

NOT TO BE PUBLISHED WITHOUT THE APPROVAL
OF THE COMMITTEE ON OPINIONS

ANDREA DAVIDOVICH a/k/a ANYA
DAVIDOVICH,

Plaintiff,

vs.

ISRAEL ICE SKATING FEDERATION,
BORIS CHAIT, IRINA a/k/a IRENE
CHAIT, and GALIT CHAIT,

Defendants.

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION

BERGEN COUNTY

DOCKET No. BER-L-8543-14

CIVIL ACTION

OPINION

Argued: August 7, 2015
Decided: August 28, 2015

Honorable Robert C. Wilson, J.S.C.

Stuart P. Slotnick, Esq., and Christopher J. Dalton, Esq., appearing for the Plaintiff, Andrea Davidovich a/k/a Anya Davidovich (Buchanan, Ingersoll & Rooney, P.C.; Barry I. Slotnick, Esq., Tanya D. Bosi, Esq., and Lauren A. Isaacoff, Esq., on the brief).

Brian D. Spector, Esq. and Douglas A. Goldstein, Esq., appearing for the Defendants, Israel Ice Skating Federation, Boris Chait, Irina Chait a/k/a Irene Chait, and Galit Chait (Spector & Ehrenworth, P.C.; Danielle A. Koch, Esq., on the brief).

FACTUAL BACKGROUND

THIS MATTER arises out of the termination of the relationship between the Plaintiff, Andrea Davidovich a/k/a Anya Davidovich (hereinafter the “Plaintiff” or “Ms. Davidovich”) and the Israel Ice Skating Federation (the “IISF”). Plaintiff is a figure skater who has previously skated in international pair skating competitions for the IISF, and who aspires to continue competing internationally.¹ At all times relevant to this litigation, Plaintiff was a minor child, and had dual

¹ Plaintiff has trained as a figure skater since she was five years old. Plaintiff decided to skate competitively on behalf of Israel in or around 2012, and joined the IISF and began competing internationally as a junior skater. In or

Israeli and American citizenship. Plaintiff has spent most of her life in New Jersey. Boris Chait is president of the IISF, and Irene Chait is his wife and team leader for the IISF². Galit Chait is Boris Chait's daughter, and an ice dancing coach and choreographer. The IISF is an Israeli organization that trains figure skaters to compete in international figure skating competitions as representatives of the nation of Israel. Plaintiff was a member of the IISF from 2012 until 2014. Upon joining the IISF, Plaintiff, then a minor, allegedly entered into an agreement or understanding with the IISF's parent organization agreeing to be bound by its rules and regulations.³

The IISF is a Member of the International Skating Union (the "ISU") which is a non-party organization that is the exclusive international sport federation recognized by the Olympic Committee administering figure skating competitions internationally. The ISU has adopted a Constitution and has standardized international regulations governing the skating disciplines. The ISU also issues "communications" which further concern interpretation of its rules and regulations, and of its Constitution. Only national associations and special clubs may belong to the ISU as Members, and each represents an individual country and administers figure skating and speed skating sports at a national level. Both the IISF and the United States Figure Skating Association ("USFSA") are Members of the ISU.

about February of 2013, at just 16 years old, Plaintiff was selected for the IISF's senior team to train as part of a pair. After eight months of training, Plaintiff qualified for the February 2014 Winter Olympics in Sochi, Russia. Plaintiff placed fifteenth in those Olympic Games. Plaintiff and her partner stopped skating together after the Sochi Olympics.

² The actual legal existence of the IISF, and its standing to be a party in this litigation, has not been presented to this Court. The IISF stated at oral argument that it was a foreign entity, authorized to do business in the State of New Jersey.

³ Plaintiff certifies that she "never signed any contract or other type of agreement with any other party relating to my skating career," including with the IISF. Plaintiff's father also certifies that neither he nor Plaintiff's mother has entered into any contract with the IISF or other skating organizations relating to Ms. Davidovich's skating career. Defendants have produced a "Declaration for Competitors and Officials entering ISU Events" signed by Anya Davidson and her mother in 2013, which is purported to be the contract at issue. No actual contractual agreement was ever produced between the child and the IISF.

Individual skaters who compete internationally are members of the Member associations and clubs, but not of the ISU itself. Nevertheless, both Member associations and clubs, as well as member skaters, are subject to the ISU Constitution by its own terms. Rule 109 of the ISU Regulations provides, in part, that “a skater may compete only as a member of the Member of the country of which he is a citizen...[or] a skater may compete for the Member of the country of which he is not a citizen [subject to the skater’s fulfillment of certain specified conditions.]” ISU Communication No. 1420 elaborates upon the procedure set forth under Rule 109 for obtaining permission from a Member to disassociate from it and compete internationally for another Member, which applies to:

... any present citizen and skater of the Member who has in the past represented another ISU Member in an international competition and/or ISU Championships and whom the Member intends to enter in international competitions and/or ISU Championships in the coming season as a representative of the Member.

The ISU regulations prohibit a skater who belongs to one Member, such as the IISF, from departing to compete internationally for a different Member, without first obtaining written permission or a release from the other Member. Nothing in the ISU regulations or rules requires a Member to grant a release to its former skaters. However, a refusal of a Member to grant such a release may be addressed by the ISU Council in an administrative appeal. It is alleged that Plaintiff is undergoing such an appeal through the ISU in the instant matter. The ISU Constitution claims that the ultimate appeal, taken to the Court of Arbitration for Sport, is “final and binding to the exclusion of jurisdiction of any civil court.”

On April 30, 2014, Plaintiff e-mailed Boris Chait requesting a release from the IISF, since she had ended her partnership with a fellow figure skater. Plaintiff sought this release in order to skate for the United States of America, through the USFSA. On Plaintiff’s behalf, the USFSA also

requested a release from the IISF, to permit her to compete internationally as a member of the USFSA. Ultimately, the IISF denied the request of Plaintiff and the USFSA for a release on May 28, 2014, and noted that Plaintiff was ineligible to compete internationally until February of 2015, which would allow the parties additional time to consider the release. Plaintiff had found an ice skating partner, A.J. Reiss, who was a member of the USFSA, and began training with him. However, due in part to the IISF's refusal to grant a release, that partnership has ended. Plaintiff has found yet another American skating partner in hopes of competing internationally on behalf of the United States. On September 10, 2014, Plaintiff initiated this action, asking the Court to order such a release, and making claims for money damages for defamation and other causes of action. Defendants moved for summary judgment on Counts I and II of the Complaint, which seeks a declaration that the IISF is compelled to issue a written release, and alleges that Defendants have tortiously interfered with her prospective economic gain, respectively. Plaintiff cross-moves for summary judgment on these counts, and further moves for sanctions for frivolous litigation under Rule 1:4-8. Oral argument was heard on August 7, 2015.

SUMMARY JUDGMENT STANDARD

The New Jersey procedural rules state that a court shall grant summary judgment “if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.” N.J.S.A. § 4:46-2(c). In Brill v. Guardian Life Insurance Co., 142 N.J. 520 (1995), the Supreme Court set forth a standard for courts to apply when determining whether a genuine issue of material fact exists that requires a case to proceed to trial. The New Jersey procedural rules state that a court shall grant summary judgment “if the pleadings, depositions, answers to interrogatories and admissions on file, together

with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.” N.J.S.A. § 4:46-2(c). In Brill v. Guardian Life Insurance Co., 142 N.J. 520 (1995), the Supreme Court set forth a standard for courts to apply when determining whether a genuine issue of material fact exists that requires a case to proceed to trial. Justice Coleman, writing for the Court, explained that a motion for summary judgment under N.J.S.A. § 4:46-2 requires essentially the same analysis as in the case of a directed verdict based on N.J.S.A. § 4:37-2(b) or N.J.S.A. § 4:40-1, or a judgment notwithstanding the verdict under N.J.S.A. § 4:40-2. Id. at 535-536. If, after analyzing the evidence in the light most favorable to the non-moving party, the motion court determines that “there exists a single unavoidable resolution of the alleged dispute of fact, that issue should be considered insufficient to constitute a ‘genuine’ issue of material fact for purposes of N.J.S.A. § 4:46-2.” Id. at 540.

“The determination whether there exists a genuine issue with respect to a material fact challenged requires the motion Judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.” Brill, supra at 523.

DECISION

There is no legal or equitable basis for the IISF to continue to refuse to release Andrea Davidovich from her membership with the organization, and she must therefore be released immediately so that she may pursue opportunities to skate internationally on behalf of the United States of America. Defendants primarily argue that this Court lacks jurisdiction to adjudicate this dispute because the Plaintiff has agreed to abide by the rules of the ISU, and therefore must exhaust her administrative appeals through that body prior to seeking the invocation of these legal proceedings. This argument fails to persuade. Both parties extensively briefed the ISU Rules and

Regulations surrounding this issue, but these are simply not dispositive of the Plaintiff's rights and privileges as a citizen of the United States of America and a resident of the State of New Jersey. It is further of no moment that the Plaintiff has attempted to pursue some administrative remedies with the ISU for the IISF's brazen refusal to issue her a release.

