust purposes. There was little real negotiation of the broad contours of the transaction or the compensation to be paid by the management group. The disparity between the market potential of the asset, in fact, and the minimal value placed on it in exchanging Golden Temple, Inc., for a 10 percent interest in Golden Temple LLC, is so tremendous that it demands explanation. No cogent explanation was offered by the defendant trustees. Instead, the blind eagerness of the actors to complete the transaction was based on a combination of greed by the benefited individuals and reckless indifference to the interests of the charitable trust.

The lack of any contractual protections to the interest of KIIT and Unto Infinity, by way of guarantees of duration of the income stream that KIIT and Unto Infinity sought to achieve in the transaction proved critical, in the swift termination of what had been touted as a secure and long-term support for nonprofit operations. Where a continued, assured income stream to KIIT and Unto Infinity was the chief expressed value to the charitable trust, the trustees acted negligently in omitting to seek any contractual protection to achieve a durable income stream.

A trustee owes a fiduciary duty of utmost loyalty to the charitable trust. That duty was violated by Unto Infinity and KIIT when they dealt away trust assets to achieve the personal benefit of members of the board of Unto Infinity and KIIT. Lambert, as attorney for Unto Infinity and KIIT, framed the transaction as he did to accede to the desire of Kartar Singh Khalsa to take ownership in Golden Temple, and in order to secure a lifetime retirement income to the individuals sitting on the board – what Lambert once referred to as the “YB assurances aspect of the transaction.” Ex. 363. The use of

the trust assets for the private benefit of the board members was a breach of fiduciary duty.

Defendants argued in defense of the Golden Temple transaction that, by diverting the income from the capitable account into an independent charitable gifts committee, the mechanisms of the Operating Agreement achieved a tax-favored flow of economic support to the Yogi Bhanan nonprofits. The scheme was supposed to shield from taxation to KIIT the 8 percent interest paid on Unreturned Capital, and make that payment a deductible business expense of Golden Temple of Oregon, LLC. Given that the transaction involved ceding tens of million dollars of a trust asset to the private benefit of a board member and his associates, it seems an almost incidental defect that the waiver of the 8 percent payment in favor of an external, charitable donations committee was also in itself a violation of fiduciary duties.

A trustee of a charitable trust owes a duty to apply the assets and income of the trust to the particular objectives of the trust. It is a duty that cannot be delegated to others. Restatement (Second) of Trusts § 348 Comment, p. 211 (1959). The independent charitable gifts committee could not be controlled by Unto Infinity and KIIT, or the payments to it would be attributed and taxed to them; hence, the device could only achieve its tax avoidance purpose by truly severing control by the trustee, over trust assets. Further, a charitable trust is not fulfilled by just any charitable use of assets, but only by the particular objectives contemplated in the trust. *See, Wemme, supra*. The charitable committee was not restricted to gifts supporting and advancing Sikh Dharma. Therefore, the device of waiving receipt of the income from Unreturned Capital necessarily violated the obligation of Unto Infinity as trustee to deal with the assets of the trust only for the purposes of the trust.

The thorough-going violation by KIIT and Unto Infinity of fiduciary duties to the charitable trust through engaging in the disposition of Golden Temple, Inc. as they did was proven beyond any doubt.

Obligations of Board Members of KIIT and Unto Infinity.

Plaintiffs have alleged that the individual defendant board members of KIIT and Unto Infinity are liable for breach of fiduciary duties as trustees. Defendants contend that, even if Unto Infinity is a trustee, the managers of Unto Infinity are not, and owe only the statutory duties of a manager to the limited liability company he or she manages, as stated in ORS 63.155(9) or (viewing the actions as the actions of the directors of a corporation, KIIT), the obligations they owed to the corporation under the corporate laws of the state of Nevada.

ORS 63.155(9) does impose limited fiduciary duties in favor of the entity. Among the duties owed is the duty to account to the limited liability company and hold for it any property, profit, or benefit derived by the member in the conduct of the limited liability company's business, including the appropriation of a limited liability company opportunity. A manager must refrain from dealing with the company in a manner adverse to the company, except in a transaction that is fair to the company, or authorized or ratified by a majority of the disinterested members of the LLC. The manager's duty of care is a duty to refrain from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law. Nevada law similarly imposes upon directors of a corporation fiduciary duties to the corporation. However, the plaintiffs, and the Attorney General, do not stand in the position of the limited liability company, Unto Infinity, much less the position of the Nevada corporation or its shareholder, to vindicate rights owed to the business entities. Instead, they seek to vindicate the rights owed to the beneficiaries of a charitable trust operated in Oregon by and through those organizations.

Under common law, the duties of the board of a charitable corporation vis-a-vis the trust are similar to the duties of a trustee, although obligations of the institutional trustee may be divided among committees of the board, and each board member is liable only for individual fault. Restatement

(Second) of Trusts § 379 Comment b, p. 271 (1959); *id.* §386 Comment (b) p. 276.

The statutory obligations of the managers of a limited liability company do not distinguish between nonprofit and for-profit companies, and are not drafted with charitable institutions in mind. In the special case in which a limited liability company, such as Unto Infinity, is *also* the trustee of a charitable trust I do not find that the statutory standards of care and loyalty to the company displace common law obligations to the trust. Much less, where KIIT held the property for the nonprofit Unto Infinity, and as its agent, can the argued satisfaction of duties of the directors to a business corporation absolve those individuals (in their guise as KIIT directors) of liability asserted by private plaintiffs and the Attorney General in protection of the interests of beneficiaries of a charitable trust.

Whether measured by the statutory obligations to the entity, or the common-law obligations to the charitable trust administered by a corporation, the performance of Kartar Singh Khalsa fell far short of compliance.

Manager Kartar Singh Khalsa dealt adversely with the company, in a transaction that was not fair to the company and not authorized or ratified by a majority of the disinterested members. (Unto Infinity had but one member, a corporation that had no board of directors, and never was informed of, or ratified, the actions. Because of the Yogi Bhajan assurances aspect of the transaction, there were no disinterested members of the board of managers of Unto Infinity.)

Further, the actions of each of the other defendant managers were grossly negligent and reckless in disposing of the asset without full appraisal of its value, without consideration of the existing markets for sale of the asset, and on terms that failed to protect Unto Infinity's sought-after benefit of an extended stream of income from the asset or secure its interest in the property. The same actions caused Unto Infinity and KIIT to violate their duties as trustees to safeguard the entrusted assets for the charitable and religious purposes of the trust.

Claim of Aiding and Abetting Breach of Fiduciary Duty.

Private plaintiffs assert that the individual defendants Kartar Singh Khalsa, Sopurkh Kaur Khalsa, Peraim Kaur Khalsa, and Siri Karm Kaur Khalsa are also liable for aiding and abetting the breach of fiduciary duty by the entity trustees, even if they, individually owe no such duty to the trust and its beneficiaries. (The analysis in the previous section finds that the board members did owe a primary fiduciary duty as trustees, in their role as managers of a entity that was a trustee.) Individuals who act knowingly, with a fiduciary, to violate a fiduciary duty may be held accountable for violations they assisted. *Granewich v. Harding*, 329 Or 47, 56-60, 985 P2d 788 (1999). Such persons do not commit a separate wrongful act, but are jointly liable with the misbehaving fiduciary for the breach of fiduciary duty. *Id.*, at 57-58.

There is no question but these individual managers and board members assisted Unto Infinity and KIIT in violation of the duties of a trustee by causing the organizations to enter into the Golden Temple transaction. The critical question, here, is whether their actions, in so doing, were accompanied by the state of mind sufficient to make them liable as aiders and abettors. Under *Granewich*, plaintiff may establish liability of a third party (not otherwise a fiduciary):

“Legal authorities, however, virtually are unanimous in expressing the proposition that one who knowingly aids another in the breach of a fiduciary duty is liable to the one harmed thereby. That principle readily extends to lawyers. None of those authorities even implies that liability for participants in the breach of fiduciary duty is confined to those who *themselves* owe such duty.”

Id., 329 Or at 56. Defendant Kartar Singh Khalsa and Sopurkh Kaur Khalsa acted with knowledge and intent that the transaction serve the beneficiaries of the Staff Endowment.

Sopurkh Kaur Khalsa took the occasion of the resignation of Siri Ram Kaur Khalsa¹¹ to

¹¹ Deemed “unreliable” by her colleagues on the KIIT and Unto Infinity board, Siri Ram Kaur Khalsa was denied access to
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excoriate her for her lack of appreciation for the “win/win agreement” with GTM, which, according to Sopurkh Kaur Khalsa, provides that “GT is required to pay millions of dollars annually to nonprofit funding and to cover the Siri Singh Sahib’s agreements, and all this comes out of 100% of profits before there is any split.” Ex. 193 (emphasis added). This note indicates that the provision for the Yogi Bhajan Assurances was considered by Sopurkh an obvious objective of the transaction, as important as funding for the non-profit organizations, and that she was surprised that Siri Ram Kaur Khalsa failed to recognize that advantage (despite her exclusion from the meetings participated in by the other board members, before the board meeting approving the transaction).

That was a purpose outside the objectives of the trust to support the nonprofit organizations inspired by Yogi Bhajan to advance the religious and educational objectives of Sikh Dharma of the Western Hemisphere.

Kartar Singh Khalsa acted with knowledge that the effect of the transaction was to abstract from the trust and provide for his own economic benefit a tremendously valuable asset. Both Sopurkh Kaur Khalsa and Kartar Singh Khalsa intentionally and knowingly caused Unto Infinity to violate its fiduciary duties with respect to the trust assets and the objectives of the trust and are liable for the resulting breach of fiduciary duty.

The liability of Siri Karm Kaur Khalsa and Peraim Kaur Khalsa on this theory is not, however, persuasively established. Because they had a primary fiduciary duty as board members of the corporate trustee (as discussed in the previous section) they bear liability for their recklessness, gross negligence, and what amounts to a willful indifference to their obligation to inquire into the value of the asset in question, the alternatives to the proposed transaction, and the fairness of a transaction. However, for a claim that requires proof of active knowledge and intent to advance the breach of a

the KIIT and Unto Infinity agreements she had approved as a board member, and, frustrated by her inability to play a meaningful role in the management of the organization, she resigned November 2008.

fiduciary duty, the evidence fails short.

Unjust Enrichment

The private plaintiffs state a claim for unjust enrichment against GTM. The Attorney General asserts a similar claim against GTM and also against its individual member-managers: Kartar Singh Khalsa, Karam S. Khalsa, Ajeet S. Knalsa, Guru Haris S. Khalsa, Gurudhan S. Kalsa, and Roberts Ziehl.

Private plaintiffs assert that a benefit has been conferred on the company (and, in the state's claim, the members of the company) in the form of the Golden Temple assets, that the defendants knew that those assets were held for the benefit of Sikh Dharma, that GTM did not pay value for the assets, and hence it would be unjust for Golden Temple Management to retain its interest in the assets. The Attorney General's allegations are not meaningfully different.

The law regarding unjust enrichment and constructive trust (one of the available remedies for unjust enrichment) was recently reviewed by the Oregon Supreme Court in *Tupper v. Roan*, 349 Or 211, 243 P3d 50 (2010). The circumstances, there, were quite different: a claim of constructive trust on the proceeds of an insurance policy in favor of the decedent's girl-friend, by the decedent's ex-wife. The court noted the flexibility of the doctrine (well illustrated by the variety of circumstances it addresses – as unlike in terms of historical fact as this case is, to the *Tupper* facts). The court's summary of the elements of the claim serves in this instance as well:

First, the plaintiff must show that property or a property interest that rightfully belongs to her was taken or obtained by someone else under circumstances that in some sense were wrongful or inequitable. Next, the plaintiff must show that the person who now possesses the property is not a bona fide purchaser for value and without notice. Finally, the plaintiff must establish, with "strong, clear and convincing evidence," that the property in the hands of that person, *i.e.*, the property upon which she seeks to impose a constructive trust, in fact is the very property that rightfully belongs to her, or is a product of or substitute for that property.

