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

Case Number: 37771/2019

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
DATE	SIGNATURE

In the matter between:

JALITE (PTY) LTD

Plaintiff

and

HAI SHI

Defendant

(Identity number: 6[...])

JUDGMENT

Wijnbeek, AJ

1. This is an action whereby a creditor wants to hold liable a member of a now wound-up close corporation by application of section 64 of the Close Corporation Act, 69 of 1989 ("the Act")¹.

¹ Section 64. **Liability for reckless or fraudulent carrying-on of business of corporation**

2. To succeed against the member the plaintiff, as creditor, is liable to proof on a balance of probabilities, that the defendant was "knowingly a party" to the reckless or fraudulent conduct of the business of the close corporation. The case must accordingly rest on –

2.1. Recklessness: Operating the business without concern for whether the entity can meet its obligations.

2.2. Gross Negligence: A severe lack of care in managing the company's affairs.

2.3. Fraud: Intentionally conducting business to defraud creditors or for other fraudulent purposes.

3. The gripe in this matter is that the close corporation was voluntarily wound up by the defendant member on 6 August 2019, in the wake of a Supreme Court of Appeal judgment against the close corporation delivered on 29 March 2019. To secure the wound up of the close corporation, the defendant member confirmed under oath a statement of affairs that, objectively assessed, is not correct in all respects.
4. The parties introduced a single witness each. The trial lasted for two full days.
5. I will briefly sum up the evidence of the respective witnesses, whereafter the evidence will be measured against the legal position of section 64 of the Act.
6. The following chronology is common cause:

6.1. The initial cause of action between the plaintiff and the close corporation, Shanghai Furniture Import and Export CC ("Shanghai") resorts to a claim for

(1) If it at any time appears that any business of a corporation was or is being carried on recklessly, with gross negligence or with intent to defraud any person or for any fraudulent purpose, a Court may on the application of the Master, or any creditor, member or liquidator of the corporation, declare that any person who was knowingly a party to the carrying on of the business in any such manner, shall be personally liable for all or any of such debts or other liabilities of the corporation as the Court may direct, and the Court may give such further orders as it considers proper for the purpose of giving effect to the declaration and enforcing that liability.

(2) If any business of a corporation is carried on in any manner contemplated in subsection (1), every person who is knowingly a party to the carrying on of the business in any such manner, shall be guilty of an offence.

rental of a commercial property situated at [...] D[...] Road, E[...], Edenvale relative to a lease entered in on 27 November 2012.

- 6.2. The plaintiff succeeded with a claim for rental, damages and costs in the Regional Magistrate's Court with judgment delivered on 13 January 2017. Shanghai was ordered to pay the plaintiff.
- 6.3. On appeal, the High Court upheld Shanghai's appeal per its judgment of 15 September 2017. Accordingly, the plaintiff was liable to pay Shanghai a substantial sum of money.
- 6.4. The plaintiff thereafter sought special leave to appeal to the Supreme Court of Appeal. Such leave was granted.
- 6.5. The Supreme Court of Appeal delivered its judgment on 29 March 2019, setting aside the High Court's ruling and upholding the Regional Court's decision.
- 6.6. By 1 April 2019, the plaintiff demanded payment from Shanghai in the amount of R430 164.90, being capital and interest calculated from 2013.
- 6.7. The defendant, as sole member of Shanghai, on 29 May 2019, signed a resolution for the voluntary winding-up of Shanghai.
- 6.8. By 1 August 2019, a warrant of execution was executed at 11 Engwena Street, Sebenza, Edenvale. No assets of Shanghai were pointed out and a *nulla bona* return was rendered.
- 6.9. To facilitate its winding-up, Shanghai was reinstated on 2 August 2019 and was thereafter wound up on 6 August 2019.

Plaintiff's evidence

7. Mr Price, director of the plaintiff, testified on the latter's behalf.

8. Mr Price is of the view that the defendant conducted the business of Shanghai reckless or grossly negligent and that the defendant orchestrated a scheme to defraud the plaintiff, inter alia as plaintiff testified that:

8.1. Shanghai's Inventory recorded in the Shanghai Financials for 2017 and 2018² records a value of R883 575. The member failed to disclose this value in the winding up.

8.2. During 2018 Shanghai incurred liabilities of R547 564 versus the amount of R290 700 for 2017.

8.2.1. The defendant reduced his loan in Shanghai from R290 700 in 2017 to R111 900 by 28 February 2018, and no such loan is recorded in the "Statement of Affairs"³ filed in support of the winding up of Shanghai. Therefore, the member paid him about three hundred thousand Rand instead of retaining money for payment to creditors such as plaintiff.

8.2.2. Shanghai incurred R435 664 "Non-current liability" in 2018, whilst there was no such liability in 2017. Note three to the 2018 financials explains this liability as a loan that bears no interest and has no fixed term of repayment from Ping Upholstery Suppliers CC ("Ping Upholstery"), wherein the defendant is also the sole member. Analysing the figures further, it becomes apparent that where Ping Upholstery owed Shanghai R305 236 by 28 February 2017, Shanghai owed Ping Upholstery R435 664 by 28 February 2018, representing a movement of more than seven hundred thousand Rand in favour of Ping Upholstery over the 12-month period. No liability towards Ping Upholstery is recorded in the Statement of Affairs signed by 29 May 2019. Accordingly, the defendant as sole member of Shanghai and Ping Upholstery engineered a shift in funds from Shanghai, failing to duly separate the respective close corporations and abusing his position of sole member in the respective entities.

² Core bundle p96

³ Core bundle p 32 and further

- 8.3. The defendant recorded in the Statement of Affairs that Shanghai had no cash in hand by 29 May 2019⁴, whilst the bank statement of the time records a positive bank balance of R4840.46⁵.
- 8.4. In the financials of 28 February 2018, it is recorded that Shanghai “Loans advanced to group companies”⁶ accounts for R740 900 in 2018 and only R25 764 in 2017.
- 8.5. The bank statements record flow of funds between Ping Upholstery and T&D Hardware, another close corporation of which the defendant is the sole member, underscoring plaintiff’s view that the defendant did not respect the legal persona of Shanghai as he failed to keep Shanghai separate. Accordingly, he conducted Shanghai’s business reckless or fraudulently.
- 8.6. The defendant, whilst knowing that more than R430 000 was demanded as payment in January 2019, only recorded the capital amount of R229 815,15 of the initial Regional Court judgment.
9. Accordingly, plaintiff’s view is that the defendant must be held liable in person for the debt of Shanghai.

Defendant’s evidence

10. Mr Hai Shi (“Shi”), defendant, was the only witness called by the defendant. Shi was the only member of Shanghai.
11. Shi disputes the allegations of reckless conduct or scheme to defraud, *inter alia* premised on the following evidence, namely that:
- 11.1. Shanghai’s business was the import of furniture from China delivering same to its clients, comprising of main chain stores such as House and Home and Lewis.

⁴ Compare Core Bundle p38

⁵ Compare Core Bundle p131

⁶ Core Bundle p99

- 11.2. The contractual obligation of Shanghai towards its clients requires Shanghai to replace and repair goods for a period of up to three years from import and sale of its merchandise. Accordingly, a substantial inventory was kept and reflected on the books, but, if not used for repairs, such goods have no real value.
- 11.3. Shanghai fell on hard times as –
- 11.3.1. It lost its biggest client, House and Home, with the latter indicating a drive to purchase from local suppliers; and because of
 - 11.3.2. financial loss from imports due to⁷ fluctuations in the exchange rate from the time that goods were ordered in China to payment 90 days from delivery to House and Home (exchange rate losses on transactions).
- 11.4. The aforesaid had a detrimental effect on Shanghai's business, reducing the turnover from about R10m per annum in 2013 to about R200 000 by 2018, causing the close corporation to trade at a loss.
- 11.5. Shanghai leased warehouse space in its name, and as Shanghai's business shrunk, T&D Hardware incrementally took over Shanghai's space and honoured Shanghai's obligation towards its landlord, Hans Schneider, until the lease with Shanghai expired. This explains the money received from Ping Upholstery and T&D Hardware for payment to Shanghai's landlord.
- 11.6. Shanghai (through the defendant) attempted to diversify its market into independent stores, but that did not solve the cashflow conundrum developing from 2016.
- 11.7. The value of the inventory – to the tune of R883 575, carried in the books for 2017 and 2018 was not reflected in the Statement of Affairs signed on 29 May 2019, for the following reasons:

- 11.7.1. Mechanisms and parts carried for repairs represented about R200 000's value on the books. If not used as repairs in three years' time, such goods have no value. It is written off and the goods are discarded at no or nominal value.
- 11.7.2. A further about R200 000 represented the value of covers for lounge suites. Again, if not used as replacement during the warranty period, such goods have no eventual value. In addition, whilst storing such covers, the material fades and incur damage from dust and rats.
- 11.7.3. The remainder of about R400 000 represented the carrying value of various lounge suites not sold and delivered to retail clients. In its attempts to diversify the business of Shanghai and to secure income, these suites were sold to independent traders at discounted prices. In addition, some lounge suites faded or damaged over the time of storage and necessitated discounts to move it from the warehouse. Shanghai received cash payments for such deals, either directly or via its member. Defendant was able to realise about R160 000 for the lounge suites from March 2018 until the winding-up of Shanghai. The money was accounted for.
- 11.7.4. When Shanghai's lease expired, and hesitant to incur any further costs for storage whilst Shanghai had no income, Shanghai and defendant disposed of goods in storage; either by destroying the mechanisms, parts and covers or by donating same at no cost to contracted repairers in an endeavour to retain goodwill in the event that Shanghai's business may turn around.
- 11.7.5. Accordingly, defendant can account for the inventory of Shanghai; there was no remissness in not recording any of such value in the statement of affairs signed on 29 May 2019.
- 11.8. At the time of signing the Statement of Affairs that records that Shanghai had no cash on hand (by 29 May 2019), the defendant was

not in possession of the bank statement that was issued on 8 June 2019 reflecting a value of R4840.46 as of 29 May 2019.

- 11.9. Defendant recorded the debt due to plaintiff as R229 815.15 only, in the Statement of Affairs as that was the only definite amount known to him. He expected that interest and costs would be more since the demand in January 2019 but was assured by the liquidators of Shanghai that they would engage with plaintiff to eventually obtain the exact amount due to plaintiff and would include same in the liquidation figures.
- 11.10. The defendant approached House and Home and Absa Bank to attempt to secure loans for payment of plaintiff's claim against him. House and Home and Absa Bank assessed the risk of such loans and refused to assist the defendant.
- 11.11. Having been confronted by the demand for payment in January 2019, and despite attempts to raise capital for payment towards plaintiff, and having regard to the collapse of Shanghai's business, the only reasonable option remaining to the defendant was to wind up the business of Shanghai.
- 11.12. The defendant relied on professionals to assist him with accounting and legal advice. During the period from 2013 to 2019 his initial accountants resigned and his enterprises were in limbo for about two years before he obtained the services of EJ Roccas & Company. It was at all material times the accountant's function to see to the proper registration of Shanghai. When called upon to make payment for the (annual) registration with the CIPC, the defendant made such payment to the accountants.
- 11.13. The deregistration of Shanghai on the companies' register came about because of remissness of the accountants, and the CIPC had not informed the defendant of such fact during that time. The defendant had no way to know of the deregistration.

- 11.14. The most recent reinstatement on 2 August 2019 came about when Shanghai's liquidator realised that Shanghai was in deregistration. It was necessary to reinstate Shanghai before the winding up could proceed. There was accordingly nothing sinister to the reinstatement at the time.
- 11.15. The move of funds in between defendant's close corporations was to ensure that Shanghai met its financial obligations as they fell due.
- 11.16. The obligation to pay plaintiff was only confirmed with the Supreme Court of Appeal's judgment. Until then, plaintiff owed Shanghai about R190 000 in terms of the High Court order. It was at the time of the SCA's judgment that it became apparent that Shanghai was unable to settle its debt.
- 11.17. Other debtors, such as Ilsana Interiors CC recorded in the Statement of Affairs and from whom Shanghai sourced furniture locally, did not press for payment upon learning of Shanghai's financial distress. The defendant, in person and as member in Ping Upholstery and T&D Hardware, waived any entitlement to further payments, and accordingly, the credit due to defendant and the other close corporations were not recorded in the Statement of Affairs.
- 11.18. The defendant was advised by the liquidator of Shanghai that any amounts due and owing may be corrected during the process. The defendant expected that the plaintiff would submit a claim in the liquidation wherein the plaintiff would reflect indebtedness to it.
12. Accordingly, defendant says that he did not conduct the business of Shanghai reckless, nor was the winding up abused as mechanism to escape payment to the plaintiff.

On the law

13. The test whether to hold a member liable in terms of section 64 of the Act is whether the business of a corporation was carried on recklessly, with gross negligence or with intent to defraud any person or for any fraudulent purpose.
14. Was the business carried on recklessly? "Acting recklessly consists in an entire failure to give consideration to the consequences of one's actions, in other words, an attitude of reckless disregard of such consequences."⁸ Key factors to be considered in this inquiry include the scope of the business of the close corporation, the role, function and powers of the defendant whom is sought to be held liable in terms of s 64 have deviated from the standard of a reasonable person.⁹
15. The aforesaid factors must be weighed up and applied to the facts within a commercial environment. Losses do not ordinarily equal recklessness as participation in business necessarily involves taking entrepreneurial risks.¹⁰
16. To ignore the separate legal persona of a close corporation, may result in personal liability for the debts of such close corporation.¹¹

Finding

17. I have no basis to make any negative credibility findings against any of the witnesses; I accept their evidence. But does the evidence frame liability in terms of s64?
18. Assessing the evidence, I form the view that:

18.1. In essence, Shanghai lost its biggest client and fell on tough times. The defendant was unable to raise capital, despite his approach to

⁸ Ebrahim and Another v Airport Cold Storage (Pty) Ltd 2008 (6) SA 585 (SCA) para 14, 591C; and S v Dhlamini 1988 (2) SA 302 (A) at 308D-E, applied in the corporate context in Philotex (Pty) Ltd v Snyman 1998 (2) SA 138 (SCA) at 143F-G

⁹ MA Vleisagentskap CC and Another v Shaw NO 2003 (6) SA 714 (CPD) at 720J-721B; TJ Jonck BK h/a Bothaville Vleismark v Du Plessis NO en 'n Ander 1998 (1) SA 971 (O)

¹⁰ Cf Philotex (Pty) Ltd and Others v Snyman and Others; Braitex (Pty) Ltd and Others v Snyman and Others 1998 (2) SA 138 (SCA) at 146H- 147C

¹¹ Badenhorst v De Kock 2025 (4) SA 540 (WCC) para 135

House and Home and Absa Bank. There is no basis to find that the business of Shanghai was conducted recklessly.

18.2. Only when the Supreme Court of Appeal found in favour of the plaintiff, years after the fact, was plaintiff's debt vis-à-vis Shanghai replaced with a debt of the latter payable to plaintiff. It was this debt ordered by the SCA that Shanghai was unable to pay triggering the process to wind up Shanghai.

18.3. The explanation regarding the defendant's accountants, the information in the financials, and flow of funds in the bank account is reasonable. There is no basis to find on fraud or that the separate legal persona was abused.

19. And that brings me to costs.

19.1. The parties incurred substantial costs over the years, which by now far exceed the quantum initially claimed in the regional court. The demand made on 1 April 2019 underscores this view.

19.2. Although the plaintiff fails with its claim, in the exercise of my discretion, I am inclined to order that each party pays its own costs. Both parties incurred costs over many years exploring their rights within the framework of the law. It is time that the litigation that commenced as far back as 2013, be put to rest.

Order

20. Accordingly, I hand down the following order:

20.1. The action is dismissed.

20.2. Each party is to pay its/his own costs.

DH WIJNBEEK

**ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG**

Dates:

Trial – 26 & 28 January 2026

Argument – 30 January 2026

Date Judgment published: 27 February 2026

For the plaintiff:

Counsel: DL Williams

Instructed by Wright, Rose-Innes Inc.

For the defendant:

Counsel: N Alli

Instructed by Gascoigne Randon & Associate

