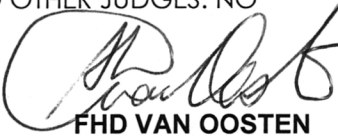


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

CASE NO: 41609/2017

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED
17 NOVEMBER 2017	 FHD VAN OOSTEN

In the matter between

**YANG WU**

**APPLICANT**

and

**JIE ZHANG**

**FIRST RESPONDENT**

**ZHANG RECYCLING (PTY) LTD**

**SECOND RESPONDENT**

**AFRICA CHINA TRADING (PTY) LTD**

**THIRD RESPONDENT**

**CHIH-PO HUANG**

**FOURTH RESPONDENT**

**TZU LING HUANG**

**FIFTH RESPONDENT**

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**J U D G M E N T**

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**VAN OOSTEN J:**

**Introduction**

[1] The applicant by way of semi-urgency seeks relief in terms of the provisions of s 163 of the Companies Act 71 of 2008. In sum the applicant alleges that a deadlock has arisen between him and the first respondent in the running and management of the business of the second and third respondent, resulting in him being subjected to oppressive and prejudicial conduct. The fact of a deadlock has become common cause but the cause thereof is sharply in dispute. It is further common cause that the applicant and the first respondent are the shareholders of the third respondent. The applicant alleges that he is also a shareholder of the second respondent which is denied by the first respondent (the shareholding dispute).

[2] The relief sought is for first respondent to acquire the shareholding of the applicant in both the second and third respondents, the fair market value of which is to be determined by a chartered accountant. I should mention at this juncture that an application for the liquidation of the third respondent brought by the first respondent and opposed by the applicant, is pending in this court and that the third respondent is not represented before me.

[3] For the sake of completeness, the fourth respondent is a practising attorney who acted as the second and third respondent's attorney. The fifth respondent is married to the fourth respondent and she is the financial manager of both the second and third respondents. Except for allegations made by the applicant that the fourth and fifth respondents acted in concert with the first respondent in subjecting the applicant to the alleged unfair and oppressive conduct, no relief is sought against them. I will revert to the appropriateness of their joinder in this application and their involvement in the further proceedings I propose to order, later in the judgment.

### **The shareholding dispute**

[4] The shareholding dispute was the only dispute that was argued before me. Counsel were in agreement that the shareholding dispute was pivotal to the application as a whole and that the dispute is incapable of resolution on the papers as they stand. Having read and considered the papers, I agree. It follows that only the opposing contentions of the parties as to the order I am now required to make, need to be considered.

[5] The applicant has not produced a share certificate or any other documentary proof of his alleged shareholding on the second respondent. Counsel for the applicant with reliance on an interpretation of certain documents submitted that the applicant has placed sufficient information before this court for the matter to be referred to trial. As opposed thereto, counsel for the respondents submitted that the applicant was well aware of the shareholding dispute prior to launching the urgent application but apart from merely stating that he is a shareholder of the second respondent, he has failed to adduce sufficient proof of his alleged shareholding in the second respondent for this application to proceed on trial and that the application accordingly falls to be dismissed. Compelling opposing arguments were advanced primarily based on an interpretation of certain documents forming part of the papers before me. For the reasons that follow I do not consider it necessary to further deal with those arguments as the considerations I will now turn to deal with, in my view, are decisive of the issue.

### **Discussion**

[6] The applicant and the first respondent were known to one another for many years arising from their employment by a state owned steel company in China. Their business relationship in South Africa vested when the applicant, after having moved to South Africa, in 2011 commenced the business of importation of gloves through the vehicle of the third respondent. The applicant was entrusted with the effective control of the third respondent and he was formally appointed a director of the third respondent on 1 March 2016. In addition they were both, as the first respondent put it, 'allocated 50% shareholding' in the third respondent. The third respondent's business for a variety of reasons that are not relevant for present purposes, appears not to have been successful, hence the application for its liquidation. The first respondent avers that the applicant's 'improper and unlawful conduct' regarding the affairs of the third respondent resulted in the gradual deterioration of their relationship.

[7] The applicant moreover, was also in effective control of the second respondent. He was appointed a director of the second respondent but later, pursuant to disciplinary proceedings instituted against him, divested of such powers and duties. As I have mentioned, the first respondent denies that the applicant holds any

shareholding in the second respondent. The first respondent has attached a share certificate to prove his alleged sole shareholding in the second respondent but the authenticity of that document, as rightly pointed out by counsel for the applicant, at least *prima facie*, is open to doubt.

[8] Against this background and having regard to the acrimony now existing between the parties, I am of the view that the shareholding dispute ought to be determined by a trial court after having heard and considered oral evidence based on pleadings clearly defining the issues for determination. A referral of not only the shareholding dispute but the application as a whole for trial, in my view, will ensure a proper delineation, ventilation and determination of all issues between the parties.

#### **The joinder of the fourth and fifth respondents**

[9] The respondents have taken issue in the answering affidavit with the applicant's joinder of the fourth and fifth respondents to the application. No grounds in support of the joinder are set out in the founding affidavit. In the replying affidavit it is stated 'the fourth and fifth respondents have been cited on the basis of averments made regarding their complicit conduct with the first respondent and [they] are necessary parties to be cited as such'. This, as a basis for joinder, is clearly misconstrued: those respondents have no direct and substantial interest in the relief sought or in such relief as may be granted, nor is relief sought against them (*Erasmus Superior Court Practice Vol 2 D1-124*). It follows that the applicant must pay their costs of the application and that they ought to be excluded from any further proceedings.

#### **Order**

[10] In the result the following order is made:

1. The application between the applicant and the first, second and third respondents is referred for trial.
2. The applicant's notice of motion shall stand as a simple summons.
3. The applicant shall deliver a declaration within 20 days of the date of this order, whereafter the time limits for the filing of further pleadings and notices, provided for in the rules, shall apply.
4. The applicant shall pay the fourth and fifth respondents' costs of the application.

5. The remainder of the costs of this application shall be costs in the action.



**FHD VAN OOSTEN  
JUDGE OF THE HIGH COURT**

**COUNSEL FOR APPLICANT**

**APPLICANT'S ATTORNEYS**

**COUNSEL FOR 1<sup>ST</sup>, 2<sup>ND</sup>, 4<sup>TH</sup>  
& 5<sup>TH</sup> RESPONDENTS**

**RESPONDENT'S ATTORNEYS**

**DATE OF HEARING  
DATE OF JUDGMENT**

**ADV SK DAYAL**

**PRANAV JAGGAN ATTORNEYS**

**ADV H LOUW**

**HUANG ATTORNEYS INC**

**14 NOVEMBER 2017  
17 NOVEMBER 2017**