I. Plaintiff's Claim in Count I of Her Complaint Is Justiciable.

First, the Court finds that there exists an actual and justiciable controversy herein which is ripe for a declaratory judgment. The right to declaratory relief is governed by the Uniform Declaratory Judgments Act, N.J.S.A. § 2A:16-50, et seq. "It is essential for relief under the Declaratory Judgment Law that there be a finding of ... justiciability...." Camarco v. Orange, 111 N.J. Super. 400, 402 (Law Div. 1970) aff'd, Camarco v. Orange, 116 N.J. Super. 531 (App. Div. 1971) (internal citations omitted). "Justiciability refers to whether a matter is appropriate for judicial review." N.J. Citizen Action v. Riviera Motel Corp., 296 N.J. Super. 402, 411 (App. Div. 1997). The justiciability of a claim requires consideration of "whether the duty asserted can be judicially identified and its breach judicially determined, and whether protection for the right asserted can be judicially molded." Gilbert v. Gladden, 87 N.J. 275, 281 (1981). The requirement of justiciability is met where there is an actual controversy between the parties. Unsatisfied Claim and Judgment Fund Bd. v. Concord Ins. Co., 110 N.J. at 196.

It is undisputed that the parties herein have an actual controversy regarding their respective rights. Plaintiff contends that she has a right to pursue her vocation as an international skater by being released from the IISF. The IISF seemingly contends that it has the right to unilaterally and without justification withhold that release. The IISF cites precedent which states that "it is well established that a voluntary association may, without direction or interference by the courts, draw up for its government and adopt rules, regulations and by-laws which will be controlling as to all

questions of ... doctrine or internal policy.” Loigman v. Trombadore, 228 N.J. Super. 437, 450 (App. Div. 1988). The Loigman case was one in which a past president of the New Jersey Bar Association sought court intervention to inhibit or change the Association’s practice of recommending judicial candidates to the Governor. “[D]eference has always been afforded to the internal decision making process of private associations.” Id. Defendants further cite well-established case law dealing with adverse membership decision of private voluntary associations, including, for example, the Free Masons. The Court recognizes and concurs with the cited precedents holding that private voluntary associations should generally be left well-enough alone to govern their own affairs. However, the instant dispute is a far cry from a fraternal organization’s suspension of one of its members. This is not such an adverse membership decision, insofar as Plaintiff is not a member of the IISF, and has not been since February of 2014. Moreover, no membership decision, let alone an adverse one, has been made by the ISU. Rather, the undisputed facts indicate that the IISF is withholding a release with an inscrutable motive, despite the termination of the Plaintiff’s membership with that federation. Indeed, if any membership decision was even made, it was made by the USFSA – when it requested that the IISF release the Plaintiff and allow her to skate on behalf of the United States of America.

As such, it is clear to the Court that declaratory relief is permissible in the instant matter.

II. Plaintiff Has Not Waived Her Right to Litigate the Instant Matter.

Defendants argued in their papers and at oral argument that this Court does not yet have jurisdiction over this matter, insofar as the Plaintiff has not exhausted her administrative remedies within the ISU. The parties vigorously dispute whether there even is an administrative remedy for Plaintiff within the ISU, or whether it is fundamentally fair. Nevertheless, regardless of whether such an appeal process exists, or whether it is fair and reasonable, the Court finds that this state’s

jurisdiction has not been waived by the Plaintiff, whether in the form of an arbitration agreement or otherwise.

First, the Court notes that the parties vigorously dispute whether any contract at all existed between Plaintiff and the IISF, or the ISU. Various representations have been made in the papers and at oral argument. Defendants produced a Declaration for Competitors and Officials entering ISU events, which reads, pertinently that “I/we the undersigned, 1) accept the ISU Constitution, which establishes an ISU Disciplinary Commission (Article 24) and recognizes the Court of Arbitration for Sport (CAS), in Lausanne, Switzerland as the arbitration tribunal authorized to issue final and binding awards involving the ISU, its Members and all participants in ISU activities, excluding all recourse to ordinary courts (Articles 25 and 26).” The Court will presume that this was in fact intended to be a contract by the parties at the time it was signed, pursuant to the summary judgment standard.

Preliminarily, the Court holds that Defendants’ attempt to couch this as some sort of binding administrative proceeding is unpersuasive. No case or statute has been identified which confers any authority whatsoever upon the IISF to resolve disputes between itself and Ms. Davidovich in contravention of this court’s authority merely because Plaintiff signed an agreement with a non-party to this litigation. This Court has already addressed Defendants’ argument that this is really an adverse membership decision by the IISF. In turn, the Court rejects any suggestion that the parties’ relationship must be governed by the appellate procedures maintained by the ISU.

Defendants’ position that the Plaintiff “has not established a legal duty that the IISF has refused to fulfill” is without merit, insofar as they maintain the existence of a contractual relationship between the parties. Therefore, at the very least, in order to deal in good faith and fairly with Ms. Davidovich, they must have some reason other than an attempt to extort payment

from the Plaintiff. There is no genuine dispute that no obligation for payment was ever in place here, and Defendants assert that the record does not indicate that they are seeking any such payment. The mere fact that the IISF may feel entitled to payment does not impose an affirmative obligation on the Plaintiff to send payment in return for a IISF release. Such a quid pro quo is not acceptable or reasonable. Moreover, as was made clear to the Court, no written contract exists between Plaintiff and the IISF; rather, it is between Plaintiff and the ISU. As such, regardless of whether this contract is valid or enforceable, the Defendants have no standing to rely on it whatsoever. Nothing in that agreement confers upon the IISF the status of a third-party beneficiary. The ISU has not submitted any amicus curiae briefs with regard to this litigation, or moved the Court to permit the same. Furthermore, there is nothing in the body of the purported agreement that specifically prohibits a skater from representing the United States of America.

IISF's claimed binding requirement derived from the ISU agreement is a restrictive covenant, prohibiting Plaintiff from competing. New Jersey applies a three-part test for determining the reasonableness of restrictive covenants, and considers "whether the covenant in question protects the legitimate interests of the employer, imposes no undue hardship on the employee, and is not injurious to the public." Cnty. Hosp. Group, Inc. v. More, 183 N.J. 36, 45-46 (2005).

There is no genuine dispute of material fact that the IISF's sole interest is to prevent Ms. Davidovich from skating for the United States of America. However, no legitimate interest has been articulated, let alone demonstrated to support this restriction. Defendants contend that they have invested substantial sums in development and training of the Plaintiff, but it is unclear why that creates a legitimate interest to prohibit her from ever skating for another team, or another

nation. Administrative strong-arming of the Plaintiff in order to exact a payment⁴, which was never agreed upon between the parties, creates no such bar. Moreover, as articulated below, there is extreme undue hardship on the Plaintiff, insofar as her skating career has a finite duration, as do all athletic careers. Lastly, the Court finds expressly that it is injurious to the public to deprive any nation from allowing its citizens to freely compete on its behalf. International athletic competitions capture the imagination of children throughout the world, who should be freely allowed to participate for their country.

The equities require that Plaintiff's motion for summary judgment be partially granted. It is undisputed that an Olympic or international figure skater's athletic lifespan is relatively short. Given that Ms. Davidovich has been unable to skate in international competition, or even train with an international team who has expressed interest in her membership, since February of 2014, it is clear to the Court that irreparable harm to her economic interests continues to be inflicted. Defendants note that the Plaintiff would have been ineligible to compete on behalf of any other federation than the IISF prior to February of 2015. The Court notes that eight months have passed since that date and no release has been granted. Plaintiff began skating with the IISF when she was only 15 years old; some three years have passed, and she is now 18. There is no genuine dispute as to the facts establishing the unreasonableness of the IISF's conduct with regard to the release at issue.

It is abundantly clear to the Court that the parties' voluntary relationship was intended to be mutually beneficial. Ms. Davidovich trained with the IISF, and was supported in her efforts to be a competitive international figure skater for the state of Israel. However, as in all relationships,

⁴ Again the Court is mindful of Defendants' contention that no such payment is demanded. Drawing all inferences in favor of the Defendants, the Court notes that in the absence of such a demand for payment, Defendants still have no legitimate interest in restricting Plaintiff from skating for the United States of America.

the parties are obligated to deal with each other fairly and in good faith. There is nothing fair in preventing this young woman from representing the United States of America in international competition.

Where, as here, a litigant's commercial viability, as well as their rights and privileges as U.S. citizens, are unlawfully restricted, mere reference to the rules and regulations codified by a non-party entity are insufficient. The law is clear that "an arbitration provision – like any comparable contractual provision that provides for the surrendering of a constitutional or statutory right – must be sufficiently clear to a reasonable [person]." Atalese v. U.S. Legal Services Group, L.P., 219 N.J. 430, 436 (2014) (referring specifically to an arbitration provision in a consumer contract). Here, where the written contract merely states that a foreign body is "the arbitration tribunal authorized to issue" awards, and "exclude[es] all recourse to ordinary courts," it is wholly insufficient. In Atalese, supra, the Supreme Court invalidated an arbitration clause where "[n]owhere in the arbitration clause is there any explanation that plaintiff is waiving her right to seek relief in court for a breach of her statutory rights. The contract states that either party may submit any dispute to "binding arbitration," that "[t]he parties shall agree on a single arbitrator to resolve the dispute," and that the arbitrator's decision "shall be final and may be entered in any court of competent jurisdiction." The waiver in Atalese was plainer and less ambiguous than the one at issue before this Court. Even giving every inference to the Defendants, then, it is plain that this provision is unconscionable, violative of our public policy, and unenforceable. There is no express or implied jury waiver, and arbitration or waiver provisions must be "sufficiently clear, unambiguously worded, satisfactorily distinguished from the other . . . terms, and drawn in suitably broad language to provide a consumer with reasonable notice of the requirement to arbitrate all

possible claims arising under the contract.” Curtis v. Cellco P’ship, 413 N.J. Super. 26, 33 (App. Div. 2010).

Even though Ms. Davidovich is not a consumer, nor is this expressly a commercial relationship, it is clear that this contract purportedly waiving constitutional or statutory rights is impermissible in these circumstances. More importantly, even if this waiver of a right to a jury trial were sufficiently clear and unambiguous – which it clearly is not – the Court notes that Andrea Davidovich was a minor child at the time it was entered into, and that this necessitates a closer scrutiny of the contract in question. As such, it is plain that Andrea Davidovich’s claim is ripe for adjudication, and that the IISF must be compelled to issue a release to the USFSA on Ms. Davidovich’s behalf.

III. Plaintiff Must Proceed to Trial on the Issue of Tortious Interference.

The Court finds that genuine issues of material fact exist as to whether Defendant tortiously interfered with Plaintiff’s prospective economic interests. The Court has expressly found that Defendants acted unreasonably in preventing Ms. Davidovich from skating for nations besides Israel and the IISF. However, genuine issues of fact exist as to whether IISF’s refusal to grant her a release unlawfully interfered with her prospective business relation or economic gain. “An action for tortious interference with a prospective business relation protects the right ‘to pursue one’s business, calling or occupation free from undue influence or molestation.’” Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 750 (1989) (quoting Louis Kamm, Inc. v. Flink, 113 N.J. 582, 586 (E. & A. 1934)). The plaintiff must establish that she had a reasonable expectation of economic advantage, which she lost as a direct result of the defendant’s malicious interference, and that she suffered losses thereby. See Ideal Dairy Farms, Inc. v. Farmland Dairy Farms, Inc., 282 N.J. Super. 140, 198-99 (App. Div. 1995).

Accordingly, to establish a *prima facie* claim of tortious interference, the plaintiff must prove that she was in pursuit of business. See Sharp Electronics Corp., 116 N.J. at 751. Secondly, the plaintiff must establish that the defendant's interference was made with malice, or "that the harm was inflicted intentionally and without justification or excuse". Id. at 751 (quoting Rainier's Dairies v. Raritan Valley Farms, Inc., 19 N.J. 552, 563 (1955)). Third, plaintiff must show that the alleged interference caused the loss of the prospective gain, establishing "...proof not only of the unlawful, intentional interference with the prospect of reasonable expectation of economic advantage, but also proof that if there had been no interference there was a reasonable probability that the victim of the interference would have received the anticipated economic benefits". Leslie Blau Co. v. Alfieri, 157 N.J. Super. 173, 185-86 (App. Div. 1978), cert. den. 77 N.J. 510 (1978). Lastly, the plaintiff must show that the alleged injury caused damage. See Norwood Easthill Assocs. v. Norwood Easthill Watch, 222 N.J. Super. 378, 384 (App. Div. 1988).

Plaintiff is not entitled to summary judgment as to Defendant's liability for tortious interference with Ms. Davidovich's prospective business relation or economic gain. There is no dispute that Ms. Davidovich has been unable to skate in an international competition, or train with an international team who has expressed interest in her membership, since February 2014 when she returned home from the 2014 Winter Olympic Games. Additionally, there is no dispute that Defendants' refusal to grant Ms. Davidovich a release has prevented her from competing on another country's behalf in international competition. However, at this juncture of the litigation, the evidence does not incontrovertibly prove that Ms. Davidovich is entitled to damages for Defendants' alleged wrongful interference with the prospective economic advantage she would receive if she was released from the IISF and permitted to compete in international competition.

The evidence on record does not indisputably prove that Defendants' conduct caused Ms. Davidovich to lose an ascertainable prospective economic advantage and to suffer losses thereby. Plaintiff claims, in part, that she is entitled to summary judgment on her claim for tortious interference because Defendants' refusal to release her prevents her from competing internationally, *i.e.*, her reasonable expectation of economic advantage. Plaintiff relies on several facts in the record to attempt to prove that she possessed such an advantage. Specifically, Plaintiff asserts that since February 2014 she has earned a spot on the USFSA and has found an American skating partner with whom she plans to compete domestically and eventually internationally. Plaintiff asserts that her past success – qualifying for and placing fifteenth (15th) in the 2014 Olympic Winter Games with her former skating pairs partners – is sufficient evidence that her expectation of realizing an economic advantage for future international competition is reasonable. (Pl.'s Mem. in Law In Opp'n to Defs.' Motion for Partial Summ. J. Dismissing Counts I and II and In Supp. of Cross-Motion for Partial Summ. J., pp. 44). In light of her past success, Plaintiff assumes that she will in fact successfully compete in future international competition and reap whatever economic reward she may earn in competition.

Nevertheless, in considering all competent evidential materials in the light most favorable to the non-moving party, genuine issues of material fact exist as to whether Ms. Davidovich has an ascertainable prospective economic advantage. The evidence does not indisputably prove that Ms. Davidovich will in fact skate in international competition. While the USFSA sought a release on Ms. Davidovich's behalf, it is unclear from the evidential materials if the USFSA and Ms. Davidovich have entered into an agreement permitting her to skate in international competitions on its behalf, or that she could qualify to represent the USFSA. Additionally, the evidence does not indisputably prove that Ms. Davidovich's past success in international competition guarantees

her success in future competition, or that she will realize an economic gain as an international figure skater. At this juncture of the litigation, there is genuine issue of material fact with respect to the reasonableness of Ms. Davidovich's expectation that she will participate and replicate her earlier performances in future international competition. At trial, the finder of fact must determine that had there been no malicious interference with Plaintiff's prospective economic gain, she would have received the anticipated economic benefits. Therefore, summary judgment is denied and Plaintiff must proceed to trial on the issue of tortious interference.

IV. Plaintiff's Motion for Sanctions Must Be Denied at this Juncture of the Litigation.

The Court finds that while Defendants acted unreasonably in preventing Ms. Davidovich from skating for nations besides Israel and the IISF, sanctions are not warranted here. Rule 1:4-8 of New Jersey's Rules of Court authorizes this Court to impose sanctions, including the cost of reasonable attorneys' fees, if a party's Complaint is filed in bad faith, is not "warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;" or contains factual allegations that do not "have evidentiary support or, as to specifically identified allegations, are neither likely to have evidentiary support nor will be withdrawn or corrected if reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support. R. 1:4-8. Parties who are alleged to have filed a frivolous pleading or other document are to be notified by their adversary and given 28 days' time to withdraw the purportedly frivolous document. Id.

N.J.S.A. § 2A:15-59.1, also known as the Frivolous Litigation Statute, provides that "[a] party who prevails in a civil action ... against any other party may be awarded all reasonable litigation costs and reasonable attorney fees, if the judge finds at any time during the proceedings or upon judgment that a complaint ... of the nonprevailing person was frivolous." The Statute

goes further to define a frivolous claim, as one “commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or ... [t]he nonprevailing party knew, or should have known, that the complaint ... was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.” N.J.S.A. 2A:15-59.1.

The Court has found in detail on the record that Defendants unreasonably withheld the requested release of Ms. Davidovich and the USFSA and prohibited her from skating in international competition on behalf of the United States. The complaint for frivolous litigation shall abide by a final resolution of the remaining legal issues in this instant matter.

It is so ordered.