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Order Denying Petitioner's Motion for
Interlocutory Injunction (Eden_2005 Schinazi
GST Grantor Trust)

Alice D. Bonner
Fulton County Superior Court

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**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

CAROL LYNN EDEN, As Trustee of the
2005 Schinazi GST Grantor Trust,

Petitioner,

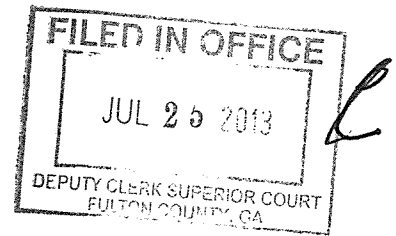
vs.

RAYMOND F. SCHINAZI, Individually,
and RFS & ASSOCIATES, LLC, As the
General Partner of RFS PARTNERS, L.P.,

Respondents.

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Civil Action No. 2012CV224395



ORDER DENYING PETITIONER’S MOTION FOR INTERLOCUTORY INJUNCTION

This matter comes before the Court on Petitioner’s Limited Motion for Interlocutory Injunction to Maintain the Status Quo. Having reviewed the record and considered the arguments and submissions of the counsel, the Court finds as follows.

Petitioner Carol Lynn Eden and Respondent Raymond F. Schinazi were previously married and recently divorced. During their marriage, Schinazi set up several trusts and business entities, including but not limited to RFS Partners, LP (“RFS Partners”) and Respondent RFS & Associates (which serves as the general partner of RFS Partners). Schinazi is the Manager of RFS & Associates and holds a controlling interest in the entity. On or about August 23, 2005, Schinazi established the 2005 Schinazi GST Grantor Trust (the “Trust”) which is the subject of this lawsuit. He named Petitioner, his wife at the time, as the Trustee. Their daughter and her descendants are the Trust’s beneficiaries.

Originally, Schinazi funded the Trust with a gift of \$500,000. Subsequently, the Trust borrowed \$7 million from Schinazi. The Trust then purchased from Schinazi a 71.675% interest

as a limited partner in RFS Partners. Until their divorce proceedings, Schinazi managed the Trust himself. Post-divorce, Petitioner has sought to more actively fulfill her role as Trustee.

A key provision of the Trust for purposes of this proceeding is found in Item V where Schinazi, as Grantor, reserved for himself the right “without the approval or consent of any person in a fiduciary capacity” to “reacquire any part or all of the [Trust] property by substituting property of equivalent value.”

In 2011 RFS Partners owned a significant amount of Pharmasset, Inc. (“Pharmasset”) common stock (over 650,000 shares). In November of 2011, it was announced that Gilead Sciences would be acquiring Pharmasset at a price of \$137 per share. As a result of this buyout, Petitioner claims that the Trust’s interest in the Pharmasset common stock held by RFS Partners was valued at approximately \$64,703,663.

On or about January 2, 2012, Schinazi attempted to exercise his right to “reacquire” Trust assets as set forth above. In exchange for the Trust’s interest as a limited partner in RFS Partners, he tendered an unsecured promissory note in the amount of \$58,290,000 with a term extending for 25 years. Almost immediately thereafter, on January 6, 2012, Eden notified Schinazi that his attempt to exchange the promissory note for the Trust’s limited partnership interest was being rejected because the substitution was not of equivalent value. She refused to sign the proposed acknowledgment of the transfer that Schinzai had forwarded. On January 12, 2012, Gilead’s purchase of all outstanding shares of Pharmasset was completed at the announced per/share purchase price of \$137. Unbeknownst to Petitioner and despite her objections, Schinazi purportedly exercised the right of substitution. Schinazi replied to Petitioner that an independent appraisal firm had calculated the amount of the promissory note such that it was equivalent in value to the Trust’s limited partnership interest in RFS Partners. On January 25, 2012, Petitioner replied asking for a copy of the appraisal and noting that, regardless of the value

of the promissory note, the fact that the note was unsecured rendered it an insufficient substitute for the Trust's limited partnership interest in RFS Partners.

The record does not make it clear what happened thereafter. Petitioner claims to have discovered in September of 2012 that Schinazi's purportedly exchanged the promissory note for the Trust asset several months earlier.

Petitioner filed her initial complaint on November 30, 2012, and her Motion for Limited Interlocutory Injunction to Preserve Status Quo was filed on April 30, 2013. Petitioner asserts that Schinazi did not have the legal ability to make the exchange, that the note given to the Trust by Schinazi was not equivalent in value to the Trust's limited partnership interest after the Pharmasset buy-out and that Trust's limited partnership interest in RFS Partners was never properly transferred back to the partnership such that it remains part of the Trust.

Motion for Limited Interlocutory Injunction to Preserve Status Quo

Petitioner describes the purpose of her motion as follows:

Because title to the Partnership Interest is key in this litigation and because Respondent Schinazi, as the manager of RFS & Associates, has complete control over the management of RFS Partners, Petitioner seeks the entry of a limited interlocutory injunction to enjoin Schinazi and RFS & Associates from taking any action that would encumber the Partnership or its assets, from making a distribution from the Partnership to alleged partners, or from transferring their interests in the Partnership in such a manner that would inhibit the Trust's rights as a limited partner should it prevail on the merits of the lawsuit, without first giving Petitioner notice and an opportunity to object to the transaction.

(Motion, p. 4)¹

¹ Specifically, Petitioner seeks to enjoin the Respondents from doing any of the following without providing her 30 days prior notice and an opportunity to object and seek Court intervention:

- (a) Converting, disbursing, transferring, dissipating, liquidating, selling, assigning, encumbering, pledging, granting a lien or security interest or other interest in, loaning, or otherwise disposing of any partnership interest in RFS Partners, LP;

“An interlocutory injunction is an extraordinary and remedy and the power to grant it must be prudently and cautiously exercised.” Bishop v. Patton, 288 Ga. 600, 604 (2011).

The most important factor for a court to consider in evaluating a request for interlocutory injunctive relief is whether there exists a “substantial threat that the [requesting] party will suffer irreparable injury if the injunction is not granted.” *Id.* at 604-605. See also Kennedy v. W.M. Sheppard Lumber Co., 261 Ga. 145,146 (1991) (“...there must be some vital necessity for the injunction so that one of the parties will not be damaged and left without adequate remedy”); American Mgmt. Svcs. East, LLC v. Ft. Benning Family Communities, LLC, 313 Ga. App. 124, 127 (2012) (“... in seeking injunctive relief a plaintiff must show that he is in great danger of suffering an imminent injury for which he does not have an adequate and complete remedy at law”); DBL, Inc. v. Carson, 262 Ga. App. 252, 256 (2003) (trial court erred in entering an injunction when plaintiffs demonstrated no “urgency” in their need for such relief).

In the present case, Petitioner offered no evidence of mismanagement, waste or dissipation in the assets of RFS Partners. Rather, Petitioner bases her request for injunctive relief on the bare suspicion that something inappropriate may occur if she is not given notice and opportunity to object over certain financial decisions made by RFS Partners. Based upon the

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- (b) Converting, disbursing transferring, dissipating, assigning, encumbering, pledging, granting a lien or security interest in, or loaning any of the assets of RFS Partners, LP in such a way as to make the assets of RFS Partners, LP virtually illiquid, unsellable, or non-marketable;
 - (c) Using the assets of RFS Partners, LP to invest in closely-held companies or any other virtually illiquid, unsellable or non-marketable asset;
 - (d) Taking any action that would otherwise dissolve the partnership; and
 - (e) Making any distribution to the partners of RFS Partners, L.P.

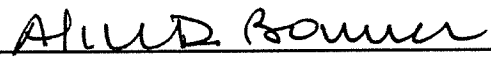
(Motion, pp. 1-2)

evidence, or lack thereof, the Court finds that the Trust has failed to persuasively demonstrate that it faces a substantial threat of irreparable injury if the injunction is not granted.

Moreover, in evaluating a request for injunctive relief, a court is also required to balance whether “the threatened injury to the moving party outweighs the threatened harm that the injunction may do to the party being enjoined.” Bishop at 604. As outlined above, Petitioner has failed to persuasively demonstrate that the Trust faces a substantial threat of harm whereas Respondents offered convincing testimony that the ability to quickly and efficiently manage the affairs of RFS Partners would be hampered by the proposed injunction. Thus, under this balancing factor, Petitioner has also failed to demonstrate that an injunction would be merited.

In light of the foregoing, it is hereby ordered and adjudged that the Petitioner’s motion for interlocutory injunctive relief be DENIED.

SO ORDERED this 25 day of July, 2013.



Alice D. Bonner, Senior Judge
Superior Court of Fulton County

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