



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ARTUR SCHABACK, individually on)
behalf of himself, and derivatively on)
behalf of Paxful Holdings, Inc.,)

Plaintiff/)
Counterclaim-Defendant,)

v.)

MOHAMED AZAB YOUSSEF,)

Defendant/)
Counterclaim-Plaintiff,)

and)

JUDE CHIDI OGENE,)

Defendant,)

and)

PAXFUL HOLDINGS, INC.,)

Nominal Defendant/)
Nominal Counterclaim-)
Defendant.)

C.A. No. 2023-0026-PAF

PUBLIC VERSION

FILED MARCH 21, 2023

**PLAINTIFF/COUNTERCLAIM-DEFENDANT’S OPENING BRIEF IN
SUPPORT OF HIS CROSS MOTION FOR PARTIAL SUMMARY
JUDGMENT AND ANSWERING BRIEF IN OPPOSITION TO
DEFENDANT/COUNTERCLAIM PLAINTIFF’S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

MORRIS JAMES LLP

Lewis H. Lazarus (#2374)

K. Tyler O'Connell (#4514)

Kirsten A. Zeberkiewicz (#4573)

Aubrey J. Morin (#6568)

Samuel Bashman (#6751)

500 Delaware Avenue, Suite 1500

Wilmington, DE 19801-1494

302.888.6800

*Attorneys for Plaintiff/Counterclaim-
Defendant Artur Schaback, individually on
behalf of himself, and derivatively on behalf
of Paxful Holdings, Inc.*

Dated: March 14, 2023

TABLE OF CONTENTS

	<u>Page(s)</u>
TABLE OF AUTHORITIES	iii
PRELIMINARY STATEMENT	1
NATURE AND STAGE OF PROCEEDINGS.....	4
STATEMENT OF FACTS.....	8
I. PAXFUL’S FORMATION AND STRUCTURE	8
II. EVENTS LEADING TO THE FILING OF THIS ACTION	10
III. SCHABACK UNCOVERS ADDITIONAL INFORMATION AND AMENDS HIS COMPLAINT, ADDING A COUNT FOR APPOINTMENT OF A CUSTODIAN UNDER SECTION 226.....	14
IV. PAXFUL’S BOARD IS DEADLOCKED AND THAT DEADLOCK IS CAUSING IRREPARABLE INJURY	16
V. RUN LEGITIMATELY AND WITHOUT LOOTING, PAXFUL COULD BE A PROFITABLE COMPANY	18
ARGUMENT.....	20
I. STANDARD OF REVIEW	20
II. APPOINTMENT OF A CUSTODIAN IS APPROPRIATE UNDER § 226(A)(2).....	22
A. The Paxful Board is Deadlocked	23
B. As a Result of the Deadlock, Paxful is Suffering and Continues to Be Threatened with Irreparable Injury	23
C. Paxful’s Stockholders Cannot Break the Deadlock	25
D. The Court Should Exercise Its Discretion to Appoint a Custodian Empowered with the Authority Set Forth in the Plaintiff’s Proposed Order	26

III. APPOINTMENT OF A RECEIVER TO [REDACTED]
[REDACTED] IS NOT APPROPRIATE27

A. Paxful Does Not Satisfy the Statutory Requirements of
Section 27327

B. In Any Event, Paxful Should Not Be [REDACTED] at This
Time29

CONCLUSION33

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Balch Hill P'rs, L.P. v. Shocking Techs., Inc.</i> , 2013 WL 588964 (Del. Ch. Feb. 7, 2013).....	25
<i>Banet v. Fonds de Regulation et de Controle Café Cacao</i> , 2010 WL 1066993 (Del. Ch. Mar. 12, 2010).....	20, 21
<i>Bentas v. Haseotes</i> , 769 A.2d 70 (Del. Ch.2000).....	21, 22
<i>Bighorn Ventures Nevada, LLC v. Solis</i> , 2022 WL 17948659 (Del. Ch. Dec. 23, 2022).....	22
<i>Brzoska v. Olson</i> , 668 A.2d 1355 (Del. 1995).....	20
<i>Gabelli & Co. v. Liggett Grp., Inc.</i> , 1983 WL 18015 (Del. Ch. Mar. 2, 1983), <i>aff'd</i> , 479 A.2d 276 (Del. 1984).....	21
<i>Giancarlo v. OG Corp.</i> , 1989 WL 72022 (Del. Ch. June 23, 1989).....	30
<i>Haley v. Talcott</i> , 864 A.2d 86 (Del. Ch. 2004).....	21
<i>Hoban v. Dardanella Electric Corp.</i> , 1984 WL 8221 (Del. Ch. June 12, 1984).....	24, 26
<i>Kleinberg v. Cohen</i> , 2017 WL 568342 (Del. Ch. Feb. 13, 2017).....	23, 24, 25, 32
<i>In re Maull</i> , 1994 WL 374302 (Del. Ch. June 9, 1994).....	20
<i>In re McKinney-Ringham Corp.</i> , 1998 WL 118035 (Del. Ch. Feb. 27, 1998).....	28

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.