

CITATION: Zhou v. Chen, 2025 ONSC 3648
COURT FILE NO.: CV-25-741704-00CL
DATE: 20250619

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
FAN ZHOU, 3888 INVESTMENT GROUP) *Calvin Zhang & Yun Lu, for the Plaintiffs*
LIMITED and VISIONARY HOLDINGS)
INC.)
)
Plaintiffs)
)
)
- and -)
)
ZHONG CHEN, DONALD M. KEALEY,) *Michael S. Myers & Arash Jazayeri, for the*
SIMON L. TANG, CHARLES YONGJUN) *Defendants Zhong Chen, Charles Yongjun*
FU, JIE LUO, XIAOFENG WANG and) *Fu, Simon L. Tang, Donald M. Kealey and*
GUOHAO XU) *Jie Luo*
)
Defendants)
)
)
) **HEARD:** June 6, 2025

2025 ONSC 3648 (CanLII)

ENDORSEMENT

JUSTICE JANA STEELE

Overview

[1] This matter involves a publicly traded company, Visionary Holdings Inc. (“VHI” or the “Company”) and allegations of oppression, among other things. Motions were brought by both the plaintiffs and the defendants for declaratory and injunctive relief. The plaintiffs allege wrongdoings related to the calling of Board meetings and unauthorized Securities and Exchange Commission filings, among other things. The defendants take the position that the plaintiffs Zhou and 3888 have engaged in oppressive conduct, and fraud, among other things.

[2] Essentially, this matter is about two things: (1) the rightful board of directors of VHI; and (2) whether there is a *prima facie* case that the plaintiff, Fan Zhou (“Zhou”) has engaged in fraud and/or oppressive conduct, among other things, in breach of her fiduciary duties owed to VHI such that an order directing an investigation is appropriate.

[3] The relief was urgently sought. The plaintiffs state that the most pressing harm is the imminent risk of NASDAQ delisting VHI if VHI’s annual financials are not approved and filed by July 15, 2025. A recognized, functioning Board of Directors is required in order for the annual financials to be approved and filed in a timely manner.

[4] The rightful board of directors’ issue is quite straightforward. The Board of Directors of VHI as it existed on March 25, 2025 constitutes the lawful Board of Directors until further court order. I have also determined that the Board of Directors should be entitled access to records, usernames, and passwords for EDGAR, NASDAQ, and securities portals.

[5] In addition, I have determined that it is appropriate to appoint an inspector and require that the status quo be maintained pending further court order.

Background

[6] VHI is an Ontario corporation, the shares of which are publicly traded on the NASDAQ. Zhou is the founder of VHI. Zhou is also a director of VHI.

[7] 3888 Investment Group Limited (“3888”) is an Ontario corporation, wholly owned and controlled by Zhou’s daughter, Wan Hong Wu (“Wu”). Wu received the shares for no consideration.

[8] 3888 is the sole holder of VHI’s Class B Common Shares, which purport to carry 100 votes per share. If these Class B Common Shares are validly issued, 3888 would hold approximately 97% of the total voting power in VHI. 3888 holds approximately 27% of the total issued and outstanding common shares of VHI.

[9] The defendants are five members of VHI’s Board of Directors: Zhong Chen (“Lawrence”), Marc Kealey (“Marc”), Simon Tang (“Simon”), Charles Fu (“Charles”), and Jie Luo (“Roger”).

[10] Each of Lawrence, Simon, Charles, and Marc hold common shares of VHI.

[11] Prior to March 26, 2025, VHI’s board of directors consisted of nine (9) individuals: Zhou, Zongjiang He, Jun Huang, Lawrence, Marc, Simon, Charles, Roger, and William Chai.

[12] On May 2, 2025 a case conference was held before Conway J. At that conference, Conway J. scheduled the motion and set out the agreed timetable for delivery of materials.

[13] On May 12, 2025 an urgent motion was brought before Osborne J. At para. 25 of his May 12, 2025 endorsement, Osborne J. made an order preserving the status quo pending the hearing and determination of the motion scheduled for June 6, 2025. The status quo order required that

during such time “no party may take any steps or transactions outside the ordinary course of business of Visionary.” In addition, Osborne J. specified that, subject to further court direction:

- a. There shall be no meeting of any Board of Directors of Visionary, or any Board Committee, until such time as the composition of the Board is resolved or determined;
- b. There shall be no meeting of shareholders of Visionary, and no action taken or purported to be taken outside the ordinary course of business;
- c. No audit or financial statements shall be approved, and none shall be filed or released, until the composition of the Board is resolved or determined;
- d. As follows from the above point, there shall be no amendment or purported amendment to the articles of incorporation, by-laws, jurisdiction of incorporation, head office or banking authority of Visionary;
- e. There shall be no public disclosure by any party save and except as may be directed by further order of the Court or the SEC; and
- f. There shall be no sale, transfer, assignment or encumbrance in any way, directly or indirectly, of any asset of Visionary outside the ordinary course of business.

[14] At the hearing of the motion, the plaintiffs raised a preliminary issue regarding the late timing of the defendants’ filing of certain materials and asked for the late filed materials to be struck. I indicated that if the plaintiffs required additional time to, among other things, consider the late filed materials and/or conduct cross-examinations, in the circumstances I was prepared to adjourn the matter to provide the plaintiffs with additional time. The plaintiffs indicated that they wanted to proceed with the motions.

Analysis

What is the constitution of the rightful Board of Directors of VHI?

[15] The Board of Directors of VHI is as it existed on March 25, 2025.

(i) *The March 26, 2025 Meeting*

[16] The Defendants purported to hold an “urgent” board meeting on or about March 26, 2025. The defendant, Marc, called the meeting via WeChat with four hours’ notice.

[17] The notice was deficient because, among other things, it violated the minimum two clear days’ notice required by VHI’s By-Law no. 1, s. 4.4. The deficient notice also did not reference the intended removal of directors.

[18] At that meeting, the Defendants purported to remove Zhou and Mr. Zongjiang He. This purported action was taken without shareholder approval. Shareholder approval is required to

remove directors pursuant to VHI's By-Law No. 1, s. 3.8. Further, under s. 122(1) of Ontario's *Business Corporations Act* (the "OBCA"), shareholder approval is required to remove a director from office¹. Following the purported removal, public filings were made regarding the removal of Zhou and Mr. He from VHI's board of directors.

[19] The meeting was wrongfully called and the actions that were purported to have been taken could not be done at the meeting. Its results are a nullity.

(ii) *The April 4, 2025 Meeting*

[20] The April 4, 2025 Meeting was also not validly held and its results are a nullity.

[21] Following the actions of the Defendants in purporting to call and convene a meeting to remove Zhou, 3888 took a similar course of action.

[22] On April 4, 2025, 3888 purported to call and hold a shareholders' meeting to remove the defendants as directors.

[23] Section 105 of the OBCA provides that shareholders (with at least 5% of the issued shares) can requisition the directors to call a meeting of shareholders. The directors of VHI were not requisitioned to call a shareholders' meeting.

[24] Under section 105(3) of the OBCA, upon receiving the requisition the directors are required to call a meeting of shareholders unless "the business of the meeting as stated in the requisition includes matters described in clause 99(5)(b) to (d)." Section 99(5)(b) of the OBCA provides that a corporation is not required to comply where "it clearly appears that the primary purpose of the proposal is to enforce a personal claim or redress a personal grievance against the corporation or its directors, officers or security holders."

[25] It appears that the purpose of the meeting would have fallen within the ambit of s. 99(5)(b) of the OBCA and therefore the directors would not have been required to call a shareholders' meeting. The purpose of the meeting appears to have been to redress a personal grievance against the defendants in their capacity as directors.

[26] Even if the purpose of the meeting was not to redress a personal grievance against the Defendants, the meeting was still not called in accordance with the OBCA. Only the board of directors can call a shareholders' meeting.²

[27] The results of the April 4, 2025 shareholders' meeting are a nullity.

¹ S. 122(1) states: "Subject to clause 120(f) [cumulative voting], the shareholders of a corporation may by ordinary resolution at an annual or special meeting remove any director or directors from office."

² If the directors do not call the meeting within 21 days the requisitioning shareholder may requisition the meeting: s. 105(4) of the OBCA.

[28] Accordingly, the Board of Directors of VHI as it existed on March 25, 2025 continues to be the Board of Directors of VHI.

Should the court order an investigation order?

[29] The Defendants seek an investigation order under s. 161 of the OBCA.

[30] The appointment of an inspector is an extraordinary remedy: *Khavari v. Mizrahi*, 2016 ONSC 4934, 61 B.L.R. (5th) 313, at para. 41.

[31] The test for the granting of an investigation order was articulated in *Khavari*, at paras. 35 and 41:

1. The applicant must be a security holder;
2. The court must be satisfied that one of the situations in s. 161(2) of the OBCA has been established *prima facie*; and
3. The court must consider the appropriateness of the investigation, considering its usefulness and reasonableness under the circumstances, with due consideration to its expected costs and benefits. With regard to the issue of whether an investigation is appropriate, the courts have considered a number of factors, including:
 - a. Whether the applicant needs access to the information;
 - b. Whether there are better less expensive means to acquire the information;
 - c. Whether the proposed investigation would give a tactical advantage to the applicant; and
 - d. The expense of the investigation as compared to the benefits.

[32] As noted above, four out of the five Defendants are security holders.

[33] The plaintiffs submit that because the Defendants hold only a small minority of the shares, they should not be considered security holders for the purposes of this test. I disagree. There is not a *de minimis* number of shares specified for a person to be considered a security holder in order to apply to the court under section 161 of the OBCA.³ Four of the defendants are minority shareholders in VHI.

³ Section 161(1) of the OBCA provides that: “A registered holder or a beneficial owner of a security or, in the case of an offering corporation, the Commission may apply, without notice or on such notice as the court may require, to the court for an order directing an investigation to be made of the corporation or any of its affiliates.”

[34] The second part of the *Khavari* test requires the court to be satisfied that one of the situations in s. 161(2) of the OBCA has been established *prima facie*. Section 161(2) provides that:

- (2) Where, upon an application under subsection (1), it appears to the court that,
- a) The business of the corporation or any of its affiliates is or has been carried on with intent to defraud any person;
 - b) The business or affairs of the corporation or any of its affiliates are or have been carried on or conducted, or the powers of the directors are or have been exercised, in a manner that is oppressive or unfairly prejudicial to, or that unfairly disregards, the interests of a security holder;
 - c) The corporation or any of its affiliates was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or
 - d) Persons concerned with the formation, business or affairs of the corporation or any of its affiliates have in connection therewith acted fraudulently or dishonestly,

The court may order an investigation to be made of the corporation or any of its affiliates.

[35] As noted by Dietrich J. in *Sherif Gerges Pharmacy Professional Corporation et al. v. Niam Pharmaceuticals Inc. et al.*, 2025 ONSC 2058, at para. 36:

With respect to the second part of the test, the *prima facie* case, this court has held that the required evidentiary threshold is low and is satisfied if there is good reason to believe the conduct complained of may have taken place or there at the very least there exists an index of suspicion or appearance that reasonable shareholder expectations have not been met. [Citations omitted]. [...]

[36] The Court in *Khavari* stated, at para. 40, that “it is not enough that an applicant merely allege misconduct or raise suspicion.” And further stated that “[i]t is incumbent on the court to examine the entire record before determining whether a *prima facie* case of oppression has been made out.”

[37] As noted by the Supreme Court of Canada in *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, [2008] 3 S.C.R. 560, at para. 68, oppressive conduct is conduct that unfairly disregards the reasonable expectations of a complainant.

[38] As discussed below, the evidence before the Court in respect of certain actions taken by Zhou are concerning. There are numerous allegations made against Zhou in the defendants’ materials. Based on the record before me, the defendants have established, at the least, “an index of suspicion” that the business or affairs of VHI have been carried on, or the powers of Zhou as a director have been exercised, in a manner that is oppressive or that unfairly disregards the interests

of the defendants as security holders of VHI. Accordingly, I am satisfied that the requirement set out in s. 161(2)(b) has been established *prima facie*.

