SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: BERNARD J. FRIED Justice PART 60

HON. BERNARD J. FRIED

E-FILE

PINE STREET ASSOCIATES, L.P.,
Petitioner,

- v -

SOUTHRIDGE PARTNERS, L.P., ET AL.,
Respondents.

INDEX NO. 652109/2010

MOTION DATE

MOTION SEQ. NO. 002

MOTION CAL. NO.

The following papers, numbered 1 to ____ were read on this motion to/for ____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☐ No

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

This action was brought as a special proceeding under CPLR §§ 7510 and 7514, seeking a judgment confirming an arbitration award. The award was confirmed in a judgment rendered on May 12, 2011.

Respondents Southridge Partners, L.P., Southridge Capital Management, LLC, and Southridge Advisors, LLC (collectively, "Southridge") now move by Order to Show Cause to enjoin petitioner Pine Street Associates, L.P. ("Pine Street") from enforcing the Court's May 12, 2011 judgment, under CPLR § 5240, unless and until the Court determines that the judgment has not already been satisfied and has delineated the terms and conditions of such enforcement.

Pine Street is an investment advisor that invested funds in Southridge in 2005 and became a limited partner. The parties went to arbitration concerning a dispute over how much Pine Street was entitled to receive to "redeem" its investment.

The arbitration concluded with an award issued on January 18, 2010 through the American Arbitration Association. The award directed Southridge, within 30 days, to redeem 40% of the balance of Pine Street's interest in Southridge "in cash," and, within 90 days, to "complete the redemption of [Pine Street]'s interest in Southridge in cash or in kind, plus interest at the legal rate . . . from October 1,

2009."

It is undisputed that Southridge paid Pine Street around $3.2 million in cash in February 2010, and that Southridge delivered various securities to Pine Street in April or May 2010. It is undisputed that Pine Street did not complain to the arbitrator about the sufficiency of these payments to satisfy the award.

Over six months after receiving Southridge's payment of cash and securities, on November 24, 2010, Pine Street petitioned to confirm the arbitration award. In that petition, it is undisputed that Pine Street did not claim that Southridge had not satisfied the award. Southridge filed an affidavit in response to the petition, in which its attorney averred that Southridge had complied fully with the arbitration award, having duly delivered the requisite cash and stock to Pine Street, and maintaining that confirmation of the award would therefore be a waste of judicial resources. Pine Street did not dispute Southridge's representation that it had already complied with the award.

I granted the petition to confirm in a March 1, 2011 decision, noting that Southridge's "full compliance with the Award does not prevent the Court from confirming" it. Judgment was entered on May 12, 2011, in the form of "forty percent of the balance of Petitioner's interest in Southridge Partners L.P. as of the date of the Award in cash, plus the remaining sixty percent of Petitioner's interest in Southridge Partners L.P. as of the date of the Award in cash or in kind, plus interest . . . ."

Pine Street did not appear in court on May 18, 2011, when Southridge's attorneys brought this motion by Order to Show Cause, although its New York-based attorneys were notified ahead of time of the appearance. At that time, I issued a temporary restraining order ("TRO"), enjoining Pine Street from seeking to enforce the judgment until this motion was decided.

CPLR § 5240 allows a court to "make an order denying, limiting, conditioning, regulating, extending or modifying the use of any enforcement procedure." It is "an omnibus section empowering the court to exercise broad powers over the use of enforcement procedures," in order to "prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts." *Paz v. Long Island R.R.*, 241 A.D.2d 486, 487 (2d Dept. 1997). *See also Guardian Loan Co., Inc. v. Early*, 47 N.Y.2d 515, 518 (1979); *JPMorgan Chase Bank, N.A. v. Motorola,*

Inc., 47 A.D.3d 293, 307 (1st Dept. 2007). For instance, in *Yellow Creek Hunting Club, Inc. v. Todd Supply, Inc.*, 145 A.D.2d 679 (3d Dept. 1988), the Appellate Division affirmed a trial court order ruling that the plaintiff was entitled to satisfaction of defendant's judgment, because certain real property satisfied the defendant's judgment in full.

Southridge's moving papers on its motion by Order to Show Cause do not ask for a ruling as to whether it has satisfied the judgment already; in filing this motion, Southridge apparently sought only to restrain Pine Street from seeking to enforce its judgment until the issue of whether the judgment has been satisfied in full could be decided. Southridge's stated concern in bringing this motion is that Pine Street will act to disrupt Southridge's daily operations–by serving the judgment on the sheriff and Southridge's banks–before it can get a court ruling on the merits of its position that the judgment has been fully satisfied. Evidently, it intends to seek such a ruling.

In opposition, Pine Street admits that it was paid $3,195,064.00 in cash, but it claims that the securities rendered are worth no more than $245,000 – far less than the over $4.5 million it claims to be entitled to, under the arbitration award. Pine Street has submitted evidence concerning the value of the securities tendered, and argues that Southridge has not submitted, on its motion, adequate proof that the securities it tendered were or are valued at around $4.5 million. Southridge, of course, does not argue that the securities were or are worth $4.5 million or anything close to it. It argues instead that the in-kind portion of the award required Southridge only to deliver Pine Street's class of shares; the award nowhere mandated that the securities delivered be worth $4.5 million. Southridge also disputes Pine Street's contention that the securities delivered are worth as little as $245,000. Pine Street has not contested Southridge's contention that it is, in fact, actively attempting to enforce its contrary understanding of the judgment.

As the above history of this case makes apparent, Pine Street's litigating position in this motion that the 2010 payments by Southridge did not satisfy the arbitration award is rather new; on the record before me, it appears that Pine Street never questioned the adequacy of Southridge's payments in satisfaction of the award, either before the arbitrator or before this Court, until about a year after those payments were made.

In response to the argument now raised by Pine Street that the in-kind portion of the arbitration award required payment in kind or in cash valued at around $4.5 million, Southridge has argued, in its reply papers, that I should either (a) "remand" this issue back to the arbitrator; (b) rule that the judgment has been satisfied in full, based on the record before me; or (c) hold a hearing to determine how much, if any, of the in-kind delivery of securities remains to be made.

Southridge has not, however, cited to any provision of the CPLR that authorizes me to "remand" a matter back to arbitration for clarification, after a final judgment has already been entered, confirming an award. Pine Street's counsel, at oral argument, has maintained that I have no authority to do so. Accordingly, I decline to attempt to do it. Therefore, it appears that I must interpret the language of the judgment.

If Pine Street deemed the language of the award to be unclear or ambiguous, it should have raised a timely objection to it. Having failed to do so, it is now bound by the language of the judgment, as interpreted by the Court. I do not intend to redo the arbitrator's work.

Based on a plain reading of the judgment, which reflects the language of the arbitration award, the securities that would satisfy the in-kind portion of the judgment should have been 60% of Pine Street's security interests in Southridge Partners L.P. as of January 18, 2010. Unlike the cash portion of the award, this portion of the award did *not* specify that the securities had to equal a particular dollar amount, and I decline to adopt Pine Street's contrary interpretation.[1]

The record is insufficient to support a conclusion as to whether or not the securities rendered by Southridge in Spring 2010 represented at least 60% of Pine Street's interest in Southridge Partners L.P. as of January 18, 2010, or whether more is required. Accordingly, the parties will be directed to confer and appear before the Court for a conference on how they would like to proceed to a final determination of this question.

On the record before me, it is evident that a stay of enforcement of the

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[1] The case of *Schuss v. Penfield Partners, L.P.*, 2008 WL 2433842, 33 Del. J. Corp. L. 960 (Del. Ch. Ct. Jun. 13, 2008), interpreting a different contract under Delaware law, and cited by Pine Street, is inapposite.

judgment is warranted, under CPLR § 5240, in order to prevent unreasonable annoyance, expense, and prejudice to Southridge, pending this determination.

Accordingly, it is

ORDERED that Motion Seq. No. 002 is granted; the parties are to settle an order; and it is further

ORDERED that the parties are directed to confer and appear before the Court for a conference on October 6, 2011 at 12:00 p.m. By September 28, 2011, the parties are directed to submit by Efiling and in hard copy a joint letter of no more than three pages indicating how they propose to proceed. If they cannot agree, the joint letter should briefly indicate their respective positions.

Dated: 9/7/2011

J.S.C.
HON. BERNARD J. FRIED

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE