

**Pathfinder Strategic Credit LP v PT Berau Coal
Energy TBK**

2019 NY Slip Op 31722(U)

June 13, 2019

Supreme Court, New York County

Docket Number: 651304/2017

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

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INDEX NO. 651304/2017

PATHFINDER STRATEGIC CREDIT LP, BC INVESTMENT LLC,

MOTION DATE 05/17/2019

Plaintiff,

MOTION SEQ. NO. 006

- v -

PT BERAU COAL ENERGY TBK, PT ARMADIAN TRITUNGGAL,
PT BERAU COAL, EMPIRE CAPITAL RESOURCES PTE. LTD,
WINCHESTER INVESTMENT HOLDINGS PLC, ARIES
INVESTMENTS LIMITED, SEACOAST OFFSHORE INC., MAPLE
HOLDINGS LIMITED

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 199, 200, 201, 202, 203

were read on this motion to/for SET ASIDE VERDICT.

Motion sequence 006 in action bearing index no. 651303/2017 is hereby consolidated for disposition with motion sequence 006 in action bearing index no. 651304/2017.

The defendants' motion pursuant to CPLR 4404(a) to set aside the verdict, on the grounds that (i) the verdict is against the weight of the evidence or (ii) in the interest of justice, and to enter judgment in favor of the defendants, or alternatively, to order a new trial is denied in its entirety.

By way of background following oral argument held on March 15, 2018 and by Order, dated May 4, 2018, New York State Supreme Court Justice Charles Ramos granted plaintiffs summary judgment on the issue of liability, dismissed the defendants' affirmative defenses and put the matter over for a trial on the issue of damages (NYSCEF Document No. 110 for Index No.

651303/2017 and NYSCEF Document No. 165 for Index No. 651304/2017).

A three-day jury trial was held in front of this Court commencing on April 15, 2019, and the jury returned a verdict awarding (i) \$73,234,987.00 to Pathfinder in respect of the 2015 Notes, (ii) \$69,759,643.00 to BC Investment LLC in respect of the 2015 Notes, (iii) \$21,395,632.00 to Pathfinder in respect of the 2017 Notes, and (iv) \$21,395,632.00 to BC Investment LLC in respect of the 2017 Notes (NYSCEF Document No. 177, Ct. Exhibit 1).

The defendants now bring the instant motion pursuant to CPLR 4404(a) to set aside the verdict on the grounds that the verdict is against the weight of the evidence or in the interest of justice, and to enter judgment in favor of the defendants, or alternatively, to order a new trial.

CPLR 4404(a) provides that:

After a trial a cause of action or issue triable of right by a jury, upon motion of any party or on its own initiative, the court may set aside a verdict or a judgment entered thereon and direct that judgment be entered in favor of a party entitled to judgment as a matter of law or it may order a new trial of a cause of action or separable issue where the verdict is contrary to the weight of the evidence, in the interest of justice or where the jury cannot agree after being kept together for as long as is deemed reasonable by the court.

It is well settled that in considering whether to set aside a jury verdict, the court should proceed with caution, in the absence of an indication that substantial justice has not been done, the successful litigation is entitled to the benefits of a favorable jury verdict and that a jury verdict should not be set aside as against the weight of the evidence unless the jury could not have reached its verdict on any fair interpretation of the evidence. *McDermott v. Coffee Beanery, Ltd.*, 9 A.D.2d 195 (1st Dept 2004).

In this case, the plaintiffs introduced a number of exhibits in support of their claim, including, among other things, certain master indentures, the business records of Argentem Creek Partners LP, the asset manager, and had a number of witnesses credibly testify as to the holdings and amounts due in this case, including Margaret Mangelsen, the Director of Operations and Accounting of Argentem, and Nadia Cobalovic, on behalf of Northern Trust, the custodial bank and fund administrator. Ms. Mangelsen and Ms. Cobalovic confirmed the amount due plaintiffs. Ms. Mangelsen testified as to the portfolio management system that Argentem maintains in the ordinary course of its business to track continuously the trades that Argentem makes for the benefit of the plaintiffs. She authenticated a print out summary of the portfolio management system that detailed the positions held by the plaintiffs with respect to the 2015 Notes and 2017 Notes (Plaintiffs' Exhibit 36). *See, e.g., People v Nashal*, 130 AD3d 480 (1st Dept 2016); *R & I Electronics, Inc. v. Neuman*, 81 AD2d 832 (2nd Dept 1981); *see, also, People v Schwartz*, 21 AD3d 304 (1st Dept 2005). Ms. Mangelsen not only explained to the jury how to calculate the total principal amount that the plaintiffs hold of each note, but also she explained that she had calculated such amounts and testified as to such amounts. To the extent necessary, she refreshed her recollection based on her notes but did not read any such notes directly into the record. For the avoidance of doubt, the court noted for the record that when Ms. Mangelsen was testifying she was not reading from her notes. Ms. Mangelsen also testified that she confirmed her calculations as to the plaintiffs' holdings with the Northern Trust data base. She also testified as to the payment and interest terms and that she and/or the people she supervises in the regular course of business calculate this information as part of Argentem's investment advisory business.

Ms. Cobalovic testified on behalf of Northern Trust as to Northern Trusts' own system for maintaining continuous records of its clients trades and holdings. She identified the specific amount of the 2015 and 2017 Notes that the plaintiffs hold and authenticated an account statement (Plaintiffs' Exhibit 27) that showed the plaintiffs' purchases during the time when Northern Trust acted as custodian. In addition, Ms. Cobalovic explained that certain transactions would not appear on that statement that relate to a time prior to when Northern Trust was custodian. However, and significantly, all transactions and positions on plaintiffs' exhibit 27 were confirmed on plaintiffs' exhibit 36.

Neither Ms. Mangelsen, nor Ms. Cobalovic's testimony was controverted in any manner by the defendants in this case. Indeed, the defendants did not put on a single fact witness. Finally, James Finkel was called by the plaintiffs as an expert in capital markets who explained to the jury that the summary business records which Ms. Mangelsen and Ms. Cobalovic relied on are typically how positions in the industry are verified. Although the defendants had brought their own expert to the trial and such witness was identified to the jury (and which witness waved to the jury when identified by plaintiffs' counsel in his opening statement), the defendants did not call their expert during trial.

The court made its proposed final jury instructions as well as the proposed verdict sheet available to counsel during the course of the trial. Both were reviewed again by counsel at the final charging conference and counsel for the defendant indicated its acceptance of the same by initialing the verdict sheet and otherwise did not object to the charges or take exception beyond those taken at trial. Ultimately, and following deliberation, the jury returned the above described

verdict in answering certain questions as set forth in the verdict sheet. To wit, the jury answered the following four questions as follows:

Jury Question # 1: What amount, if any, do the defendants owe to Pathfinder Strategic Credit LP with respect to the 2015 Notes?

\$73,234,987.00 (handwritten by jury)

All six jurors signed the verdict sheet in support of this finding.

Jury Question # 2:

What amount, if any, do the defendants owe BC Investment LLC with respect to the 2015 Notes?

\$69,759,643.00 (handwritten by jury)

All six jurors signed the verdict sheet in support of this finding.

Jury Question # 3:

What amount, if any, do the defendants owe Pathfinder Strategic Credit LP with respect to the 2017 Notes?

\$21,395,632.00 (handwritten by jury)

All six jurors signed the verdict sheet in support of this finding.

Jury Question # 4:

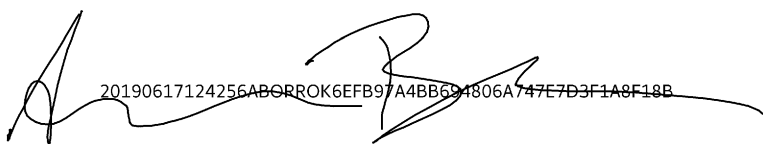
What amount, if any, do the defendants owe BC Investment LLC prove with respect to the 2017 Notes?

\$21,395,632.00 (handwritten by jury)

All six jurors signed the verdict sheet in support of this finding.

It was clear from the proceedings that the jury thoughtfully and carefully considered the evidence during the course of this trial and ultimately returned a unanimous verdict based solely on the evidence that was presented. There simply is no basis to set aside the jury's unanimous verdict.

Accordingly, the motion is denied.


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6/13/2019
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE