

Harry T. Burleigh Socy. Inc. v Foote

2023 NY Slip Op 32180(U)

June 28, 2023

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.

INDEX NO. 650622/2022

MOTION DATE 02/14/2023

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document numbers (Motion 003) 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, and 110

were read on this motion to AMEND CAPTION/PLEADINGS.

Upon the foregoing documents, plaintiff’s motion for mandatory injunctive relief is denied, for the reasons set forth in the opposition papers of defendant Lynne Foote (NYSCEF Doc. Nos. 70, 86),¹ and the exhibits attached thereto, in which the court concurs, as summarized herein. The court assumes familiarity with the facts and circumstances of this action as set forth in its prior decision and order dated July 11, 2022 (NYSCEF Doc. No. 50).

On the present application, plaintiff asks the court to appoint Alonzo Wilson, a director of plaintiff, as a signatory to plaintiff’s accounts with Chase, and to partially lift the ongoing restraint on plaintiff’s accounts to the extent that plaintiff may have access to \$400,000 for “operating costs and expenses” (order to show cause, NYSCEF Doc. No. 66). These requests sound in a request for a mandatory preliminary injunction.

“A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in

¹ Defendant JP Morgan Chase Bank, N.A. (“Chase”), does not oppose the motion.

violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual" (CPLR 6301). Preliminary injunctions "should be issued cautiously and in accordance with appropriate procedural safeguards" (*Uniformed Firefighters Ass'n of Greater New York v City of New York*, 79 NY2d 236, 241 [1992]). "The party seeking a preliminary injunction must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of equities in its favor" (*Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839, 840 [2005]).

Unlike ordinary preliminary injunctions, mandatory injunctions, i.e., one in which the court directs a party to perform some act to preserve the *status quo* rather than refrain from doing so, are disfavored (*Second on Second Cafe, Inc. v Hing Sing Trading, Inc.*, 66 AD3d 255, 265 [1st Dept 2009] ["courts are generally reluctant to grant mandatory preliminary injunctions"] [internal quotation marks and citation omitted]). "A mandatory injunction should not be granted, absent extraordinary circumstances, where the status quo would be disturbed and the plaintiff would receive the ultimate relief sought, pendente lite" (*Spectrum Stamford, LLC v 400 Atl. Tit., LLC*, 162 AD3d 615, 617 [1st Dept 2018]). The movant must satisfy a "heavy burden of proving a clear right to mandatory injunctive relief" (*Rosa Hair Stylists, Inc. v Jaber Food Corp.*, 218 AD2d 793, 794 [2d Dept 1995]). Where the requested relief would effectively grant the movant the ultimate relief sought, or where the record establishes "sharp issues of fact, injunctive relief should not be granted" (*Lehey v Goldburt*, 90 AD3d 410, 411 [1st Dept 2011] [internal quotation marks and citations omitted]). "The decision to grant or deny provisional relief, which requires the court to weigh a variety of factors, is a matter ordinarily committed to the sound discretion of the lower courts (*Nobu Next Door, LLC*, 4 NY3d at 840).

With respect to the request to add Alonzo Wilson as a signatory on plaintiff's accounts with Chase, plaintiff has failed to establish a likelihood of success on the merits. Plaintiff submits a resolution of the Board of Directors purporting to support removing defendant Foote as a signatory from the account and adding nonparties Whitney Bennett and Marti Slaten as authorized persons on the account (Board Resolution, NYSCEF Doc. No. 65). The resolution does not list Alonzo Wilson as a proposed authorized person. Moreover, plaintiff asks the court to assume that the resolution was a proper exercise of the Board's authority in the face of Foote's assertion that she was, at the time of the meeting referenced, still a member of the Board and never received notice of the meeting. The court, in its prior order, denied plaintiff's motion to name Bennett and Slaten as authorized persons or signatories to plaintiff's accounts on the grounds that it was a part of the ultimate relief sought (NYSCEF Doc. No. 50 at 2-3). Plaintiff's present request is less well-founded and not materially different from relief already denied by this court, and the court sees no reason to revisit the issue at present.

Turning to the request to temporarily lift the restraint on plaintiff's accounts in the amount of \$400,000 dollars, plaintiff fails to present a sworn affidavit from anyone presently on the Board or otherwise employed by it to substantiate its need for a \$400,000 unrestricted operating budget. The court is unpersuaded that an email from Foote submitted by plaintiffs dating from 2020 regarding that figure (NYSCEF Doc. No. 64) provides any useful information as to plaintiff's present operational and budgetary needs. The documents submitted by the parties show sharp disputes about whether plaintiff is presently fulfilling its mission, putting on programming, or employing anyone. While plaintiff submits invoices for several discrete expenses, the sum is well below \$400,000 (invoices, NYSCEF Doc. No. 63). Meanwhile, the central issue of this matter, namely whether Foote is properly a director of plaintiff or not,

appears no closer to a resolution. Because of the factual disputes present in the record, the motion must be denied (*Lehey*, 90 AD3d at 411).

Accordingly, it is

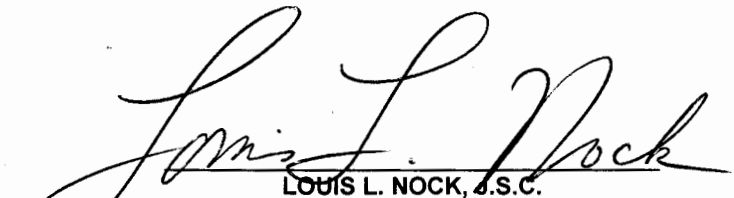
ORDERED that the motion is denied; and it is further

ORDERED that counsel shall appear for a conference before the court in Room 1166, 111 Centre Street, on July 6, 2023, at 2:30 PM.

This constitutes the decision and order of the court.

6/28/2023

DATE


LOUIS L. NOCK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE