

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2025-152609

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO


SIGNATURE

DATE 5 September 2025

In the matter between:

MOHAMED CARIM

First Applicant

SHADE 9 TRADING (PTY) LTD

Second Applicant

ROYAL FIVE TRADING (PTY) LTD

Third Applicant

MOHAMED CARIM

Fourth Applicant

and

PETZONE (PTY) LTD

First Respondent

PETZONE FRANCHISE (PTY) LTD

Second Respondent

CHANTELLE OLGA AGUIAR CASTANHO

Third Respondent

JOSE CRISTOVAO PERREIRA DA SILVA

Fourth Respondent

MICHAEL HARTMAN

Fifth Respondent

**JOSE CRISTOVOA PERREIRA DA SILVA N.O
(IN HIS CAPACITY AS TRUSTEE OF THE JOSE
CRISTOVAO PERREIRA DA SILVA FAMILY
TRUST)**

Sixth Respondent

**MONICA DA SILVA N.O (IN HER CAPACITY AS
TRUSTEE OF THE JOSE CRISTOVAO
PERREIRA DA SILVA FAMILY TRUST)**

Seventh Respondent

**CRISTOVOA PERREIRA DA SILVA N.O (IN HIS
CAPACITY AS TRUSTEE OF THE JOSE
CRISTOVAO PERREIRA DA SILVA FAMILY
TRUST)**

Eighth Respondent

**COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION OF SOUTH AFRICA**

Ninth Respondent

JUDGMENT

This judgment is handed down electronically by circulation to the parties' legal representatives by email and by being uploaded to CaseLines. The date and time for hand down is deemed to be 5 September 2025.

MAHON AJ:

Introduction

- [1] This urgent application arises out of a dispute concerning the control of the first and second respondent companies, Petzone (Pty) Ltd ("PZ") and Petzone Franchise (Pty) Ltd ("PZF"). The applicants seek to interdict a shareholders' meeting of both PZ and PZF scheduled for 8 September 2025, at which the

removal of the fourth applicant, Mr Mohamed Carrim Jnr, as a director of those companies is to be considered. The third to eighth respondents oppose the application.

- [2] The fourth applicant serves on the boards of PZ and PZF as the nominee and representative of the second and third applicants, Shade 9 Trading (Pty) Ltd and Royal Five Trading (Pty) Ltd. Shade 9 and Royal Five claim to hold, pursuant to the second cession agreement, fifty percent of the issued shares in PZ and PZF respectively. The balance of the shares is held by the Cristovao Pereira da Silva Family Trust. The shares ceded to Shade 9 and Royal Five were formerly held by the Jose Cristovao Pereira da Silva Family Trust (“the JCP Trust”), which, under the second cession agreement concluded in September 2023, ceded all of its shares in PZ to Shade 9 and all of its shares in PZF to Royal Five.
- [3] The applicants accordingly contend that the proposed meeting directly threatens their rights as cessionaries and shareholders, as it seeks the removal of their nominee director under circumstances where they are not recognised as shareholders and would therefore be unable to participate at the proposed meeting or to vote on the proposed resolution. The respondents dispute that the applicants have any such rights, maintaining that the second cession is no longer extant, and that the trusts collectively remain the only shareholders of PZ and PZF.

Issues and Contentions

- [4] The applicants contend that the second cession agreement concluded in September 2023 constituted an out-and-out cession of the JCP Trust's shares in PZ and PZF, subject only to a duty to re-cede those shares once the underlying indebtedness had been repaid. They argue that the effect of such a cession is that all rights flowing from the shares, including the right to exercise voting powers, vested in the cessionaries, Shade 9 and Royal Five, until such time as repayment occurs. On their case, the JCP Trust was divested of all rights and therefore lacked authority to demand or convene a shareholders' meeting.
- [5] The respondents dispute this characterisation. They argue that the second cession was, at best, a cession *in securitatem debiti*, designed purely as security for the repayment of the loans. On this view, the applicants acquired no more than limited rights dependent upon the existence of the indebtedness, and those rights lapsed automatically once the debt was repaid. They further contend that the cession was never perfected, because the share certificates were not delivered, and that in any event the indebtedness has been discharged.
- [6] The parties are accordingly at odds over whether the cession vested enduring shareholder rights in Shade 9 and Royal Five or whether it operated merely as a security arrangement. As will be explained later, the Court's own assessment is that the precise label is not determinative, since under either characterisation the applicants' rights stand or fall with the continued existence of the underlying indebtedness.

- [7] The applicants also argue that the notice convening the meeting is defective. They rely on section 65(3) of the Companies Act, which requires that a resolution be proposed by at least two shareholders. While section 61(3) permits a shareholder holding more than ten percent of the voting rights to demand a meeting, they argue that a single shareholder cannot both requisition the meeting and propose the resolution. They rely on the decision of this Division in *Foxvest Group (Pty) Ltd v Rocky Park Holdings (Pty) Ltd* [2023] ZAGPJHC 63, where a resolution proposed by only one shareholder was set aside.
- [8] The applicants emphasise the prejudice they will suffer if the meeting proceeds. The removal of their nominee director would deprive them of board-level transparency and oversight, compromise the security constituted by the cession, risk dissipation of company assets, and create an information vacuum that cannot adequately be repaired later. They submit that such harm would be irreparable. They rely on *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd* 2012 JOL 28244 (GSJ) and *Masstores (Pty) Ltd v Pick n Pay Retailers (Pty) Ltd* 2016 (2) SA 586 (SCA) for the principle that urgent interdictory relief is appropriate to prevent unlawful conduct that will cause irreparable prejudice. They further invoke the maxim of “clean hands”, arguing that it was the JCP Trust’s obligation to deliver the share certificates and it cannot rely on its own failure to perform as a basis to deny the efficacy of the cession.
- [9] The respondents raise several counter-arguments. They submit that the second cession was never perfected because the share certificates were not delivered, and that in any event the underlying debt has since been repaid. They

emphasise that they, and not the applicants, remain the registered shareholders reflected in the securities register, and therefore alone meet the statutory definition of “shareholder” entitled to requisition meetings and propose resolutions. They rely on *Incedon (Welkom) (Pty) Ltd v Qwaqwa Development Corporation Ltd* 1990 (4) SA 798 (A) for the distinction between real rights and mere personal rights.

- [10] The respondents further raise a defence of *lis pendens*, pointing out that the applicants have already launched an urgent ex parte application on substantially the same grounds, which remains pending. They also argue that urgency is self-created, pointing to earlier litigation and correspondence in which the appointment of the fourth applicant as director was challenged. They contend that the applicants could and should have acted earlier and rely on *In re Several Matters on the Urgent Court Roll* 2013 (1) SA 549 (GSJ). Finally, they argue that the applicants have an adequate alternative remedy, namely that the fourth applicant can attend the meeting and make representations as section 71 of the Companies Act requires, and that any unlawful resolution can thereafter be set aside.

Evaluation

- [11] In my view, the dispute concerning the characterisation of the second cession is a red herring. Whether the agreement is labelled an out-and-out cession subject to a duty of re-cession, or a cession *in securitatem debiti*, the rights of the cessionaries are dependent upon the continued existence of the underlying indebtedness. If the debt has been repaid in full, the rights have either reverted

to the cedent or lapsed by operation of law. If the debt has not been repaid, those rights endure.

[12] The respondents ask me to find that the debt has been repaid, on the basis that more than the capital amount was paid and that the applicants have not produced an accounting to show otherwise. At paragraph 50 of the answering affidavit, the deponent states as follows:

“50. Ad paragraph 20

50.1 In terms of the second cession:

50.1.1 Shade 9 advanced, in aggregate, R9,721,356.64 to West Pack Franchise Ltd and PZF; and

50.1.2 Royal Five advanced, in aggregate R9,888,920,09 to West Pack Lifestyle Franchise Ltd and PZF.

50.2 The respondents' total exposure to Shade 9 and Royal Five accordingly amounted to R19, 610, 277.54 ("the exposure").

50.3 In settlement of the exposure:

50.3.1 two properties previously owned by West Pack Lifestyle, namely Erven 8 and 9 Mostyn Park Ext 1 Township, have been transferred to Shade 9 and Royal Five on 22 September 2023; and

50.3.2 in addition, an amount of at least R1,610,000 was paid by West Pack Franchise to Shade 9 between 13 October

2023 and 7 May 2024 as per the schedule attached hereto, marked "AA20" (a full audit of all amounts paid is currently being conducted).

50.4 I attach hereto copies of deeds searches in respect of each of the properties, marked "AA21" and "AA22" and draw the Honourable Court's attention to the purchase consideration recorded therein, being R10,000,000 each. The purchase consideration of the two properties (in aggregate R20,000,000) was not paid. Instead, the purchase consideration payable was meant to be (and according to the respondents were) set off against the exposure.

50.5 The applicants failed to disclose any of the aforementioned to this Honourable Court, both in these proceedings and the ex parte application.

50.6. The applicants also failed to disclose that the respondents' attorneys of record responded to the letter attached to the founding affidavit marked "MC8". A copy of the response, dated 31 July 2025, is attached hereto marked "AA23".

50. 7. In the response, the respondents' attorneys inter alia requested the applicants to provide it with a statement reflecting the outstanding balance alleged to be owing to each of the applicants and setting out the calculation thereof.

*50.8. It is submitted that this is an entirely reasonable request and not at all "spurious", as alleged by the applicants. **Particularly under***

circumstances where the respondents hold the view that the indebtedness for which the security was provided has been settled in full, as they do.

50.9. Notwithstanding challenge in the ex parte application and the respondents express request, the applicants continue to avoid an accounting of the amount alleged to be due.

50.10 In these circumstances the objective facts demonstrate that all monies advanced has been repaid, and thus neither Carim Snr or Shade 9 or Royal 5 has any right to enforce the cession agreements.”

