

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
COMPLEX SYSTEMS, INC.,

Plaintiff,

-v-

ABN AMRO BANK N.V.,

Defendant.
-----X

08 Civ. 7497 (KBF)

MEMORANDUM
DECISION & ORDER

KATHERINE B. FORREST, District Judge:

On May 9, 2014, this Court granted plaintiff Complex Systems, Inc.’s (“CSI”) motion for permanent injunctive relief. (ECF No. 428.) Defendant ABN AMRO Bank N.V. (“ABN”) may appeal a decision granting injunctive relief as of right, 28 U.S.C. § 1292(a); Noel v. New York City Taxi & Limousine Comm’n, 687 F.3d 63, 67 (2d Cir. 2012), despite the fact that final judgment has not been entered.¹ Petereit v. S.B. Thomas, Inc., 63 F.3d 1169, 1175 (2d Cir. 1995).

ABN has moved for a stay pending resolution of its appeal. (ECF No. 436.) The Court anticipated that ABN would file such motion – it took such a possibility into account when structuring the injunctive relief provided, building in time for both this Court and if necessary, the Second Circuit, to decide such a motion.²

In determining whether to grant a motion for a stay, this Court analyzes the following factors:

¹ Nor has this Court entered partial judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

² The Court’s anticipation of a motion for a stay should not be confused with a view that it would grant such motion; just that emergency applications could and should be avoided.

(1) [W]hether the stay applicant has made a strong showing that [it] 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, 434 (2009) (internal quotation marks and citation omitted). The Court’s review of these factors does not support issuance of a stay pending appeal.

As an initial matter, the question before the Second Circuit will be whether this Court abused its discretion in granting injunctive relief. Noel, 687 F.3d at 68 (citation omitted). In making that determination, the Second Circuit may “consider the underlying merits of the case, to the extent they relate to the propriety of granting injunctive relief.” Id. (internal quotation marks and citation omitted).

The Court does not believe that ABN will ultimately prevail on its appeal – its arguments regarding both liability and injunctive relief are no stronger today than they were when the Court decided these issues.

The question of harm is a more difficult question – but that question also must be decided in favor of CSI. ABN’s primary argument is that it no longer will be able to conduct business using a product it has no right to use. As the Court explained at length in its decision granting injunctive relief, there is no intrinsic right to use that which does not belong to you – even if you have used it for a number of years. ABN argues that it will have to engage in a variety of “manual” efforts that are near impossible in order to continue to process trade finance transactions. This argument is unavailing. It may be that ABN will be forced to

stop processing certain trade finance transactions for a period of time; while this undoubtedly will be disruptive and will result in financial loss, it cannot be that that alone is sufficient to enable ABN to engage in Court-sanctioned infringement.

In addition, ABN argues it will not be able to process new trade finance transactions without BankTrade. That argument is also unavailing. It may simply be that ABN cannot take on new business in this area until it has some way of processing without infringing on CSI's copyright.

In its May 9, 2014 decision, the Court set forth various ways in which CSI is and will be irreparably injured by continued infringement. Such harm has occurred and will occur during the pendency of any appeal. Thus, the third factor weighs in favor of denying ABN's request for a stay.

Finally, in its decision granting injunctive relief, the Court analyzed the public interest. The analysis there is similar to that here. In the context of this motion for stay, the Court is also mindful that the judicial process requires that litigants subject to injunctive relief do not assume they can obtain a stay as a matter of course. There is a public interest in not issuing an Order granting relief one day simply to stay that same Order the next, without unusual circumstances. This case presents no particularly unusual circumstances.

Accordingly, the Court has reviewed the applicable factors and does not find a basis to stay its May 9, 2014 Order. ABN's motion is thus DENIED.

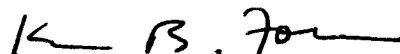
ABN also requests that, pursuant to Rules 59(e), 60(b), and/or 62(c) of the Federal Rules of Civil Procedure, the Court modify its Order to provide additional time to transition off BankTrade. That motion is DENIED.

ABN's position is premised on the erroneous assumption that the Court should or intended to provide the time it viewed as necessary to complete an ordinary transition. That was not the Court's intent. How and what ABN chooses to do during the transition period is up to ABN – the Court's view is that the one year period provides sufficient and reasonable time for ABN to "get off" BankTrade. Whether ABN starts a transition to using another system or outsources its trade finance business entirely is up to ABN. The Court does not have a view as to what business decisions ABN will make over the next year. It has but one requirement: ABN shall stop using BankTrade by the expiration of that period.

The Clerk of Court is directed to terminate the motion at ECF No. 436.

SO ORDERED.

Dated: New York, New York
May 21, 2014



KATHERINE B. FORREST
United States District Judge