349 Or at 223. Specifically with reference to property impressed with a trust, the court quoted (from an earlier case) the still-applicable, classic, authority of Pomeroy:

“ [w]herever property, real or personal, which is already impressed with or subject to a trust of any kind, express or by operation of law, * * * devolves from [the] trustee to a third person, who is a mere volunteer * * *, or who is a purchaser with actual or constructive notice of the trust * * *, then the rule is universal that such heir, devisee, successor, or other voluntary transferee, or such purchaser with notice, acquires and holds the property subject to the same trust which before existed, and becomes himself a trustee for the original beneficiary. * * * It is not necessary that such transferee or purchaser should be guilty of positive fraud, or should actually intend a violation of the trust obligation; it is sufficient that he acquires property upon which a trust is in fact impressed, and that he is not a *bona fide* purchaser for a valuable consideration and without notice.’ ” *Id.* (quoting Pomeroy, 4 *Equity Jurisprudence* § 1048 at 102)

349 Or at 221.

I have held that the Golden Temple assets (including KIT-BV, the European affiliate) were impressed with a trust when held by Unto Infinity and KIIT. I have also found that Kartar Singh Khalsa was guilty of breach of fiduciary duty in his role in formulating the transaction that transferred those assets to the control of Golden Temple LLC, an entity formed with GTM as the 90 percent member and the manager, and Kartar Singh Khalsa and other management employees the member managers of GTM. I have also found that the transaction was unfair to Unto Infinity and KIIT, causing them to part with the assets at a fraction of their value and under unreasonable terms. I have found Kartar Singh Khalsa acted knowingly in causing the breach of fiduciary duty by Unto Infinity and KIIT through their participation in this scheme.

There are few remaining questions to be answered regarding GTM’s liability for unjust enrichment. One issue is whether Kartar Singh Khalsa’s knowledge is attributable to the company of which he was manager and by far the most interested member. That knowledge is attributable to the company because Kartar Singh Khalsa was the agent of the company and his knowledge regarding the breach of fiduciary duty was knowledge relevant to, and in fact exercised in the course of, negotiating

in behalf of GTM (*See, Doe v. Oregon Conference of Seventh-Day Adventists*, 199 Or App. 319, 325-6, 111 P3d 791 (2005); *Fleishhacker v. Portland News Pub. Co.*, 158 Or 476, 486, 77 P2d 141 (1938)).

Although the negotiations, in part, predated the formation of GTM, the company ratified the full course of planning for the transaction when it entered into the Operating Agreement with Unto Infinity and KIIT, and availed itself of the benefits.

Finally, strong, clear and convincing evidence establishes that Golden Temple, LLC, and all proceeds of its business, income, substitutes, and assets, including those of KIT-BV, is the property that is impressed with the charitable trust private plaintiffs and the Attorney General seek to vindicate.

These finding conclude the liability for unjust enrichment as against GTM, and Kartar Singh Khalsa. It leaves for consideration the liability the Attorney General asserts against the other member-managers of GTM who were not at the same time board members of Unto Infinity and KIIT. Each obtained an interest in GTM by contribution to the capital of that company. The limited liability company, itself, is liable. The question (which the Attorney General's argument does not confront) is whether these individuals should be liable aside from the remedy granted against the company of which they are owners.

The evidence established that proceeds of the sale of the cereal division of Golden Temple were passed through to the individual members of Golden Temple Management in March 2010 as follows:

Kartar S. Khalsa: \$2,655, 676.80

Karam S. Khalsa: \$1,217,185.20

Ajeet S. Khalsa: \$829,899.

Guru Hari S. Khalsa: \$276,633.00

Gurudhan S. Khalsa: \$553,266.00

(Ex. 399). Other special distributions were made in May 2010 and February 2011, and as distributions to cover taxes on the sale to Heathside. Ex. 315, 316, 317. Overall, each member manager received multi-million dollar distributions within three years of the 2007 entry of Golden Temple Management, as 90 percent owner of Golden Temple, LLC for a \$100 contribution.

To the standard of clear and convincing proof, I find that these distributions were proceeds of property impressed with a trust for the charities of the Sikh Dharma community, and still impressed with that trust. Based on the evidence at trial, I am convinced that Karam Singh Khalsa, the chief financial officer of Golden Temple, Inc., who was intimately involved in planning financial aspects of the acquisition of Golden Temple by the management group, had notice that the Golden Temple assets were held in trust by Unto Infinity and KIIT and that Kartar Singh Khalsa was a self-dealing fiduciary in the transaction by which the management group obtained the great majority interest in the newly formed Golden Temple of Oregon without giving value.

