

<b>Matter of Chouk Ng v Chouk King Co. Inc.</b>
2017 NY Slip Op 32645(U)
December 18, 2017
Supreme Court, New York County
Docket Number: 152836/2017
Judge: Barbara Jaffe
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. BARBARA JAFFE**  
*Justice*

**PART 12**

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In the Matter of the Application of

**INDEX NO. 152836/2017**

CHOUK NG,

**MOTION DATE \_\_\_\_\_**

Petitioner,

**MOTION SEQ. NO. 001**

For the Inspection of the Minutes of Shareholders and  
Records of Shareholders of CHOUCK KING CO.  
INC. and TIEN YICK CO. INC.,

- v -

**DECISION AND ORDER**

CHOUK KING CO. INC., TIEN YICK CO. INC.,  
STEVEN NG, and WILSON NG,

Respondents.

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This special proceeding arises from a protracted and contentious dispute between members of the Ng family in which plaintiff and his son, non-party William Ng, are pitted against plaintiff's two other sons, Steven Ng and Wilson Ng. It is the third of two related actions, the first of which was commenced approximately eight years ago, and all of which center on the ownership and management of respondent corporations. (NYSCEF 15, 21).

Plaintiff seeks to inspect, with respect to both respondent corporations, the records, minutes and proceedings of the shareholders, names and addresses of all shareholders, number and class of shares held by each and the dates when they respectively became the owners of record, the annual balance sheet and profit and loss statement for the preceding fiscal year, and the most recent interim balance sheet and profit and loss statement. (NYSCEF 15). Respondents

allege, *inter alia*, that plaintiff, who is approximately 88-years-old and cannot read or write in English, has brought this action as a surrogate for their brother William, who does not himself have standing, and that plaintiff may not be fully aware of the purpose of the action, or the contents of documents to which he has signed his name. (NYSCEF 15, 21).

It is well settled that, under New York law, shareholders have a statutory right to inspect a corporation's books and records, provided that they seek inspection in good faith and for a valid purpose. (*Matter of Pokoik v 575 Realties, Inc.*, 143 AD3d 487, 488 [1<sup>st</sup> Dept 2016]). As long as the shareholder alleges compliance with the statute, the sincerity of his intentions is presumed. (*Matter of Marcato*, 102 AD2d 826, 826 [2d Dept 1984], citing *Matter of Crane Co. v Anaconda Co.*, 39 NY2d 14, 20 [1976]). The corporation must then justify its refusal to allow the inspection by showing that the records are sought for an improper purpose or in bad faith. (*Matter of Marcato*, 102 AD2d at 826). Improper purposes are those that are "inimical to the corporation, for example, to discover business secrets to aid a competitor of the corporation, to secure prospects for personal business, to find technical defects in corporate transactions to institute 'strike suits,' and to locate information to pursue one's own social or political goals." (*Tatko v Tatko Bros. Slate Co.*, 173 AD2d 917, 917-18 [3d Dept 1991], citing Henn and Alexander, *Corporations* § 199, at 538 [3d ed]).

Where the corporation raises a substantial question of fact as to the shareholder's good faith and motive, a hearing must be held on that issue. (*Matter of Troccoli v L & B Contract Indus., Inc.*, 259 AD2d 754, 754 [2d Dept 1999], citing *Matter of Crane Co.*, 39 NY2d at 20). At the hearing, the corporation bears the burden of showing the petitioner's improper purpose or bad faith. (*Matter of de Paula v Memory Gardens, Inc.*, 90 AD2d 886, 887 [3d Dept 1982]). Broad, conclusory allegations will not suffice. (*Matter of Marcato*, 102 AD2d at 828).

A hearing may also be necessary to determine the proper scope of the inspection. (*Ret. Plan for Gen. Employees of City of N. Miami Beach v McGraw-Hill Companies, Inc.*, 120 AD3d 1052, 1056 [1<sup>st</sup> Dept 2014]). If the court deems it necessary, it may grant an in-person examination of the relevant records, or require the corporation to deliver records to the shareholder. (*Pomerance v McGrath*, 143 AD3d 443, 445 [1<sup>st</sup> Dept 2016]).

Although plaintiff alleges compliance with the statute and thus, establishes the sincerity of his intentions (*see Matter of Wolberg v Wolberg Elec. Supply Co.*, 72 AD2d 903, 903 [3d Dept 1979] [“In view of petitioners’ allegations of compliance with section 624 of the Business Corporation Law, their Bona fides will be presumed”]), the highly contentious and litigious relationship between these parties, along with respondents’ allegations, present factual issues as to whether the purpose of the action is proper, which cannot be resolved without a hearing (*see Matter of Hammerman v Bueche-Girod Corp.*, 72 AD2d 677, 678 [1<sup>st</sup> Dept 1979] [hearing appropriate as, *inter alia*, “record before us leaves us in doubt as to the good faith of the petitioner . . .”]; *Matter of RDR Assocs., Inc. v Media Corp. of Am.*, 63 AD2d 888, 889 [1<sup>st</sup> Dept 1978] [“. . . highly competitive relationship between these parties and the history of prior litigation and bitterness clearly present a factual issue as to RDR’s motives and good faith that cannot be resolved without a hearing”]).

Accordingly, is it hereby

ORDERED, that the petition is held in abeyance pending a hearing before the Special Referee; it is further

ORDERED, that a Special Referee shall be designated to hear and report to this court on the following individual issues of fact, which are hereby submitted to the Special Referee for

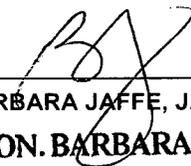
such purpose: The issue of whether plaintiff's request for an inspection of the documents requested herein was made in bad faith or for an improper purpose; it is further

ORDERED, that this matter is hereby referred to the Special Referee Clerk (Room 119M, 646-386-3028 or *spref@nycourts.gov*) for placement at the earliest possible date upon which the calender of the Special Referee Part (Part SRP), which, in accordance with the Rules of that Part, shall assign this matter to an available Special Referee to hear and report as specified above; it is further

ORDERED, that counsel shall immediately consult one another and counsel for plaintiff shall, within 15 days from the date of this order, submit to the Special Referee Clerk by fax (212-401-9186) or email, an information sheet (which can be accessed at the "References" link on the court's website) containing all the information called for therein and that, as soon as practicable thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referee Part; and it is further

ORDERED, that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referee Part in accordance with the Rules of that Part.

12/18/2017  
DATE

  
BARBARA JAFFE, J.S.C.  
HON. BARBARA JAFFE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input checked="" type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	DO NOT POST	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	