[39] Among other things, the Defendants point to Zhou’s actions in respect of another court proceeding brought by Baoshuo Zhang against Zhou, Wu, and VHI, among others, in September 2024 (the “Zhang Action”), which action is ongoing.

[40] Service of the Zhang Action was effected by personal service on Zhou, who proceeded to retain a single counsel to represent all the defendants (including VHI) in the Zhang Action. However, Zhou did not inform the rest of the Board of Directors about the Zhang Action in a timely manner. Zhou was aware of the Zhang Action since at least October 19, 2024, at which time a statement of defence was filed on behalf of all defendants, including VHI. She concealed the existence of the Zhang Action from the rest of the VHI board of directors for about six months.

[41] The background to the Zhang Action also appears troubling. Zhou and Zhang entered into a personal transaction for Zhou to buy a personal residence from Zhang. Subsequently, Zhang agreed to loan money to Zhou. Zhou signed two \$1,500,000 promissory notes on behalf of VHI, without the knowledge or approval of VHI’s board of directors.

[42] The loan of \$1.5 million from Zhang was made to Zhou (not to VHI). Zhou says that the loan was for VHI’s benefit and the funds were immediately advanced by her to VHI on an interest-free basis. However, there was no documentary evidence provided to support this assertion. Zhou could have included bank statements evidencing that the transfers were made (and when).

[43] Zhou filed evidence with regard to the Zhang Action. In her evidence, she states that the \$1.5 million loan from Zhang was “structured as a private loan” to Zhou personally secured by the property she was buying. Zhou further states that “[a]lthough [she] was named as the director borrower, the loan was arranged for the benefit of [VHI].” She states that she loaned the funds received to VHI interest free (again, with no supporting documentation).

[44] In the endorsement of Koehnen J., in the Zhang Action, dated April 2, 2025, he stated:

It appears that the defendant Fan Zhou was a director of Visionary Holdings. She was served with the claim and defended it through counsel. She did so without advising the other members of the Board of Directors. [...]

[45] At best, it seems that Zhou kept the other directors in the dark regarding the dealings with Zhang and the subsequent Zhang Action. The VHI board of directors may have known that Zhou was advancing an interest free loan to VHI, but there is no evidence that the VHI board of directors was aware that Zhou had signed promissory notes with Zhang on behalf of VHI (as guarantor). I agree with the Defendants that it appears that Zhou was acting in a manner in which her personal interests directly conflicted with her duties to VHI.

[46] The Defendants also allege stock manipulation. On March 5, 2025, the defendants state that Zhou caused a press release to be published announcing that VHI and Alfardan Group LLC (“Alfardan”) had entered a financing consent letter, pursuant to which Alfardan intended to provide a \$1 billion investment in VHI. The news release states, among other things, that

“Visionary announced externally that it has reached a financing consent letter worth \$1 billion with the Alfardan Group of Qatar.”

[47] On April 3, 2025, VHI received a letter from Alfardan’s counsel stating that there was no such intended investment and demanding that VHI immediately retract all public statements. The letter addressed to Lawrence states, among other things:

As you know, on March 10, 2025, your company published a press release which stated as fact that Visionary had reached an agreement with Alfardan on a financing consent letter, pursuant to which you said that Alfardan intended to provide a *one billion dollar* investment in Visionary. [...]

Of course, as you now know, none of this was true. Indeed, it appears that Visionary Holdings – through a significant lapse in internal controls and a complete failure to perform any meaningful due diligence – participated in the publication of a press release which was obviously untrue, and as to which Visionary either knew or was reckless as to its lack of truth.