The reputation in the community that the Golden Temple business was held for the benefit of the Sikh Dharma community of nonprofits and controlled by Unto Infinity was well established by the evidence. Each of the member-managers, through their work in that community, had notice that the assets were those of a trust and that the primary organizer of the management group, Kartar Singh Khalsa, was an insider in Unto Infinity and KIIT. However, regardless of the fact that other members of the group had much less involvement or knowledge regarding the circumstances, none is a bona fide purchaser for value and without notice of those assets of the trust that were distributed through Golden Temple Management, to the hands of the members. Each gave some consideration (contributed a share of the management group's total \$100,000 capital) for his share of GTM, but received millions of dollars of proceeds from the asset obtained by GTM for a mere peppercorn. The property of the charity never lost its character as trust property, because at no stage was it exchanged to a bona fide purchaser

for value without notice of the trust obligation.

To the extent that individual member managers received funds as a distribution of the proceeds of Golden Temple, therefore, they were unjustly enriched. If it were true, as Golden Temple defendants argue, that these member-managers acted in “good faith” (which I take to mean honesty in fact) it would not justify their retention of trust proceeds as to which neither they, nor GTM, were bona fide purchasers for value.

Affirmative Defenses.

GTM, and the GTM defendants and Kartar Singh Khalsa assert the “business judgment rule” by way of an affirmative defense. This doctrine is recognition, by courts, of the scope of discretion exercised by the directors of a corporation when acting in good faith and in behalf of the interests of the corporation. Applying that rule to managers of a limited liability company does not advance the GTM defendants’ position here, because the liabilities asserted against GTM do not depend on criticism of any of the GTM defendants’ business judgment in acting within their discretion as managers. Actions to accept entrusted property obtained from a charitable trust without payment of value and with notice of that the trustee could not legitimately convey those assets are not actions within the scope of the sound business judgment of a corporate director or manager.

Golden Temple argues in its closing brief that the business judgment rule is relevant to its defense, in that it should be viewed as shielding the actions of the Unto Infinity and KITT board; thus preventing the court from finding the transaction to have been a violation of fiduciary duties by those defendants. This argument does not make the rule – however interpreted – an affirmative defense for the Golden Temple defendants. Kartar Singh Khalsa and the Unto Infinity defendants (including all

other defendants) raise the business judgment rule in their own behalf. None of the defendants concede that the assets were held in trust, and none contend therefore that the actions were taken for the benefit of that trust.

Very simply, the business judgment rule, where it is relevant, is a presumption (rebuttable) in favor of business decisions by corporate (and other) directors: “ The ‘business judgment rule,’ we explained, ‘generally operates to bar judicial inquiry into actions of corporate directors taken **in good faith and in the exercise of honest judgment in the lawful and legitimate furtherance of corporate purposes.**’” *Bernards v. Summit Real Estate Management, Inc.* 229 Or App 357, 365, 213 P3d 1 (2009) (quoting *Crandon Capital Partners v. Shelk*, 219 Or App 16, 31, 181 P3d 773, *rev. den.*, 345 Or 158, 190 P3d 379 (2008) (Emphasis added)). The rule shields the exercise of discretion when a corporate director seeks to make a decision within the scope of the director’s duties to guide the corporation in legitimate corporate actions. It does not protect violations of fiduciary duty to a trust, of which the entity is the trustee. The findings entered above necessarily encompass the court’s conclusion that the relevant actors, here, were not acting in the exercise of honest judgment in the legitimate furtherance of the trust; they were acting in material respects to advance private interests of their own, and acting not in good faith or the exercise of honest judgment but, rather, with reckless disregard for the duties owed by one in a fiduciary position to a charitable trust.

The defendants also assert as affirmative defenses failure to state a claim for relief and lack of standing, and (as asserted by Unto Infinity defendants), estoppel and statute of frauds. For the reasons stated in the above findings and conclusions, I find a claim for relief has been stated and the plaintiffs have standing to advance the claims made. Defendants have failed to prove that any plaintiff is estopped to make a claim here. Because the claims advanced at trial did not involve real property, the statute of frauds is not applicable.

REMEDIES

The court has received some briefing regarding remedies. The parties are advised to submit any additional briefing regarding remedies in light of the findings and conclusions shown here, within three weeks of the date of this opinion. The court will set this matter down for argument on remedies thereafter, or when advised that all briefing has been submitted if earlier.

December 12, 2011.

Leslie M. Roberts
Circuit Court Judge