

HONG KONG / JUDGMENT

# QU HONG v. LAM YIN AND ANOTHER

## COURT

Court of First Instance

## DECIDED

5 January 2007

## CASE / FILE NUMBER

HCMP1607/2005

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj HCMP 1607/2005 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE  
REGION COURT OF FIRST INSTANCE MISCELLANEOUS PROCEEDINGS NO. 1607 OF 2005

IN THE MATTER of K VISION INTERNATIONAL INVESTMENT (H.K.) LIMITED and IN THE  
MATTER of the Companies Ordinance (Chapter 32)

BETWEEN QU HONG Applicant and LAM YIN 1st Respondent ZHANG HONG XIN 2nd  
Respondent

Before: Hon Kwan J in Chambers Dates of Written Submissions: 8, 15 and 22 December 2006 Date  
of Decision: 5 January 2007

## DECISION

This is an application dealt with on paper at the request of the parties. The application is an originating summons issued pursuant to section 114B of the Companies Ordinance, Cap. 32. The applicant, Qu Hong ( ), seeks an order to convene an extraordinary general meeting of K Vision International (H.K.) Limited ( the Company ) to consider and, if thought fit, passing resolutions to appoint Messrs. Deacons or another firm of solicitors to represent the Company in various legal proceedings. I will first set out the relevant background matters. The background Qu is the registered shareholder of 97% of the shares of the Company. The remaining shares are held by the 1st respondent, Madam Lam Yin ( ; as to 2%) and the 2nd respondent, Zhang Hong Xin ( Zhang ; as to 1 %). Qu has disputed the validity of the transfer of shares to Zhang in other proceedings. The quorum for transaction of business at any general meeting of the Company, as provided in the articles of association, is two members present in person or by proxy. Since 2004,

Qu, Lam and Zhang have been involved in a number of proceedings. I have given an account of these proceedings in a decision handed down on 11 January 2006 in HCCW No. 1277 of 2004, paragraphs 40 to 74. The Company is a party in most of these proceedings. Of particular relevance to the present application are these proceedings:

- (1) HCA No. 2710 of 2004 This is an action brought by Qu in the name of the Company against Lam and Zhang, claiming a declaration that various minutes of the Company were falsified and therefore void, an injunction to restrain Lam and Zhang from acting as directors of the Company, an order that they should deliver up the books and records, and damages for breach of fiduciary duty.
- (2) HCA No. 2842 of 2004 This is a derivative action brought by Lam and Zhang against Qu, alleging fraud, forgery, misappropriation of assets and bogus transactions. The Company is the 2nd defendant.
- (3) HCCW No. 1277 of 2004 This began as a petition of Zhang to wind up the Company on a debt owed to him. Later, Lam was substituted as the petitioner and she sought to wind up the Company on the ground of a debt owed to her and on the just and equitable ground, based largely on the matters complained of in HCA No. 2842 of 2004. Thus, Qu, Lam and Zhang are on opposite sides in litigation with the Company involved as a party. It is necessary for the Company to be represented by solicitors in various legal proceedings. The earlier originating summons On 31 December 2004, Qu issued an originating summons against Lam and Zhang in HCMP No. 3340 of 2004 under section 114B to convene an extraordinary general meeting of the Company. Of the resolutions to be considered was a resolution to appoint Messrs. Reimer & Partners as the Company's solicitors in various proceedings. On 7 February 2005, Deputy Judge Poon (as he then was) made an order to convene an extraordinary general meeting for the purpose of considering merely the resolution to appoint Reimer & Partners as solicitors for the Company in eight proceedings and to ratify their authority to represent the Company in these proceedings, upon Qu's undertaking not to instruct Reimer & Partners to represent him in any of the proceedings. The rest of the originating summons (relating to the consideration of a resolution to appoint additional directors) was adjourned for argument. Pursuant to this order, an extraordinary general meeting was held on 4 March 2005 and resolutions were passed to appoint Reimer & Partners as solicitors and to ratify their authority. Since then, Reimer & Partners have been acting for the Company in eight proceedings, including the three proceedings mentioned above. Qu is separately represented by Chan and Associates. The move to change solicitors On 8 July 2005, Qu's solicitors wrote to Messrs. Siao, Wen and Leung, the solicitors for Lam and Zhang, to inquire if they would consent to Deacons taking over from Reimer & Partners as the Company's solicitors in the eight proceedings. There would be no need to convene another extraordinary general meeting if this could be agreed. In the event Lam and Zhang should object to the proposed change of solicitors, they were asked to state if they would attend such a meeting without a court order. Notice was given to Lam and Zhang that if an application to court were necessitated, Qu would seek an order they should bear all costs.