Visionary’s lapses in corporate due diligence and disregard of internal controls are striking. Alfardan is disturbed not only by the false press releases by a NASDAQ-listed company, but also by two further events that took place on March 26, 2025. At 1:00 p.m. Doha time that day (*i.e.*, 6:00 a.m. Eastern), Ms. Fan Zhou visited Alfardan’s offices and attempted to explain that Visionary was the victim of a scam perpetrated by a lone individual fraudulently posing as an agent of Alfardan. According to her, it appears that armed with nothing more than an email address and a grainy, pixelated image of the Alfardan logo on fake company letterhead, this individual was somehow about to convince representatives of Visionary that the Alfardan Group – which has never had any business relationship with Visionary – intended to provide a \$1 billion investment.

[...]

[48] Zhou’s supplementary affidavit states that “all decisions to authorise disclosure and execution of any related documentation, including any Form 6-K filings with the SEC, were made by resolution of the Board of Directors, and not by me personally or without full Board knowledge and oversight, which is also the requirements of NASDAQ.” She states that the resolution of the board of directors regarding this matter is attached to her affidavit. However, the resolution that is attached (dated February 16, 2025) does not appear to authorize the release of a press release, among other things.

[49] Marc’s evidence is that “Zhou issued the [Alfardan] press release without the Board’s knowledge or authorization.” He indicated that the Board was immediately concerned. The Board determined that the press release contained false information, which is what prompted the Board to try to remove Zhou on March 26, 2025.

[50] Given the timing of the resolution (February 16, 2025), and the fact that, among other things, it refers to the fact that no due diligence had yet been commenced on this purported \$1 billion deal, it appears that the press release was made without the Board’s knowledge or

authorization. It appears that in the face of a board resolution requiring confidentiality, among other things, Zhou made the March 2025 announcement.

[51] The defendants also filed evidence from Xinyu Zhang who alleges she was “duped” by Zhou. Her evidence was that on December 23, 2024, she signed a Stock Buyback Agreement with Zhou and VHI for the purchase of one million shares of VHI at the price of \$1 per share. Xinyu Zhang states that Zhou guaranteed the buyback of her shares at \$2 million after six months or her shares would reach a value of at least \$2 million. Xinyu states that she transferred \$500,000 towards the share purchase, but once she became suspicious, she stopped making further payments. Xinyu Zhang’s evidence is that the amounts were not transferred to VHI’s bank account but were instead transferred to Zhou’s personal U.S. company. Xinyu states that when she discovered that the shares had not been provided, Zhou “attempted to evade responsibility by offering excuses, threatening to sue [her], subsequently refused to answer [her] phone calls, and ultimately stated that she would not issue a refund.”

[52] I am satisfied that the defendants have demonstrated that there is *prima facie* evidence of serious misconduct and that an investigation is in the best interests of the company.

[53] The third branch of the test is discretionary. I am satisfied that it is appropriate in the circumstances for me to exercise my discretion and appoint an inspector, recognizing that it is an extraordinary remedy. The Defendants require access to the information to determine whether, and to what extent, the company has suffered from a fraud and/or the other shareholders have been oppressed. As noted by the Defendants, there is a complex web of companies potentially involved (as set out at Exhibit L to Zhou’s affidavit). Further, there are complex transactions that are outside the norm of typical commercial transactions, such as the Zhang Action. I agree with the Defendants that a neutral inspector with expertise in financial and tracing of assets would be valuable.

Should Zhou be restrained from participating in the management of VHI pending further court order?

[54] The defendants seek an order restraining Zhou from participating directly or indirectly in the management of VHI pending further court order. This relief is an interlocutory injunction. Accordingly, the defendants must satisfy the test set out in *RJR-MacDonald Inc. v. Canada (A.G.)*, [1994] 1. S.C.R. 311, at para. 43:

- a. There must be a serious issue to be tried;
- b. The moving party would suffer irreparable harm if the application were refused; and
- c. The balance of convenience must favour granting the injunction.

[55] In determining whether there is a “serious issue to be tried” the court must be satisfied that “the claim is not frivolous or vexatious.” As detailed above, there is a “serious issue to be tried.”

[56] I am also satisfied that the defendants would suffer irreparable harm if Zhou were permitted to continue to manage VHI. The letter received by VHI in respect of the Alfardan matter reserves all rights to Alfardan in respect of the alleged fraudulent press notice that was issued. The reputation of VHI as a public corporation could be in jeopardy if false information continues to be disseminated.

