UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
SOUNDVIEW ELITE LTD., *et al.*,	:	Case No. 13-13098 (REG)
Debtors.	:	(Jointly Administered)
CORINNE BALL, as Chapter 11 Trustee of SOUNDVIEW ELITE LTD.,	:	
Plaintiff,	:	Adv. Proc. No. 14-01923 (REG)
v.	:	
SOUNDVIEW COMPOSITE LTD.,	:	
Defendant.	:	

DECISION ON MOTIONS FOR SUMMARY JUDGMENT
AND ASSET FREEZING PRELIMINARY INJUNCTION

APPEARANCES:

JONES DAY
Counsel for Plaintiff Corinne Ball, as Chapter 11
Trustee of Debtor Soundview Elite Ltd.
222 East 41st Street
New York, New York 10017
By: William J. Hine, Esq. (argued)
Veerle Roovers, Esq.

LAW OFFICE OF PETER M. LEVINE
Former[1] *Counsel for Defendant Soundview Composite Ltd.*
99 Park Avenue, Suite 330
New York, New York 10016
By: Peter M. Levine, Esq. (argued)

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[1] After the filing of his brief and oral argument on the summary judgment elements of this decision, Mr. Levine sought permission to withdraw from his representation of defendant Soundview Composite Ltd. His motion was granted.

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SHER TREMONTE LLP
Successor Counsel for Defendant Soundview Composite Ltd.
80 Broad Street, Suite 1301
New York, New York 10004
By: Robert Knuts, Esq.[2]

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[2] Mr. Knuts filed a brief on the asset-freezing injunction elements of this decision. The Court did not need, nor hold, oral argument as to these.

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ROBERT E. GERBER
UNITED STATES BANKRUPTCY JUDGE:

In the chapter 11 cases of debtors Soundview Elite Ltd. ("**Elite**") and its affiliates (collectively, and with Elite, the "**Soundview Debtors**"), plaintiff Corinne Ball (the "**Trustee**") was appointed chapter 11 trustee for the Soundview Debtors after this Court removed Alphonse Fletcher ("**Fletcher**") and others under Mr. Fletcher's control from possession.[3] Until the Soundview Debtors needed to be liquidated (in the Cayman Islands, under which they were organized, and the United States, where they were headquartered), the Soundview Debtors were investment companies—"open ended mutual funds"[4]—taking investor money and placing that money in other investments.

One such investment (in this case, by debtor Elite, one of the six companies that are debtors in this chapter 11 case) was in another investment company, defendant Soundview Composite Ltd. ("**Composite**"), which is not a debtor in this Court. As of the time of the events relevant here, Composite was also under Mr. Fletcher's control, and it remains under Mr. Fletcher's control.

In this adversary proceeding under the umbrella of the Soundview Debtors' chapter 11 cases, the Trustee, on behalf of debtor Elite, sues to recover the "**Owed Amount**," *i.e.*, the net asset value of Elite's investment—which effectively is everything

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[3] *See In re Soundview Elite, Ltd.,* 503 B.R. 571 (Bankr. S.D.N.Y. 2014) (Gerber, J.) (the "**Trustee Decision**") (addressing a number of issues in this case, including the appointment of a chapter 11 trustee).

Earlier, in a distinct, but related, chapter 11 case involving another investment fund controlled and managed by Mr. Fletcher, *In re Fletcher Int'l Ltd of Bermuda.,* No. 12-12796 (Bankr. S.D.N.Y. case filed June 29, 2012), referred to by the parties, and eventually this Court, as "**FILB**," the Court likewise appointed a trustee—in that case, Richard Davis, Esq. (the "**FILB Trustee**). For further background with respect to some of FILB matters, see *In re Fletcher Int'l Ltd*, 2014 Bankr. LEXIS 2558, 2014 WL 2619690 (Bankr. S.D.N.Y. June 11, 2014) (Gerber, J.).

[4] Decl. of Alphonse Fletcher, Jr. Pursuant to Local Rule 1007-2, filed 9/24/2013 (Main Case ECF No. 2) ("**Fletcher Rule 1007-02 Decl**."), ¶ 4.

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Composite would have after the payment of Composite's creditor liabilities,[5] since Elite is the only shareholder with an economic interest in Composite[6]—after Elite made a redemption request that Composite repeatedly acknowledged but now refuses to honor. The Trustee also seeks a preliminary injunction (replacing a consensual hold on Elite's assets that was put into place when this controversy first came up) freezing Composite's assets to avoid their dissipation.

More specifically, the Trustee seeks (i) turnover, under sections 541 and 542 of the Bankruptcy Code, of the net asset value of Elite's holdings; (ii) an accounting; (iii) attorneys' fees, costs, and litigation expenses, and (iv) other relief that the Court considers proper.

The Trustee now moves, pursuant to Fed.R.Bankr.P. 7056 and Fed.R.Civ.P. 56, for summary judgment—though this might better be regarded as partial summary judgment, because (as the Trustee readily acknowledges) the Debtor's redemption entitlement—while to the entirety of Composite's remaining assets—is to those assets after the payment of any senior third-party creditor claims, which are not yet known with precision.

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[5] As discussed below, Elite's contractual entitlement is to the net asset value ("**NAV**") as of the close of business on the relevant quarterly redemption date, not the time of any payment or of any judicial determination. And because the value of Composite's assets has gone down since the redemption request was made, the amount Composite now could pay, net of its expenses, would be less than Elite's entitlement at the earlier time. Obviously, Composite cannot pay more than it has. Thus the Trustee's entitlement on behalf of Elite, Composite's only shareholder, is effectively to everything Composite would still have left after Composite's payment of any more senior creditor claims.

[6] Composite has shareholders of two types—those with voting rights (Mr. Fletcher, and/or people or entities Mr. Fletcher controls), and those who, like the average holder of shares in a mutual fund, might contribute money or property into Composite (*e.g.*, Elite), but have no voting power. Only the shareholders in the latter category have the right to redeem their investments, and Elite is the only one of them. Hereafter, instead of accompanying "shareholder" with the qualifier "with an economic interest" every time, the Court will simply refer to Elite as Composite's only shareholder.

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Composite's position—*i.e.*, Mr. Fletcher's position—is inexplicable, and offensive to the Court. It is obvious that once any existing senior Composite liabilities have been satisfied, the entire remaining balance of Composite's assets rightfully belongs to Elite. That Elite made a redemption request has been repeatedly acknowledged by persons and entities acting for Mr. Fletcher, or entities under Mr. Fletcher's control. Mr. Fletcher, acting through companies he controlled, was on both sides of the redemption request at the time it was made. But Mr. Fletcher (who, as noted, still controls Composite) nevertheless refuses to return Elite's investment—or what is left of it.

On behalf of Composite, Mr. Fletcher contends that almost all of the evidence supporting the redemption request is inadmissible, and that what is admissible is "ambiguous"; that he can find no record of the redemption request and (though he and his staff were on both sides of the transaction at the time, and repeatedly acknowledged it before) cannot remember it; and that he isn't sure whether, assuming any redemption request was made, the request complied with necessary formalities. Mr. Fletcher also contends that Composite has the right, under "gating"[7] provisions in the investment documents, to "gate" Elite's redemption request—even though there are no other Composite shareholders to protect; gating here would serve no purpose; and he offers no evidence to support the notion that Composite took any action to gate this redemption request.

Sooner or later, the Trustee will win. But Mr. Fletcher's resistance to meeting his obligations to his investors, and constraints on the statutory and constitutional authority

[7] "Gating" or "gate" provisions authorize managers of investment funds to limit the amount of withdrawals on shareholders' requested redemptions as a means of protecting the fund, to avoid a run on the bank and protect other shareholders.

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