

Harry T. Burleigh Socy. Inc. v Foote

2022 NY Slip Op 32247(U)

July 11, 2022

Supreme Court, New York County

Docket Number: Index No. 650622/2022

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LOUIS L. NOCK **PART** **38M**

Justice

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THE HARRY T. BURLEIGH SOCIETY INC.,

Plaintiff,

- v -

LYNNE FOOTE and J.P. MORGAN CHASE & CO.,

Defendants.

-----X

INDEX NO. 650622/2022

MOTION DATE 02/09/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 14, 15, 16, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, and 46 were read on this motion for DECLARATORY & INJUNCTIVE RELIEF.

This action was filed by summons and verified complaint filed March 8, 2022, by plaintiff not-for-profit corporation alleging that defendant Lynne Foote was a founding co-president of plaintiff and that “in 2018 defendant Foote, without formal designation, assumed the role of Chairman of the Board of Directors” (Complaint ¶ 5). It is further alleged that “on September 15, 2020, defendant Foote resigned, in writing, from any role with” plaintiff (*id.*, ¶ 6), and that said resignation was “reiterated, in writing,” on January 27, 2021 (*id.*, ¶ 7). It is further alleged that plaintiff thereafter “appointed and seated a new Board of Directors” (*id.*, ¶ 8), and that plaintiff, at that point in time, provided to defendant J.P. Morgan Chase & Co. (“Chase”) notification revoking former members of the Board, including Ms. Foote, as signatories on plaintiff’s account with Chase (*id.*, ¶¶ 11-12).

However, it is further alleged that after the foregoing events, Ms. Foote misrepresented to Chase that she was a current member of the Board in an attempt to regain erstwhile control as a director of the board, causing Chase (in an apparent state of confusion) to block access to the

account (*see*, Complaint ¶¶ 16-21). Ms. Foote filed a verified answer denying seminal allegations of the verified complaint, and asserting what are cast as affirmative defenses which provide detailed counter-allegations that challenge the propriety of plaintiff's procedures in installing new directors who are alleged by plaintiff to have displaced her as a director of the board with continuing capacity to sign with regard to the account (*see*, Answer [NYSCEF Doc. No. 19], *passim*).

The verified complaint seeks the following relief:

WHEREFORE, plaintiff THE HARRY T. BURLEIGH SOCIETY, INC., respectfully requests that this Court Declare as follows:

- a) Lynn Foote's resignation from the The Harry T. Burleigh Society Inc., was effective as of January 27, 2021;
- b) The Harry T. Burleigh Society, on February 23, 2021, duly elected a new Board of Directors;
- c) The Harry T. Burleigh Society, on September 9, 2021, properly passed a resolution removing Lynne Foote as Controller and signatory on all accounts maintained by The Harry T. Burleigh Society with J.P. Morgan Chase & Co;
- d) J.P. Morgan Chase & Co. shall remove Lynne Foote as Controller and signatory on all accounts maintained by The Harry T. Burleigh Society with J.P. Morgan Chase & Co.;
- e) J.P. Morgan Chase & Co. shall fully comply with the resolution of The Harry T. Burleigh Society dated September 9, 2021 designating those persons who are authorized to act on behalf of The Harry T. Burleigh Society in relation to the accounts of The Harry T. Burleigh Society; [and]
- f) J.P. Morgan Chase & Co. shall remove any freeze, hold, restraint or other restriction in place on the accounts maintained by The Harry T. Burleigh Society.

(Complaint at 6-7.)

Plaintiff now moves, by order to show cause filed March 14, 2022 (NYSCEF Doc. No. 14), for the very same declaratory and injunctive relief quoted above from the verified complaint. However, no discovery of any kind has been conducted in this action. In essence, plaintiff seeks

the ultimate relief sought in its action, under the guise of provisional relief, without sufficient factual development of the type that only discovery can provide, and especially given Ms. Foote's conflicting position in this litigation. This court is, thus, unable to grant the motion for declaratory and injunctive relief.

However, the order to show cause did grant a temporary restraining order to the effect that "pending the hearing of this motion, defendant J.P. Morgan Chase & Co. is hereby enjoined from refusing and/or dishonoring payment of means from Quickbook/Intuit for funding of plaintiff's payroll obligations" (Order to Show Cause at 2). This court hereby continues said restraining order until further order of the court.

Counsel for the parties have written the court, post-motion, regarding various difficulties encountered in respect of the account lying at the heart of this action. The court will schedule a preliminary conference at which such concerns can be better addressed and resolved.

Accordingly, it is

ORDERED that the plaintiff's motion for declaratory and injunctive relief is denied, except that the temporary restraining order issued in this court's Order to Show Cause (NYSCEF Doc. No. 14) shall continue until further order of the court; and it is further

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ORDERED that a preliminary conference shall be held on August 10, 2022, at 10:00 a.m., at the Courthouse, 111 Centre Street, Room 1166, New York, New York.

Louis L. Nock

<u>7/11/2022</u>			<u>LOUIS L. NOCK, J.S.C.</u>	
DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE

August 10 at 10