[57] I am satisfied that the balance of convenience weighs in favour of enjoining Zhou from exercising powers as a director, officer, or shareholder of VHI pending an inspection. The evidence in respect of the Zhang Action, among other things, suggests that Zhou may not be acting in accordance with her fiduciary duties to the company. Zhou will face minor inconvenience from the injunction (being temporarily removed from the management of VHI). However, without the injunction in place, VHI and the defendants risk significant damage to VHI's reputation and potential legal actions, among other things.

Should 3888 be restrained from taking action to change the Board of Directors while the investigation is ongoing?

[58] While the directors of VHI (in place as of March 25, 2025) may continue, 3888 as the purported 97% Class B Common shareholder is restrained from taking action to remove the Defendants as directors pending the outcome of the investigation or further court order.

[59] The Defendants seek to prevent 3888 from exercising her purported super-majority voting shares to control VHI. The Plaintiffs allege that Wu and Zhou are acting together. The fact that 3888 purported to hold a shareholders' meeting immediately after the improperly convened directors' meeting for the purpose of retaliating against the defendants and removing them supports the defendants' assertion.

[60] Another issue that was raised by the defendants was the purported change of 3888's shareholdings to special Class B Common Shares with 100 votes per share, giving 3888 a super majority (97%) of the votes of VHI (while 3888 holds about 27% of the equity). The plaintiffs state that this was done to consolidate voting power and provide enhanced control to the majority shareholder. The background documents provided to support this purported change to the voting control of VHI were not provided. All that was filed in evidence was a copy of the publicly filed Form 6-K reporting the change. As noted by the defendants, there was no evidence of the company issuing the Class B Common Shares, among other things. The defendants note that the purported change in the voting rights held by 3888 is another issue that ought to be investigated.

[61] In the circumstances, 3888 is restrained from taking action to remove the defendants as VHI directors pending the outcome of the investigation or further court order. Balancing the potential harm to VHI with the time limited restraint on 3888's ability to change the board of directors from the status quo board of directors, I am satisfied that this is appropriate in the circumstances.

[62] In their notice of motion, the defendants had also sought leave to bring a derivative action. However, this was not addressed at the motion, nor is this relief adequately addressed in the materials. In their oral submissions the defendants stated that this relief could be addressed another

time. The defendants may bring a separate motion for leave to commence a derivative action. There was not sufficient time booked before me for the parties to address this relief.

Disposition and Costs

[63] Order to go as follows:

- a. An inspector shall be appointed under s. 161 of the OBCA. If there are issues regarding the choice of inspector or the terms of the order, the parties may arrange a case conference before me through the Commercial List Office.
- b. The purported directors' meeting held on March 26, 2025 to remove Zhou and Mr. He as directors of VHI was improperly held and therefore the results are void;
- c. The purported "special meeting" of the shareholders of VHI held on April 4, 2025 to remove the Defendants as directors of VHI was improperly held and therefore the results are void;
- d. The Board of Directors of VHI as it existed on March 25, 2025 shall constitute the lawful Board of Directors of VHI until further court order;
- e. Zhou is restrained from participating directly or indirectly in the management of VHI pending further court order;
- f. 3888 is restrained from taking action to remove the defendants as directors of VHI pending further court order; and
- g. The Board of Directors of VHI shall be provided with access to all records, key codes, usernames and passwords for EDGAR, NASDAQ, and all securities-related portals for VHI.

[64] I encourage the parties to resolve the issue of costs between them. If they are unable to do so by July 18, 2025, they may schedule a Case Conference (30 minutes) before me to set out a timetable for submissions.

J Steele J.

Released: June 19, 2025

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and VISIONARY HOLDINGS INC.

Plaintiffs

-and-

ZHONG CHEN, DONALD M. KEALEY, SIMON L.
TANG, CHARLES YONGJUN FU, JIE LUO,
XIAOFENG WANG and GUOHAO XU

Defendants

ENDORSEMENT

J. Steele J.

Released: June 19, 2025