On 20 July 2005, Chan and Associates sent to Siao, Wen and Leung a notice for the extraordinary general meeting to be held on 8 August 2005. The stance taken by Siao, Wen and Leung, as appeared from their letters in July 2005, may be summarized as follows:

- (1) Chan and Associates were asked to explain why Qu felt necessary to appoint another firm to act in the place of Reimer & Partners, and in what ways Reimer & Partners had failed to discharge their duties towards the Company;
- (2) they expressed concern about the duplication of costs that would follow with the change of solicitors;
- (3) they did not give any indication if Lam and Zhang would attend an extraordinary general meeting to consider a resolution to change solicitors. On 2 August 2005, Qu issued the present originating summons to convene an extraordinary general meeting for the purpose aforesaid. Lam and Zhang did not attend the meeting on 8 August 2005 and it was aborted as there was not a quorum. The subsequent developments On 31 October 2005, Lam filed an affirmation to oppose the application. She deposed that it was her understanding Qu found it necessary to change solicitors for the Company not because of any problem of performance of Reimer & Partners, but because Qu or the Company was unable to settle the bills of these solicitors. She alleged that the Company is insolvent and expressed concern for the Company to incur further liabilities when it would not be able to discharge them. She stated that the change of solicitors would only result in abortive and additional costs, as the new solicitors would have to go through the documents again. On 1 November 2005, I made an order on the originating summons that an extraordinary general meeting be convened to consider a resolution to appoint Deacons or another firm of solicitors nominated by Qu as the Company's solicitors in four of the eight proceedings. I adjourned the rest of the relief sought for argument. Deacons were then appointed the solicitors of the Company in four of the proceedings. The other four proceedings for which the change of solicitors has yet to be made are the three proceedings mentioned earlier and HCMP No. 3340 of 2004. On 5 October 2006, Chan and Associates wrote to the court asking to restore the application for hearing to a date not later than December 2006. They stated that the handling solicitor in Reimer & Partners acting for the Company in HCA No. 2710 of 2004, HCA No. 2842 of 2004 and HCCW No. 1277 of 2004 had left the firm, and Qu is of the view that it would be to the benefit of the Company for it to be represented by Deacons. I note the stance of Chan and Associates that they were not seeking to effect a change of solicitors for HCMP No. 3340 of 2004, taking the view that this action can now be excluded. On 6 November 2006, Siao, Wen and Leung wrote to the court. In relation to Qu's application to convene a meeting to change solicitors for the Company, they stated that their clients are prepared to consent to the application and this was subject to the two matters mentioned therein:
  - (1) Qu giving an undertaking to bear the costs of Deacons incurred up to the date of the change of solicitors; and

- (2) Deacons issuing a written confirmation to the Company, Lam and Zhang that they would only look to Qu for payment of any costs incurred before the change of solicitors. On 15 November 2006, Chan and Associates informed Siao, Wen and Leung that Qu would not accept the above conditions and would proceed with his application. Siao, Wen and Leung then wrote to the court on the same day stating that Lam and Zhang generally have no objection to the application and the only issue is the abortive costs before the change of solicitors. They maintained that the Company should not have to bear two sets of legal costs, one set of costs being the abortive costs. They requested the court to deal with the application on paper. On 20 November 2006, I gave directions to deal with the application on paper and vacated the hearing of the application on 22 December 2006. On 25 November 2006, Lam filed a further affirmation raising various contentions:
- (1) the affirmations filed by Qu have not shed any or much light on the need of the Company to change solicitors in various proceedings, Qu has offered no or no plausible reason for his request or the need of the Company to change solicitors;
  - (2) Qu's assertion that the Company would be better represented by Deacons would appear not to have been borne out by the conduct of proceedings by Deacons in one of the cases in which the change of solicitors was made in that the Company's application for a stay of proceedings was dismissed;
  - (3) she remained concerned that the assets of the Company have been and will continue to be depleted in order to resist what is clearly an unmeritorious case, for example, in HCA No. 2884 of 2004 (one of the four proceedings in which Deacons have been appointed to act for the Company);
  - (4) she believed there is little truth or substance in Qu's assertion it would be to the benefit of the Company for it to be represented by Deacons for the alleged reason that the handling solicitor of Reimer & Partners had left the firm;
  - (5) the costs already incurred to date in engaging Deacons are substantial, she remained concerned about the abortive costs or the depletion of the Company's assets that would arise from the request to change solicitors and she failed to see why such abortive costs should be absorbed by the Company, if the Company should turn out to be insolvent;
  - (6) she prayed that the application in relation to HCA No. 2710 of 2004, HCA No. 2842 of 2004 and HCCW No. 1277 should be or should have been dismissed and even if it is allowed (which [she and Zhang] no longer contest in order not to escalate costs even further), the application should be allowed only on terms that (1) the Company will not be made to bear the abortive or duplicated costs incurred prior to the change of solicitors; and (2) [Qu] should be ordered to bear the costs of the present application. On 2 December 2006, Chan and Associates sought confirmation from Siao, Wen and Leung whether their clients now do not only dispute the alleged abortive costs but also oppose the application in its entirety, in view of the matters raised in the 2nd affirmation of Lam. Siao, Wen and Leung replied on 6 December 2006 that they have referred to the underlying merits of this application only in