[My emphasis]

- [13] During the hearing, I posed the question of whether these passages reflected that the respondents do not assert any *direct* knowledge that the debt has in fact been settled. I observed that they, themselves, do not produce an account showing that all obligations (capital, interest, rental or otherwise) have been met. I questioned whether they advance a conclusion drawn solely from the fact that the total of the payments made exceeds the capital initially advanced.
- [14] The cession agreements contemplated that amounts over and above the capital (described as “rental”) were payable. In those circumstances, the mere fact that payments exceed the capital amount is not determinative. Some or all of those payments may have been applied to rental, leaving a portion of the capital debt still outstanding. Thus, the question is whether the respondents’ own affidavits demonstrate that they do not know what the true position is or whether their

allegations go far enough for me to accept the proposition that the underlying indebtedness has been discharged.

[15] It must also be said that the applicants are not without blame for this state of affairs. They were called upon to provide proper statements of account but failed to do so. The absence of an accurate accounting obscures what the true position is, and it is not clear why either party has been unable to get to the bottom of it. That said, the allegations in the answering affidavit, in my view, go far enough to have called for rebuttal by the applicant. For whatever reason, the applicant elected not to deliver a replying affidavit which could have placed these allegations in dispute. Under those circumstances, it is reasonable for me to accept the respondents' version that the debt which was secured by the cession, has been discharged.

[16] It is not open to the applicants to argue that there may yet be an outstanding balance when they have chosen not to contest the factual allegations underpinning the respondents' conclusion. The absence of a reply means that the positive assertion by the respondents to the effect that that the debt has been repaid and the secured rights have fallen away, must stand.

[17] Once that finding is made, the applicants' case necessarily collapses. Their rights under the second cession do not endure. Whatever the proper interpretation of sections 61 and 65 of the Companies Act, and whatever procedural criticisms may be levelled at the notice convening the meeting, those issues cannot avail the applicants if they no longer hold rights in the shares. In

light of this finding, it is not necessary for me to address the other defences raised by the respondents.

- [18] The respondents, as the registered and beneficial owners, are entitled to requisition the meeting and to determine whether the fourth applicant should be removed as a director.

Conclusion and Order

- [19] For the reasons set out above, I find that the respondents' allegations in their answering affidavit, that the indebtedness secured by the second cession has been repaid, went unanswered and must be accepted. The result is that the applicants' rights under the second cession have lapsed, and they no longer enjoy standing to interdict the respondents from exercising the rights of shareholders.

- [20] In these circumstances, the second and third applicants have failed to establish a *prima facie* right to the relief sought. Whatever criticisms may be directed at the notice convening the shareholders' meeting, those cannot assist the second and third applicants if they have no enforceable rights in the shares.

- [21] The respondents, as the registered and beneficial owners, are entitled to requisition the meeting and to place before it a resolution for the removal of the fourth applicant as director.

- [22] The argument advanced on behalf of the applicants concerning section 65(3) of the Companies Act does not avail the fourth applicant. What the present application seeks to interdict is the convening of the shareholders' meeting

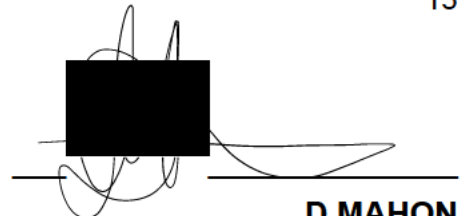
itself, not the tabling of a resolution once the meeting is under way. Assuming the decision in *Foxvest* is correct — a question on which I express no view — it does not alter the position here. Two shareholders, who together hold the entirety of the issued shares, are entitled to table the proposed resolution at the meeting once it has been duly convened.

[23] The only potential prejudice to the fourth applicant would arise if he were ambushed at the meeting by the sudden introduction of a resolution of which he had no prior notice. That is not this case. The notice convening the meeting has expressly set out that the business of the meeting will be to consider his removal as a director. He therefore enters the meeting fully apprised of the resolution that is to be tabled and with an opportunity to exercise the rights conferred upon him by section 71 to make representations before any vote is taken.

[24] In these circumstances, the reliance on section 65(3) does not provide a basis to interdict the holding of the meeting. The shareholders are entitled to place the resolution before the meeting, and if two of them do so, the requirements of section 65(3) will have been satisfied.

[25] In the circumstances, the following order is made:

1. The application is dismissed.
2. The applicants are ordered to pay the third to eighth respondents' costs, such costs to include the costs of two counsel, on scale C.



D MAHON
Acting Judge of the High Court
Johannesburg

Date of hearing: 4 September 2025

Date of judgment: 5 September 2025

APPEARANCES:

For the Applicant: Adv F. J. Labuschagne
Adv B. Casey

Instructed by: Omar Attorneys

For the Respondent: Adv L. VR. van Tonder
Adv L. Acker

Instructed by: Smit Sewgoolam Attorneys