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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

VITALY IVANOVICH SMAGIN, Petitioner, v. ASHOT YEGIAZARYAN, Respondent.	CASE NO. 14-CV-09764-R ORDER DENYING RESPONDENT'S MOTION TO STAY

Before the Court is Respondent's Motion to Stay (Dkt. No. 69), which was filed on April 19, 2016. This Court took the matter under submission on June 1, 2016.

The district court has inherent power to issue a stay in a case before it "to control the disposition of the causes on its docket in a manner which will promote economy of time and effort for itself, for counsel, and for litigants." *Filtrol Corp. v. Kelleher*, 467 F.2d 242, 244 (9th Cir. 1972). The exertion of this power calls for the exercise of a sound discretion. *Id*. When a stay is sought, "the competing interests which will be affected by the granting or refusal to grant a stay must be weighed." *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962). The traditional standard a court considers when deciding a motion to stay involves four factors: "(1) whether the

stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 425-26 (2009) (citing *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). The party seeking a stay bears the burden of establishing its need. *Clinton v. Jones*, 520 U.S. 681, 708 (1997).

Respondent has the burden of establishing that he made a strong showing that he is likely to succeed on the merits. In this case, Respondent argues that he is likely to succeed on the merits on both his appeal to the Ninth Circuit, as well as the arbitration decision that is on appeal in the English Court of Appeal. Respondent first makes the argument that he will likely succeed on the merits of his Ninth Circuit appeal because he claims that the arbitration award from the London Award is "suspended." Article V(1)(e) of the New York Convention states that "recognition and enforcement of the award may be refused . . . if the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made." Respondent claims that the award granted in England, now on appeal, has been suspended because it is not "finally disposed of." Even though the award is currently on appeal and unenforceable in England and Wales, Respondent errs in stating that the arbitration award is suspended or invalid. Petitioner points out that in fact, the English Court has not invalidated or suspended the award. In contrast to Respondent's claims, the English Court declared that Petitioner "shall have permission to take steps in jurisdictions other than England and Wales . . . for the purposes of enforcing the [London Award] . . . ." ECF 52-1 ¶ 10 & Ex. 4. Even if Respondent provided adequate evidence that the arbitration award has been suspended, it is still within the Court's discretion whether or not to enforce the award. *See* New York Convention Article V(1)(e) ("[R]ecognition and enforcement of the award *may* be refused . . . if the award has not yet become binding on the parties, or has been set aside or suspended . . . .") (emphasis added). Therefore, the Court takes the position that Respondent has not met his burden of establishing a likelihood of success on the merits of his appeal with the Ninth Circuit.

In an attempt to make a showing of likelihood of success in his appeal with the English

Court of Appeal, Respondent's only argument is that his application has not been disposed of and was allowed to proceed on appeal. The mere fact that the judge who ruled against Respondent in the lower English Court has granted him the opportunity to appeal his case does not prove a substantial likelihood of success on the merits. Respondent also omits key context when he quotes Mr. Justice Teare in an attempt to demonstrate likelihood of success on the merits. Respondent claims that Justice Teare stated he has a "real prospect of success on appeal." But Petitioner is quick to point out that Justice Teare in fact stated "that he could not 'say there is *no real prospect of success.*'" (ECF 47-9 at 13). Respondent has failed to present evidence or reasoning that would demonstrate a likelihood of his success on the merits of his claims with the English Court of Appeal and accordingly, the first factor finds against a stay.

Respondent next argues that he will suffer irreparable injury absent a stay since he will be forced to pay the large sum of $93 million to his "political enemy." The Court is unpersuaded. Regardless of the amount of money involved in this dispute, this is the amount that was previously determined by the English Courts, as well as this Court in its order granting summary judgment. (Dkt. No. 56). Respondent provides reference that "irreparable harm is traditionally defined as harm for which there is no adequate legal remedy." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014). It is in the Court's view that if the English Court of Appeal finds in favor of Respondent, he will still have an adequate legal remedy because he can then bring proceedings to recover the entire judgment that he will pay to Petitioner. Respondent further argues that he will suffer irreparable harm from the post-judgment discovery that Petitioner is likely to pursue. This type of discovery is a legal right presented to judgment creditors when a judgment is enforced against a party. This legal right to engage in post-judgment discovery would present a minor burden on Respondent and thus will not result in an irreparable harm. Lastly, Respondent briefly claims that Petitioner will attempt to recover twice from Respondent based on prior corrupt dealings between the parties in Russia. Respondent does not present adequate evidence of this being a formidable issue in this matter. Therefore, the second factor finds against a stay.

The Court next considers whether issuance of the stay will substantially injure Petitioner.

Respondent states that the English Court of Appeals is expected to give its ruling during this year, and he argues that Petitioner should have to wait to hear this final ruling. While this may be true, this dispute has been ongoing since 2010, and as a result, Petitioner has exerted a substantial amount of time and money in pursuit of a resolution. Accordingly, this factor finds against a stay as well.

Finally, the Court considers the public interest. Petitioner has already won this arbitration dispute in three different legal settings. One of those legal settings was this Court. The public has an interest in resolving legal disputes in a timely manner as well as enforcing a speedy receipt of judgment from the losing party. "Where delay would have an adverse impact on the statutory rights sought to be enforced or where strong considerations of public policy militate in favor of speedy judicial resolution, a stay is generally inappropriate." *Fujikawa v. Gushiken*, 823 F.2d 1341, 1347 (9th Cir. 1987). As mentioned above, this dispute has been ongoing since 2010. Further delaying a ruling in this dispute contrasts the public interest in fast and timely judicial resolution. Accordingly, the final factor likewise finds against a stay.

With all the factors finding against a stay, this Court denies Respondent's Motion to Stay. However, even if this Court was inclined to grant Respondent's motion, Respondent has requested to be relieved from posting a supersedeas bond. Generally, to stay an execution of a judgment, the requesting party must post a supersedeas bond as collateral while its case is on appeal. *Cotton ex rel. McClure v. City of Eureka*, Cal., 860 F. Supp. 2d 999, 1025 (N.D. Cal. 2012); Fed. R. Civ. P. 62(d).

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The fact that Respondent has requested a waiver from his obligation of posting a bond furthers this Court's reasoning that a stay in this case is inappropriate. In order to ensure that Petitioner is accorded complete relief in the absence of an overturned ruling, Respondent's unwillingness to post bond deprives Petitioner of his entitled security and reaffirms that a stay is unwarranted.

IT IS HEREBY ORDERED that Respondent's Motion to Stay is DENIED. (Dkt. No. 69).

Dated: June 14, 2016.

MANUEL L. REAL
UNITED STATES DISTRICT JUDGE

CC: FISCAL