

STATE OF NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
23 CVS 20101

VISIONARY EDUCATION  
TECHNOLOGY HOLDINGS  
GROUP, INC.; FAN ZHOU; and 3888  
INVESTMENT GROUP, LTD,

Plaintiffs,

v.

ISSUER DIRECT CORPORATION,  
d/b/a DIRECT TRANSFER,

Defendant.

**ORDER AND OPINION  
ON PLAINTIFFS' STANDING**

*Lewis Brisbois Bisgaard & Smith LLP, by Christopher Derrenbacher, Clint A. Corrie, and Travis J. Cox, for Plaintiffs Visionary Education Technology Holdings Group, Inc., Fan Zhou, and 3888 Investment Group, Ltd.*

*McAngus, Goudelock & Courie, PLLC, by Robin A. Seelbach and Michael Gruman, for Defendant Issuer Direct Corporation d/b/a Direct Transfer.*

Conrad, Judge.

1. Visionary Education Technology Holdings Group, Inc. is a Canadian company that offers technology services to high schools and colleges. Earlier this year, Visionary and its majority shareholder, Fan Zhou, filed a lawsuit in Canada against former directors Yiu Bun Chan and Thomas Traves for breach of contract. There, Visionary and Zhou have asked the Canadian court to order Chan and Traves to return shares of Visionary's stock that were transferred to them in May 2022.

2. This is a sister lawsuit to that one. Here, Visionary and Zhou\* have jointly sued Visionary's transfer agent, Issuer Direct Corporation, under section 25-8-403 of North Carolina's Uniform Commercial Code. The impetus for this second litigation is the fear that Chan and Traves will try to sell their shares before the Canadian litigation ends. To stop that from happening, Visionary and Zhou seek, first, an order barring Issuer Direct from removing restrictions on the shares and registering a transfer if and when Chan and Traves make such a request and, second, a declaration that Issuer Direct cannot be liable to Chan and Traves for refusing a request to register transfer.

3. But the Court cannot do what Visionary and Zhou ask. For reasons discussed below, they do not have standing to seek relief under section 25-8-403, and as a result, the Court lacks jurisdiction.

4. A brief background will help frame the discussion. In early 2022, Visionary made an initial public offering ("IPO") and began listing shares on the NASDAQ stock exchange. Just before the IPO, Zhou transferred over 3.3 million of her shares to Chan and Traves, ostensibly to induce them to take a more active role at Visionary. Chan and Traves allegedly agreed that they would need to return the shares if they failed to meet various performance goals. They also signed a lock-up agreement in which they promised not to sell their shares for one year from the date of the IPO. As the lock-up period wound down in May 2023, Visionary instructed Issuer Direct to place a stop transfer order on the stock certificates in the names of Chan and Traves,

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\* Zhou's personal holding company—3888 Investment Group, Ltd.—is also a named plaintiff. For simplicity, the Court will refer to the plaintiffs as Visionary and Zhou.

claiming that they had not met their performance goals and therefore had no right to retain the shares. A month later, Traves asked Issuer Direct what he needed to do to remove the restrictions on his shares but took no further action. (*See* Compl. ¶¶ 10, 11, 15, 17, 18, 21, 23, ECF No. 3.)

5. Aware of Traves's inquiry, Visionary and Zhou sued Issuer Direct and immediately moved for a preliminary injunction under section 25-8-403(d)(1). (ECF No. 3 at 18–20.) Issuer Direct took no position on the motion on the ground that it must maintain neutrality in the underlying dispute between Visionary and Zhou, on one side, and Chan and Traves, on the other.

6. At a hearing, the Court observed that section 25-8-403 allows an “appropriate person” to demand that an issuer's transfer agent not register transfer of a security and that a related statute defines “appropriate person” to mean the security's registered owner. *See* N.C.G.S. §§ 25-8-107(a), -403(a). When counsel for Visionary and Zhou conceded that they are not the registered owners of the shares at issue, the Court questioned their standing, called for supplemental briefing, and noted that a lack of standing may necessitate dismissal of the action. (*See* ECF No. 18.) The Court held a second hearing on 18 September 2023 after receiving Visionary and Zhou's supplemental brief.

7. Section 25-8-403, though dense, is clear and unambiguous. In simple terms, it allows the registered owner of a security to demand that an issuer—or, as in this case, the issuer's transfer agent—not register a transfer of that security and then sets out the shifting obligations placed upon the registered owner and transfer agent once

a demand has been made. *See* N.C.G.S. § 25-8-403; *see also id.* § 25-8-407 (stating that a transfer agent has “the same obligation” as the issuer with respect to registration of transfer). The purpose of the statute is to help a registered owner stop a sham registration request by a trickster when, for example, a stock certificate has been lost or misplaced. *See id.* § 25-8-403 cmt. 2. The statute does not allow anyone other than the registered owner to make a demand. Nor does it let others, including the issuer or past owner of the shares, interfere with the registered owner’s *own* right to request registration of a transfer, which is what Visionary and Zhou are trying to do here. *See id.* § 25-8-403 cmt. 1 (“[Section 25-8-403] permits the registered owner—but not third parties—to demand that the issuer not register a transfer.”).

8. A closer look at the text bears this out. Subsection (a) explains who may initiate a demand and how to do so. It states that “an appropriate person to make an indorsement or originate an instruction may demand that the [transfer agent] not register transfer of a security” and specifies the form that the demand must take. *Id.* § 25-8-403(a) (emphasis added). The phrase “appropriate person” is a defined term. For purposes of an indorsement, it means “the person specified by a security certificate . . . to be entitled to the security.” *Id.* § 25-8-107(a)(1). For purposes of an instruction, it means “the registered owner of an uncertificated security.” *Id.* § 25-8-107(a)(2). These are two ways of saying the same thing: for certificated and uncertificated securities, the appropriate person to make a demand is the registered owner. *See id.* § 25-8-107 cmt. 2 (referring to “appropriate person” as “the person who is actually designated as the person entitled to the security”).

9. Subsection (b) explains what a transfer agent must do when faced with a registration request after having received a demand from the registered owner not to register a transfer. In a nutshell, the transfer agent must give notice to both parties: notice of the registration request to the registered owner and notice of the owner's demand to the person seeking registration. Then the transfer agent must "withhold registration of transfer for a period" of up to thirty days—a temporary freeze designed to give the registered owner enough time to go to court to seek an injunction. *Id.* § 25-8-403(b), (c).

10. Subsection (d) addresses the transfer agent's liability. The transfer agent "is not liable to a person who initiated a demand" not to "register transfer for any loss" resulting from registration "if the person who initiated the demand does not" obtain a court order "enjoining the [transfer agent] from registering the transfer" in a timely fashion. *Id.* § 25-8-403(d)(1). Put another way, a registered owner who wishes to stop a transfer agent from registering a transfer must not only make a demand under subsection (a) but also get a court order under subsection (d)(1). If the registered owner does not, then he or she cannot recover against the transfer agent for losses caused by registration (assuming, of course, that the transfer agent hasn't done anything unlawful otherwise).

11. By their own admission, Visionary and Zhou are not the registered owners of the shares at issue. Their complaint states, without equivocation, that the shares are "registered in the name" of Chan and Traves. (Compl. ¶ 51; *see also* Compl. ¶ 18 (stating that "Chan and Traves were the registered owner of the 9.5% shares of

Visionary” at the time of the IPO.) Their pleading in the Canadian lawsuit says the same thing. (See Compl. Ex. B at 5 (“Therefore, as at the date of the listing of Visionary on Nasdaq (i.e., May 17, 2022), Chan and Traves are the registered owner of the 9.5% shares of Visionary.”).) And their counsel confirmed as much during the first hearing. For the first time in their supplemental brief, they contradict those statements and argue that Zhou is the registered owner—not because the shares have been returned to her but because Chan and Traves failed to meet the performance goals that underlay the share transfer. But her affidavit refutes that assertion and confirms what is in the pleadings. In her words, the shares remain “in the name of Chan and Traves,” and she and Visionary hope to “regain and or cancel the shares” through the Canadian lawsuit. (Zhou Aff. ¶¶ 25, 27, ECF No. 5.)

12. As a result, Visionary and Zhou do not have standing. Neither is an appropriate person under section 25-8-403(a) to initiate a demand not to register a transfer or under section 25-8-403(d)(1) to obtain an injunction barring Issuer Direct from registering a transfer. For the same reason, neither has standing to seek a declaration concerning Issuer Direct’s potential liability to Chan and Traves under section 25-8-403(d)(1). Because standing is a jurisdictional necessity, its absence is fatal to the complaint. See, e.g., *In re Custodial Law Enft Agency Recordings*, 287 N.C. App. 566, 576 (2023) (referring to standing as a “threshold issue” that is “jurisdictional in nature” (citation and quotation marks omitted)); see also *CAPM Corp. Advisors AB v. Protegrity, Inc.*, 2001 Del. Ch. LEXIS 133, at \*22 (Del. Ch. Oct. 30, 2001) (holding, under analogous Delaware version of Uniform Commercial Code,

that alleged beneficial owner of contested shares was not an “appropriate person” and, thus, “not empowered with the authority to demand that [issuer] not register transfer”).

13. To be clear, the Court has not been asked to decide—and therefore does not decide—whether an issuer could enforce restrictions on share transfers through other contractual or statutory means. *See* N.C.G.S. §§ 25-8-204 & 25-8-401(5) (addressing effectiveness of restrictions on transfer imposed by the issuer). As framed, Visionary and Zhou have sought injunctive and declaratory relief under only section 25-8-403. They lack standing to seek that relief, and the Court lacks jurisdiction to grant it.

14. The Court therefore **DISMISSES** the complaint without prejudice and **DENIES** the motion for preliminary injunction.

**SO ORDERED**, this the 22nd day of September, 2023.

/s/ Adam M. Conrad  
Adam M. Conrad  
Special Superior Court Judge  
for Complex Business Cases