the context of the costs issues . The ruling and orders In my view, the stance taken by Lam and Zhang, with its many twists and turns, and under the guise they are not opposing the application but in effect submitting that the application should not be granted for the contentions they put forward or at least should not be granted without the terms or conditions as proposed by them, is without merit. The reliance of Siao, Wen and Leung on paragraph 47 of Re Success Plan Ltd. [2002] 3 HKLRD 560 is also misconceived. On the available evidence, there is no cogent material to indicate to this court that the resolution proposed by the majority shareholder to change solicitors for the Company would be oppressive to the minority or that unfair prejudice might result from such a decision. I see no reason to disallow the application to convene a general meeting to consider the resolution to change solicitors for the Company in the three legal proceedings. Qu, as the majority shareholder, has the responsibility of engaging solicitors so that the Company is properly represented in all these proceedings and he is to give such instructions to the solicitors for the Company as may be required. There is no reason why the court should enquire into the grounds for terminating the engagement of a particular solicitor and instructing another solicitor in his place. That is a matter that should be left to the party who has the responsibility of arranging legal representation. As parties on the opposite side in these proceedings, I find it bizarre for Lam and Zhang to press for justification for the decision to change solicitors, or to criticize certain aspects of the conduct of Deacons in some of the actions, when they were not privy to the advice given to the Company. They are in effect using their minority shareholdings to render a general meeting inquorate and putting as much difficulty as they can in the way of Qu to change solicitors for the Company. They are hardly disinterested parties in the disputes with the majority shareholder and their alleged concern for the costs liability of the Company should be viewed with circumspection. Whether the costs to be incurred in effecting a change of solicitors would be abortive or additional, as alleged by Siao, Wen and Leung, remain to be seen. Even if they were, it would be a matter for the majority shareholder, who has the responsibility of arranging legal representation, to consider if there should still be a change of solicitors, notwithstanding the amount of costs that would be wasted or that further costs had to be incurred. There is no basis at present requiring the majority shareholder to shoulder personal responsibility for all such costs incurred before the change of solicitors as a condition to allow a general meeting to be held to bring about such change. I understand all bills of Reimer & Partners have been settled. Lam and Zhang are not without a remedy, if it should transpire eventually that the decision to change solicitors for the Company was not made in good faith and against the interest of the Company, although one wonders why the majority shareholder should embark on such a course damaging to the interest of the Company as he would have far more to lose holding 97% of the shares. Any order made on this application is not determinative of the substantive rights of the parties. If Qu were in breach of his fiduciary duties to the Company, or had acted in a way unfairly prejudicial to the interest of minority shareholders in arranging legal representation for the Company, Lam and Zhang could seek appropriate relief against Qu in other proceedings. At the moment, I am not persuaded a clear case of oppressive or unfairly prejudicial conduct has

been made out. I order that an extraordinary general meeting of the Company is to be convened for the purpose of considering and if thought fit passing the resolutions set forth in paragraphs 1 and 2 of the schedule to the originating summons, insofar as there are other proceedings not covered by the order I made on 1 November 2005. I see no reason to restrict the wording of the resolution to specific legal actions identified by the action number. I also order that one member of the Company present in person or by proxy shall constitute a sufficient quorum at such meeting. As I have found that the stance taken by Lam and Zhang is without merit, I order them to pay Qu s costs in this application, to be taxed if not agreed. (S Kwan) Judge of the Court of First Instance High Court Mr. Victor Dawes, instructed by Messrs. Chan and Associates, for the Applicant Messrs. Siao, Wen and Leung, for the 1st and 2nd Respondents PAGE - 1udk 1udk H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V i\$&`G hccw (for Susan Kwan only).dot setup Microsoft Word 9.0 7mv0 7mv0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF’s page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

|                 |                                                                                                                                                                           |
|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ORIGINAL SOURCE | <a href="https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=55612">https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=55612</a>                       |
| CASE PAGE       | <a href="https://chat.esheria.ai/case-law/hong-kong/qu-hong-v-lam-yin-and-another-2007">https://chat.esheria.ai/case-law/hong-kong/qu-hong-v-lam-yin-and-another-2007</a> |

Prepared on 28 October 2026 · Esheria