

**Noris Med., Inc. v Hagbi**

2023 NY Slip Op 31957(U)

June 8, 2023

Supreme Court, New York County

Docket Number: Index No. 654964/2022

Judge: Arlene P. Bluth

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

**PRESENT: HON. ARLENE P. BLUTH PART 14**

*Justice*

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NORIS MEDICAL, INC.

Plaintiff,

- v -

NETA HAGBI, as Administrator of the Estate of  
Liran Hagbi

Defendant.

-----X

NETA HAGBI,

Third-Party Plaintiff,

-against-

NORIS MEDICAL, INC.,

Third-Party Claim Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19

were read on this motion to/for DISMISS.

Plaintiff Noris Medical, Inc.’s (“Noris”) motion to dismiss the second counterclaim for declaratory judgment and the third counterclaim for accounting and to dismiss the entire third-party complaint granted. (The first counterclaim remains).

**Background**

This action arises out of the alleged misappropriation of corporate funds by Noris’ former CEO, Liran Hagbi. Plaintiff insists it is a Rhode Island corporation with a principal place of business in Las Vegas, Nevada but that it had an office in New York County where Mr. Hagbi

principally worked. Neta Hagbi is Mr. Hagbi's widow-- Mr. Hagbi unfortunately passed away in April 2022.

Noris claims that after his death, it conducted a review of payments made to Mr. Hagbi and insists that he directed payments to himself in excess of \$700,000 that he was not entitled to receive. Noris argues that Mr. Hagbi misrepresented his health condition (apparently, he was battling cancer) and so it was unprepared for his death. It claims that employees left and vendors took their business elsewhere. It brings causes of action for breach of contract, unjust enrichment, and breach of fiduciary duty against his estate.

Ms. Hagbi contends that her husband was largely responsible for the success of Noris and that his estate is owed substantial compensation and bonuses. She insists that her husband owned a ten percent stake in Noris and even owned a minority ownership share in Noris' parent company. Ms. Hagbi argues that her husband developed customer relations and managed sales for Noris. She brings counterclaims/third-party claims for breach of contract, for declaratory relief that she is the owner of her husband's company shares and is entitled to the benefits of a shareholder in Noris, and an accounting.

In this motion, plaintiff argues that the second and third counterclaims as well as the entire third-party complaint should be dismissed. It insists that the declaratory relief is not applicable here because plaintiff did not follow the necessary conditions under Rhode Island law to establish such a right. Plaintiff maintains that there is no basis to require a corporation to account to a minority shareholder and there is no fiduciary relationship between it and either the Hagbi estate or Ms. Hagbi. It also argues that Ms. Hagbi cannot bring a third-party claim against plaintiff.

Plaintiff insists that it is a Rhode Island corporation and so the transfer of shares to Ms. Hagbi is subject to Rhode Island law, which requires that the will be filed in Rhode Island, among other requirements. It maintains that Ms. Hagbi failed to comply with the statutory requirements of Rhode Island law and so neither Mr. Hagbi's estate nor Ms. Hagbi can maintain the declaratory relief claim.

With respect to the accounting claim, plaintiff maintains that it must be dismissed because Ms. Hagbi does not have standing as the proper procedures under Rhode Island law were not followed. It also argues that an accounting is not required when a minority shareholder asks for one. Plaintiff emphasizes that Ms. Hagbi did not properly plead the requisite fiduciary duty.

Plaintiff also seeks to dismiss the third-party claims by Ms. Hagbi (apparently brought in her individual capacity separate from the claims of the estate) are procedurally improper. It claims that Ms. Hagbi is not a defendant here—she is named in her capacity as an administrator of the estate—and that only a defendant can bring a third-party claim against a non-party.

In opposition, Ms. Hagbi argues that all of her husband's property became the property of Mr. Hagbi's estate by operation of law after he died. She insists that Rhode Island law does not prohibit her claimed declaratory relief and she does not seek a transfer of the shares. Instead, she only seeks a declaration that the estate holds the shares and can exercise rights that accompany the ownership of those shares.

Ms. Hagbi argues that the accounting cause of action arises from a statutory duty under Rhode Island law that permits shareholders to inspect the books and records of a corporation.

In reply, plaintiff insists that Rhode Island law mandates that no executor or administrator can take possession of personal property, such as shares in a corporation, until the will is filed in

a Rhode Island court. It claims that Ms. Hagbi does not dispute that she has failed to do this and so she cannot bring the instant claim.

