

Haart v Scaglia

2023 NY Slip Op 30691(U)

March 7, 2023

Supreme Court, New York County

Docket Number: Index No. 652373/2022

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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JULIA HAART,	INDEX NO.	<u>652373/2022</u>
Plaintiff,	MOTION DATE	<u>01/17/2023</u>
- v -	MOTION SEQ. NO.	<u>007</u>
SILVIO SCAGLIA, PAOLO BARBIERI, JEFFREY FEINMAN, DDK & COMPANY, LLP, FREEDOM HOLDING, INC.	DECISION + ORDER ON MOTION	
Defendant.		

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 007) 107, 108, 109, 110, 111, 112, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159

were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR.

Julia Haart's motion seeking a preliminary injunction requiring Mr. Scaglia to (i) put back funds into Freedom or (ii) to prevent him from further distributing cash and other property from Freedom or EWG must be denied.

“[A] party seeking a preliminary injunction must demonstrate: (i) a likelihood of ultimate success on the merits, (ii) irreparable harm if the preliminary injunction is denied, and (iii) a balance of the equities in favor of the moving party” (*Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839, 840 [2005]; *Gilliland v Acquafredda Enters., LLC*, 92 AD3d 19, 24 [1st Dept 2011]). “To sufficiently plead a cause of action for a permanent injunction, a plaintiff must allege that there was a ‘violation of a right presently occurring, or threatened and imminent,’ that he or she has no adequate remedy at law, that serious and irreparable harm will result absent the injunction, and that the equities are balanced in his or her favor” (*Aponte v Est. of Aponte*, 172

AD3d 970, 974 [2d Dept 2019], quoting *Caruso v Bumgarner*, 120 AD3d 1174, 1175 [2d Dept 2014]). Simply put, Ms. Haart has not demonstrated a likelihood of success on the merits, irreparable harm or that the balance of the equities favors granting the injunction. Thus, she is neither entitled to a permanent injunction to have Mr. Scaglia return money to Freedom (as this is the ultimate relief she seeks [*Aponte v Est. of Aponte*]) nor a preliminary injunction to prevent Mr. Scaglia from causing the repayment of what he alleges is a \$123 million loan from him to Freedom. As discussed on the record (3.7.23), Ms. Haart is not a shareholder of EWG and has not properly asserted any predicate claims as it relates to EWG such that relief can be granted on that basis.

Reference is made to a decision and order of this Court dated February 27, 2023 (the **Prior Decision**; NYSCEF Doc. No. 176). As discussed in the Prior Decision, two courts (Hoffman, J., and Zurn, Vice-Chancellor) in two different jurisdictions (New York and Delaware, respectively) have found that Ms. Haart has lied about her relationship with Mr. Scaglia and otherwise either caused or attempted to cause others to lie on her behalf in support of her claims about her ownership in Freedom. As discussed by the Delaware Court (captioned *Haart v Scaglia and Freedom Holding, Inc. and Elite World Group, LLC*, C.A. No. 2022-0145-MTZ [NYSCEF Doc. No. 31]) and in the Prior Decision, significantly, Mr. Scaglia set up Freedom with what appears to be his pre-marital assets in exchange for control over Freedom and monies loaned from him. Freedom itself was set up following the sale of his company La Perla and for the purpose of exploring certain transactions involving Elite – also owned by him. Indeed, Ms. Haart was not a shareholder of Freedom until after Mr. Scaglia and Ms. Haart were married and the return of these assets to him from Freedom may well be appropriate because they may be his

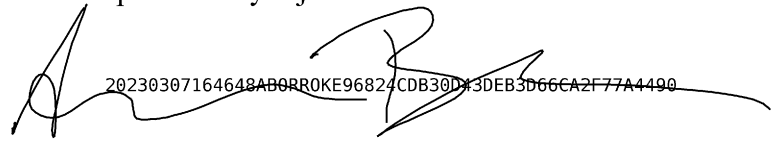
separate property and not subject to equitable distribution and otherwise in satisfaction of a loan made by him – questions hotly litigated in the context of the matrimonial action (*Scaglia v Haart*, Index 365088/2022) and to be resolved by that court (Hoffman, J.). It does not therefore matter that Tania Cohen – Mr. Scaglia’s prior executive assistant (and not during time period in which Freedom was formed) – attests to certain spending by Mr. Scaglia or otherwise testifies as to certain loans which in any event are expressly contradicted by the documents in the record and findings by the Delaware Court – part of which attestation she now has recanted in the affirmation filed in Ms. Haart’s reply papers. If in fact the property is repayment of debt as Mr. Scaglia alleges, Mr. Scaglia can direct Freedom to make those payments to third parties provided that the books of Freedom properly reflect the credit for that portion of repayment of the obligation to him. For completeness, it also therefore does not matter that the Stock Power may well be effective and make her an owner of some of the preferred shares. As discussed in the Prior Decision, Ms. Haart at least owns 50 common shares and as such is owed fiduciary duties. What matters is that she can not demonstrate a likelihood of success that the property distributed to Mr. Scaglia is not proper repayment of his loan or return of separate premarital assets to him. As discussed above, the character of this property is being litigated in front of the Hon. Douglas Hoffman and this Court declines to arrogate that issue to itself. In addition, and as discussed on the record, Ms. Haart is not a shareholder of EWG and has not asserted what amounts to be double derivative claims in this action which might form the predicate for the relief sought.

More importantly, however, Ms. Haart also can not demonstrate irreparable harm because her claims for breach of fiduciary duty based on this alleged spending if inappropriate as she alleges (and not in repayment for money lent by Mr. Scaglia as he contends) could in any event be

compensated by money damages (*Derfner Mgt. Inc. v Lenhill Realty Corp.*, 105 AD3d 683, 683 [1st Dept 2013]).

Lastly, the balancing of the equities here do not favor granting the injunction (*Greystone Staffing, Inc. v Warner*, 106 AD3d 954, 954 [2nd Dept 2013]).

It is hereby ORDERED that the plaintiff's motion for a preliminary injunction is denied.


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3/7/2023
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED			<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE