

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT SECURITIES AND EXCHANGE
Plaintiff-Appellee, v. JOSEPH A. CAMMARATA, No. 24-1381 Defendant-Appellant, and ERIK COHEN
H. PUNTURIERI, ALPHAPLUS PORTOFOLIO RECOVERY CORP., ALPHA PLUS RECOVERY LLC,
AND EXCHANGE COMMISSION'S OPPOSITION TO DEFENDANT JOESPH CAMMARATA'S EMER
FROZEN ASSETS

Appellee the Securities and Exchange Commission opposes appellant Joseph Cammarata's pro se motion to dissolve or modify the district court's asset freezing injunction for two independent reasons: (1) Cammarata failed to first move for that relief in district court as procedurally required, and (2) equitable factors overwhelmingly support maintaining the freeze.¹

I. Background

A. Cammarata's fraud conviction was affirmed by this Court and there is a \$50 million civil judgment against him. Cammarata was convicted of wire fraud for misappropriating over \$40 million from securities class action settlement funds. *United States v. Cammarata, et al.*, No. 21-cr-427 (E.D. Pa.), Dkt. 307. The district court in this civil enforcement action then entered summary judgment. This appeal is currently in abeyance. ECF 51 (stay order); ECF 54, ECF 59 (Cammarata motions to lift the stay); ECF 62 (SEC opposition to lifting the stay); ECF 65 (clerk's order). Appellant's counsel has moved to withdraw his appearance. See ECF 66, ECF 67. Case: 24-1381 Document: 69 Page: 1 Date Filed: 04/28/2025

2 In the Commission's favor based in part on the collateral estoppel effect of Cammarata's criminal conviction. *SEC v. Cammarata, et al.*, No. 21-cv-4845 (E.D. Pa.), Civ. Dkt. 319 at 1, 23-24. On January 23, 2024, the district court entered a final judgment ordering \$50,471,573 in civil monetary relief, to be offset by the restitution and forfeiture ordered in his criminal case. Civ. Dkt. 352 at 3. This Court affirmed his conviction on February 24, 2025. *United States v. Cammarata*, No. 23-2110 (3d Cir.), Crim. App. Dkt. 59.

B. The district court, with Cammarata's repeated consent, continuously froze his assets to preserve the status quo. The district court in the civil action has ordered Cammarata's assets to be frozen since November 4, 2021, when the court entered a temporary restraining order. Civ. Dkt. 4. That was the day after both Cammarata was arrested and the Commission filed its complaint. *United States v. Cammarata*, No. 21-mj-4176 (S.D. Fla.), Dkt. 2; Civ. Dkt. 1. Cammarata, while represented by counsel, consented to extending the initial temporary restraining order and asset freeze through January 25, 2022. Civ. Dkt. 38. On January 12, 2022, Cammarata, while represented by counsel, stipulated to a preliminary injunction and asset freeze. Civ. Dkt. 65, Civ. Dkt. 66. Through counsel, Cammarata agreed that the district court had the authority to liquidate and repatriate the life insurance-related asset his motion identifies (ECF 68 at 2, 4), with \$255,000 of the repatriated monies used to pay for his criminal counsel and the remainder he agreed to subject to the freeze. See Civ. Dkt. 215; Civ. Dkt. 220, Civ. Dkt. 223.

2 This Court remanded the \$16,493,939.73 forfeiture order for the "limited purpose" of allowing the government to correct a harmless "procedural error" that "did not contribute to the judgment." Crim. App. Dkt. 59 at 57-61. And the Court vacated and remanded the \$31,275,832.92 restitution order, concluding that the district court erroneously ordered restitution in an amount "well below" the losses suffered by the victims of his fraud, and that a higher restitution award was "mandatory" unless the district court found on remand that such restitution was "impracticable." *Id.* at 38, 48-51, 61. Cammarata's rehearing petition is pending. See Crim. App. Dkt. 63. Case: 24-1381 Document: 69 Page: 2 Date Filed: 04/28/2025

3 On March 7, 2024—ten days after he filed a notice of appeal in this civil action seeking review of the denial of his recusal motion (Civ. Dkt. 360, ECF 1)—Cammarata moved in the district court to dissolve the asset freeze. Civ. Dkt. 363. On May 29, 2024, Cammarata amended his notice of appeal to include the district court's denial of Cammarata's motion to dismiss the Commission's complaint and for post-judgment relief. Civ. Dkt. 387; ECF 21. After Cammarata through counsel consented to the Department of Justice's and Commission's motion to keep the asset freeze in effect and turn over frozen funds to the court's registry to pay his civil and criminal judgments pending his appeals (Civ. Dkt. 391, Civ. Dkt. 399), the district court on August 13, 2024, denied Cammarata's motion to dissolve the freeze as moot (Civ. Dkt. 404). As agreed, the asset freeze remains in effect as to any known or unknown assets Cammarata owns. Civ. Dkt. 404 at 3, 11; see also Civ. Dkt. 407. And based on the available information, the value of the frozen assets available to satisfy the government's judgements against him falls short of Cammarata's \$50 million liability. Civ. Dkt. 367 at 6; see also Civ. Dkt. 404 at 7, 10-11 (portion of frozen assets awarded to Cammarata's ex-wife, Nina). Cammarata did not appeal from the order denying his motion to dissolve the freeze (Civ. Dkt. 404), he has not filed another

motion to lift the freeze in district court, nor has he requested a carve out for the remainder of the funds from the liquidated life insurance-related asset his appellate motion discusses (ECF 68). See Civ. Dkt. 38 at 2-3 (availability of district court-approved carveouts); Civ. Dkt. 66 at 2, 4 (same). Instead, Cammarata on April 18, 2025, filed an emergency motion asking this Court to “dissolve the unlawful asset freeze” or unfreeze monies from the liquidated life insurance-related asset. ECF 68. Case: 24-1381 Document: 69 Page: 3 Date Filed: 04/28/2025 4 II. Argument A. Cammarata’s motion is procedurally improper because he did not first file for asset freeze relief in the district court. Cammarata’s motion to this Court to dissolve the asset freeze is procedurally improper under Fed. R. App. 8, because he did not “move first in the district court” for an order “suspending” or “modifying” the asset freezing injunction. Fed. R. App. 8(a)(1)(C). That failure bars his motion. See U.S. ex rel. Barnwell v. Rundle, 461 F.2d 768, 769 (3d Cir. 1972) (denying appellant’s motion for failure to comply with Fed. R. App. 8); Agudath Israel of Am. v. Cuomo, 980 F.3d 222, 225 (2d Cir. 2020) (same). The decision to freeze assets here is “committed to the district court’s sound discretion.” SEC v. Infinity Grp. Co., 212 F.3d 180, 197 (3d Cir. 2000). Because Cammarata does not appeal the district court’s asset freeze orders (ECF 1, ECF 21), the district court retains jurisdiction to consider a motion to suspend or modify the freeze, and thus Cammarata has failed to demonstrate that “moving first in the district court would be impracticable.” Fed. R. App. 8(a)(2)(A)(i). B. Even if properly filed, Cammarata’s motion fails on the merits because the equities support maintaining the asset freeze. Not only is Cammarata’s motion procedurally deficient, on its equitable merits this Court should not dissolve the asset freeze. “A freeze of assets is designed to preserve the status quo by preventing the dissipation and diversion of assets.” Infinity Grp., 212 F.3d at 197. As the district court found, the freeze here is “necessary to preserve the status quo, protect nonparties, and protect [the] Court’s ability” to ultimately award monetary relief. Civ. Dkt. 4. To obtain and maintain the freeze, the Commission satisfied the traditional four-factor test for injunctive relief by demonstrating: (1) that there was a likelihood of success on the merits of its claims (Civ. Dkt. 3, Civ. Dkt. 4); (2) irreparable harm from the risk that, absent a freeze, Cammarata would “dissipate, Case: 24-1381 Document: 69 Page: 4 Date Filed: 04/28/2025 5 conceal, or transfer assets from the jurisdiction of this Court” (Civ. Dkt. 4 at 1-2); (3) the balance of equities favored the freeze, especially in light of the availability of court-approved carveouts for attorneys’ fees and living expenses (Civ. Dkt. 66 at 2, 4); and (4) that it is in the public interest to facilitate the proper enforcement of the securities laws through the freeze (Civ. Dkt. 3). See Civ. Dkt. 403; SEC v. Chappell, 107 F.4th 114, 129-39 (3d Cir. 2024) (applying Starbucks Corp. v. McKinney, 602 U.S. 339 (2024), and affirming asset freeze). There is all the more reason to continue freezing Cammarata’s assets now that the Commission has demonstrated actual success on the merits of its claims and obtained a \$50 million judgment against him, this Court affirmed his fraud conviction, the frozen funds will ultimately be used to satisfy the criminal and civil judgments, and Cammarata does not explain what he would do with unfrozen assets other than dissipate them. III. Conclusion The Court should deny Cammarata’s motion to dissolve or modify the district court’s asset freezing injunction. Respectfully submitted, DANIEL STAROSELSKY Assistant General Counsel /s/ DAVID D. LISITZA Senior Appellate Counsel Securities and Exchange Commission 100 F Street, N.E. Washington, D.C. 20549 202-551-5015 (Lisitza) April 28, 2025 lisitzad@sec.gov Case: 24-1381 Document: 69 Page: 5 Date Filed: 04/28/2025 CERTIFICATIONS I hereby certify that: 1. I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Third Circuit using the CM/ECF system. Service was accomplished on all counsel of record by the appellate CM/ECF system. 2. I also sent a copy of the foregoing by U.S. mail to: Joseph A. Cammarata, Reg. No. 02555-506 Satellite Camp - FPC Fairton P.O. Box 420 Fairton NJ 08320 3. This motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 1,365 words. 4. This motion complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6), as required by Federal Rule of Appellate Procedure 27(d)(1)(E), because it has been prepared in a proportionally spaced typeface using Microsoft Office Word in 14-Point Times New Roman. /s/ DAVID D. LISITZA Securities and Exchange Commission 100 F Street, N.E. Washington, D.C. 20549 202-551-5015 lisitzad@sec.gov Dated: April 28, 2025