Plaintiff argues that Ms. Hagbi has abandoned her claim for an accounting and has, instead, sought the books and records of plaintiff under a Rhode Island statute. It insists that this new claim is deficient because Ms. Hagbi never moved for leave to amend. Plaintiff further argues that even if the Court could consider this new claim, Ms. Hagbi failed to show that the estate is a shareholder and that it made a written demand to review the books and records of plaintiff.

### **Shareholder Status**

Rhode Island Law provides that:

“If a corporation refuses to permit a transfer as provided in § 33-18-24 or a person indebted refuses to pay, or having possession refuses to deliver personal property as permitted in § 33-18-25, the executor or administrator, if there is no executor or administrator appointed in this state, upon application to the probate court of any town in this state in which any real estate of the decedent is located, or, if there is no real estate in this state, in which any personal property of the decedent is situated, or in which any debtor resides, or in which any corporation the decedent owned shares of stock or registered bonds is located, may be authorized by the court to transfer the shares and bonds or to take possession of the personal property and collect the debts, and the executor or administrator may demand, sue for, and recover the property or debts; provided, that no foreign executor or administrator shall be authorized to make any transfer or take possession of personal property under the provisions of this section until he or she shall have filed in the court a copy of the will, if any, and of his or her appointment, authenticated as provided in this chapter, nor until six (6) months after his or her appointment, nor until he or she shall have given bond to the probate court appointing him or her, unless sufficient bond has been given, nor until he or she shall have advertised notice of his or her application in this state at least once each week for two (2) successive weeks in some newspaper, as directed by the probate court; and provided, further, that no authority to transfer or take possession shall be granted, if any creditor of the deceased person or ward shall show to the probate court valid objections to the transfer or possession, supported by a sworn statement of his or her claim or demand and that the same is justly due” (Rhode Island Gen Laws Ann § 33-18-26).

The key part for the purposes of this motion is the phrase “provided, that no foreign executor or administrator shall be authorized to make any transfer or take possession of personal property under the provisions of this section until he or she shall have filed in the court a copy of the will, if any, and of his or her appointment, authenticated as provided in this chapter” (*id.*).

The Court finds that this provision compels the Court to dismiss the second counterclaim for declaratory relief because Ms. Hagbi did not submit any proof that she filed her husband’s will in Rhode Island in order to take possession of the shares as the executor or administrator of her husband’s estate. While Ms. Hagbi insists that the estate became the owner of the shares by operation of law (and that may be true under principles of common law), that does not mean this Court can ignore the procedural requirements in Rhode Island.

Ms. Hagbi’s attempt to insist that this provision has no applicability because it only applies to the transfer of shares is without merit as the key provision mentions both transfers and possession of shares. The Court also observes that this second counterclaim seeks a declaratory judgment—Ms. Hagbi cannot state a cognizable claim for such relief without complying with the procedural requirements to take possession of the shares.

Although the will may have been filed in an Israeli court, that does not suffice to allow this Court to declare that the estate or Ms. Hagbi have ownership rights over the shares of a Rhode Island corporation where the applicable statute under Rhode Island law was not followed.

### **Accounting**

As an initial matter, plaintiff is correct that Ms. Hagbi did, essentially, change the nature of this counterclaim from one for an accounting to a statutory claim to review the books and records of plaintiff under Rhode Island law. As no motion or cross-motion for leave to amend was made, the Court dismisses this counterclaim.

And the Court observes that even if the Court could consider this counterclaim on the merits, Ms. Hagbi did not properly establish that the estate (or that she) is a proper shareholder of plaintiff (a requirement in order to demand an inspection of the books and records). And, as plaintiff argues, only Ms Hagbi made a demand for an inspection (another requirement under Rhode Island law) instead making the demand on behalf of the estate.

### **Summary**

The Court observes that Ms. Hagbi withdrew the third-party action in her opposition papers (NYSCEF Doc. No. 17, n 1).


The Court understands that Ms. Hagbi suspects that her husband is owed something from Noris. But she must follow the proper procedure to ensure that the estate has possession of the shares before she can seek that relief in the first instance.

Accordingly, it is hereby

ORDERED that plaintiff's motion to dismiss the second and third counterclaims and to dismiss the third-party complaint in its entirety is granted.

Conference: August 7, 2023 at 10:30 a.m. By July 31, 2023, the parties are directed to upload 1) a discovery stipulation signed by all remaining parties, 2) a stipulation of partial agreement about discovery that identifies the areas in dispute or 3) letters explaining why no agreement about discovery could be reached. Based on these submissions, the Court will assess

whether an in-person conference is required. The failure to upload anything by July 31, 2023 will result in an adjournment of the conference.

<u>6/8/2023</u> DATE					 ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE