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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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YENIDUNYA INVESTMENTS, LTD., a
Cyprus, EU Corporation;

NO. CIV. 2:11-1787 WBS CKD

Plaintiff,

MEMORANDUM AND ORDER RE:
MOTION TO STAY EXECUTION OF
JUDGMENT PENDING APPEAL

v.

MAGNUM SEEDS, INC., a
California Corporation; and
GENICA RESEARCH CORPORATION, a
Nevada Corporation;

Defendants.

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Plaintiff Yenidunya Investments, Ltd. brought this
action against defendants Magnum Seeds, Inc. ("Magnum") and
Genica Research Corporation ("Genica") for declaratory relief and
accounting arising out of defendants' allegedly wrongful
violation of plaintiff's rights as a Magnum shareholder. After
granting defendants' motion to dismiss, the court awarded
defendants \$125,324.75 in attorneys' fees and \$1,002.21 in
untaxed costs. (Docket No. 44) Presently before the court is

1 plaintiff's motion to stay execution of the judgment pending
2 appeal. (Docket No. 47.)

3 I. Factual and Procedural Background

4 In October 2003, Spiros Spirou & Co. ("SS & Co.")
5 obtained common stock in Magnum by converting a \$2,267,995.00
6 loan into 2,267,995 shares of Magnum. (Compl. ¶ 7 (Docket No.
7 1).) In March 2005, Genica offered to purchase all of the
8 outstanding shares of Magnum from the existing shareholders.
9 (Id. ¶ 13.) Plaintiff declined to sell its shares, however
10 defendants exercised a call-option to purchase plaintiff's shares
11 for \$1,133,997.50 to be paid over a ten-year period. (Id.)
12 Magnum no longer recognizes plaintiff as a shareholder. (Id.
13 ¶ 10.)

14 In order to show its good faith intention to pay
15 plaintiff for the sale of its shares, defendants have created a
16 special bank account ("Special Account") into which they have
17 deposited payments due to plaintiff under the stock sale.
18 (Anastassiou Decl. Ex. A (Docket No. 47-2).) Defendant has
19 notified plaintiff that it

20 will hold the funds in this account until such time as
21 Yenidunya provides us with the following documents (the
"Required Documentation"):

22 (i) the stock certificate,

23 (ii) the executed Stock Assignment and Release, and

24 (iii) satisfactory proof that Yenidunya is entitled to the
25 payment, i.e. that the right to the payment has not been
pledged or sold to someone else.

26 (Id. at 2.) Defendant has further informed plaintiff that:

27 It is our intent to continue to hold money in this
28 separate account until such time as Yenidunya provides us
with the Required Documentation. Upon receipt, we will

1 immediately deliver the Promissory Note and all of the
2 funds in the special account to the proper party.
3 Notwithstanding the foregoing, however, we reserve the
4 right to terminate this account if we determine, in our
5 sole judgment, that our purpose in setting it up has
6 failed.

7 (Id.) Plaintiff has not yet provided defendants with the
8 Required Documentation. (Def.'s Opp'n to Pl.'s Mot. to Stay
9 Execution on J. at 2:25-26 (Docket No. 51).)

10 On July 6, 2011, plaintiff filed for declaratory relief
11 seeking to be recognized as a Magnum shareholder. Defendants
12 moved to dismiss plaintiff's complaint on the ground that it was
13 barred by the statute of limitations. (Docket No. 12.) The
14 court granted defendant's motion, finding that the statute of
15 limitations had run because "the gravamen of [plaintiff's]
16 Complaint is that the Promissory Note was never a valid
17 contract." (Oct. 31, 2011, Order at 9:7-9 (Docket No. 23).) The
18 court also denied plaintiff's motion for reconsideration. (Dec.
19 7, 2011, Order at 7:10-12 (Docket No. 29).) Defendants moved for
20 attorneys' fees and the court awarded defendants \$125,324.75 in
21 attorneys' fees and \$1,002.21 in untaxed costs. (Docket No. 44.)
22 Plaintiff filed notices of appeal as to the court's orders
23 granting defendants' motion to dismiss, (Docket No. 34), denying
24 plaintiff's motion for reconsideration, (id.), and awarding
25 attorneys' fees to defendants, (Docket No. 45).

26 II. Legal Standard

27 With a few specified exceptions, Federal Rule of Civil
28 Procedure 62(a) provides for an automatic stay of fourteen days
following entry of a judgment. Fed. R. Civ. P. 62(a). A party
appealing a district court's entry of a money judgment is

1 entitled to a further stay as a matter of right if he posts a
2 bond in accordance with Federal Rule of Civil Procedure 62(d).
3 Antoninetti v. Chipotle Mexican Grill, Inc., No. 05-1660, 2009 WL
4 1390811, at *2 (S.D. Cal. May 15, 2009) (citing Am. Mfrs. Mut.
5 Ins. Co. v. Am. Broad.-Paramount Theatres, Inc., 87 S. Ct. 1, 3
6 (1966) (mem.)). While parties have the right to a stay obtained
7 through a supersedeas bond, an unsecured stay is reserved for
8 "unusual circumstances" and awarded at the court's discretion.
9 Fed. Prescription Serv., Inc. v. Am. Pharm. Ass'n, 636 F.2d 755,
10 760-61 (D.C. Cir. 1980).

11 Where a party wishes to post a bond in an amount less
12 than the full judgment, the burden is on the moving party to show
13 reasons for the departure from the normal Rule 62(d) requirement.
14 See Poplar Grove Planting & Ref. Co. v. Bache Halsey Stuart,
15 Inc., 600 F.2d 1189, 1191 (5th Cir. 1979). Among the grounds
16 that may justify waiver of the bond requirement are:

- 17 (1) the complexity of the collection process;
- 18 (2) the amount of time required to obtain a judgment
after it is affirmed on appeal;
- 19 (3) the degree of confidence that the district court has
in the availability of funds to pay the judgment;
- 20 (4) whether the defendant's ability to pay the judgment
is so plain that the cost of a bond would be a waste of
money; and
- 21 (5) whether the defendant is in such a precarious
22 financial situation that the requirement to post a bond
would place other creditors of the defendant in an
23 insecure position.

24 United States v. Simmons, No. 96-5948, 2002 WL 1477460, at *1
25 (E.D. Cal. May 14, 2002) (citing Dillon v. City of Chicago, 866
26 F.2d 902, 904-05 (7th Cir. 1988)); see also Miami Int'l Realty
27 Co. v. Paynter, 807 F.2d 871, 873 (10th Cir. 1986) (looking
28 instead at whether (1) "there is a showing that the prevailing

1 party's judgment will not be jeopardized" or (2) "a [full] bond
2 is impracticable [and other] adequate security is provided");
3 Antoninetti, 2009 WL 1390811, at *2.

4 "Courts addressing a motion for an unsecured stay under
5 Rule 62(d) have expressed a willingness to grant such requests
6 when: (1) 'defendant's ability to pay is so plain that the cost
7 of the bond would be a waste of money' or (2) 'the requirement
8 would put the defendant's other creditors in undue jeopardy' (in
9 other words, the requirement is impracticable because it would,
10 for example, force appellant into bankruptcy or paralyze the
11 business)." Bolt v. Merrimack Pharm., Inc., No. CIV. S-04-0893,
12 2005 WL 2298423, at *3 (E.D. Cal. Sept. 20, 2005) (citing cases).
13 Even if the moving party persuades the court that a full bond is
14 unnecessary, the court typically requires a substitute form of
15 judgment guarantee. See Olympia Equip. v. W. Union Tel. Co., 786
16 F.2d 794, 796 (7th Cir. 1986). The court, in its discretion, may
17 entertain a form of security other than a supersedeas bond. See,
18 e.g., Trans World Airlines v. Hughes, 515 F.2d 173, 175-76 (2d
19 Cir. 1975) (allowing defendant, in a case awarding plaintiff over
20 \$145 million, to post a partial bond of \$75 million and provide
21 regular evidence of net worth greater than three times the
22 balance owed -- an arrangement that freed defendant to pursue
23 other business opportunities pending appeal).

24 III. Discussion

25 Plaintiff requests that the court stay execution on the
26 judgment for attorneys' fees without requiring it to file a
27 supersedeas bond pending its appeal of the court's orders
28 granting the motion to dismiss and awarding attorneys' fees.

1 Plaintiff argues that the posting of a bond is not necessary
2 because the Special Account that defendant holds on plaintiff's
3 behalf provides an adequate financial assurance of recovery for
4 defendants. Plaintiff has presented no financial information
5 suggesting that it is unable to post a supersedeas bond, nor has
6 it shown an ability to pay the attorneys' fee award without
7 reliance on the assets in the Special Account. In order to
8 demonstrate that plaintiff's ability to pay is so plain that the
9 cost of a bond would be a waste of money, the court must
10 therefore have confidence that the Special Account functions as
11 an acceptable alternative to a supersedeas bond. Plaintiff bears
12 the burden of proof to show that defendants' access to the
13 Special Account will adequately compensate it for the attorneys'
14 fees that it has been awarded. See Antoninetti, 2009 WL 1390811,
15 at *2.

16 The Special Account was created by defendants to
17 demonstrate their "good faith" attempts to pay plaintiff for its
18 shares. (Anastassiou Decl. Ex. A.) Defendants retains ownership
19 of the funds in the account, however, until plaintiff provides
20 the Required Documentation. The court does not know that
21 plaintiff has yet provided the Required Documentation, nor does
22 the court's order granting the motion to dismiss on statute of
23 limitation grounds require that plaintiff provide the Required
24 Documentation. The court recognizes that, if plaintiff loses on
25 appeal, it will have a financial interest in submitting the
26 Required Documentation in order to collect the funds that
27 defendants have set aside for the purpose of purchasing
28 plaintiff's shares. The parties' prior behavior, however,

1 greatly diminishes the court's confidence that the parties will
2 quickly and efficiently resolve their differences following the
3 outcome of the appeal.

4 For instance, plaintiff waited for six years after
5 Magnum stopped treating it as a shareholder before bringing
6 litigation contesting Magnum's forced buy-out of its shares.
7 (Compl. ¶ 10.) The correspondence between the parties
8 illustrates a complete inability to reach resolution on even the
9 smallest issues. (See Anastassiou Decl. Exs. B-E (Docket No. 47-
10 2).) The briefing on motions in this case has frequently
11 contained argumentation that is irrelevant to the issues at hand
12 and suggests that future interactions between the parties may be
13 similarly complex and inefficient. Plaintiff has recently
14 suggested that it may file an additional lawsuit in this case.
15 (Macaulay Decl. Ex. 2 (Docket No. 51-3).) And finally, despite
16 the court granting the parties additional time to reach a
17 stipulation on this issue, the parties have been unable to agree
18 on their post-appeal obligations.

19 If plaintiff loses its appeal, the court is not
20 confident that plaintiff will submit the Required Documentation
21 in a timely manner and without further litigation. This leaves
22 defendants without an adequate assurance that they will be able
23 to easily collect their attorneys' fees. Plaintiff has not met
24 its burden to show that the Special Account is an adequate
25 substitute for a supersedeas bond. Furthermore, plaintiff has
26 failed to provide an adequate reason for why it is unable to post
27 a bond. Plaintiff is thus not entitled to a stay without posting
28 a supersedeas bond. In the event that plaintiff files such a

1 bond to stay execution of the judgment, the bond must be in the
2 full amount of the judgment.

3 IT IS THEREFORE ORDERED that plaintiff's motion to stay
4 execution of judgment pending appeal be, and the same hereby is,
5 DENIED.

6 DATED: March 30, 2012

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9 WILLIAM B. SHUBB
10 UNITED STATES DISTRICT JUDGE
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