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**United States District Court
Central District of California**

FANTASTIC SAMS SALON CORP.,
Plaintiff,
v.
FRANK MOASSESFAR; PARVANEH
MOASSESFAR,
Defendants.

Case No 2:14-cv-06727-ODW (E)

**ORDER DENYING PLAINTIFF'S
MOTION FOR ATTORNEY'S FEES
AND COSTS [129] AND TO SHOW
CAUSE RE: SANCTIONS**

I. INTRODUCTION

Plaintiff Fantastic Sams Salon Corp. (“Fantastic Sams”) brings this action against Defendants Frank and Parvaneh Moassesfar for breach of contract and trademark infringement. Fantastic Sams prevailed at trial on its breach of contract claim, and now moves for an award of attorney’s fees and costs. (ECF No. 129.) After considering Fantastic Sams’ moving papers, the Court finds the matter appropriate for decision without oral argument or further briefing, and thus **VACATES** the hearing date. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.¹ For the reasons discussed below, the Court **DENIES** Fantastic Sams’ Motion. The Court further **ORDERS** Fantastic Sams’ counsel to **SHOW CAUSE** why the Court should

¹ The Court does not rely on any argument in the Moassesfars’ Opposition, and thus the Court finds it unnecessary to await Fantastic Sams’ Reply before ruling on the Motion.

1 not sanction them for asserting an argument without any reasonable basis.

2 **II. FACTUAL BACKGROUND**

3 The parties are familiar with the factual background of the case, and thus the
4 Court recounts only the salient facts here. Fantastic Sams is a franchisor of hair
5 cutting salons throughout the United States. (Compl. ¶ 5, ECF No. 1.) In 2007, the
6 Moassesfars became franchisees of two Fantastic Sams salons in California—one in
7 Tarzana and the other in Northridge. (*Id.* ¶ 6.) The franchise agreements required,
8 among other things, that the Moassesfars pay a weekly license fee and a national
9 advertising fee for each franchise location. (*Id.* ¶ 26.) The Moassesfars failed to pay
10 these fees beginning in January 2011 for the Tarzana location and February 2012 for
11 the Northridge location. (*Id.* ¶ 32–33.) Despite not paying the fees, the Moassesfars
12 allegedly continued to operate both locations as Fantastic Sams salons. (*Id.* ¶ 41.)

13 In August 2014, Fantastic Sams filed this action against the Moassesfars,
14 asserting one claim for breach of contract and one claim for trademark infringement.
15 (ECF No. 1.) In March 2016, the Court granted summary judgment in Fantastic
16 Sams’ favor on liability for the breach of contract claim. (ECF No. 75.) On March
17 28, 2017, the Court conducted a jury trial on damages for that claim, and the jury
18 returned a verdict for the full amount of damages sought by Fantastic Sams. (ECF
19 No. 118.) The Court entered judgment accordingly, and dismissed Fantastic Sams’
20 trademark infringement claim. (ECF No. 127.) Fantastic Sams subsequently moved
21 for an award of attorney’s fees in the amount of \$90,904.49 and costs in the amount of
22 \$3,203.17. (ECF No. 129.) That Motion is now before the Court for decision.

23 **III. LEGAL STANDARD**

24 “In an action involving state law claims, we apply the law of the forum state to
25 determine whether a party is entitled to attorneys’ fees, unless it conflicts with a valid
26 federal statute or procedural rule.” *MRO Commc’ns, Inc. v. Am. Tel. & Tel. Co.*, 197
27 F.3d 1276, 1282 (9th Cir. 1999). In California, the prevailing party in an action for
28 breach of contract may recover its attorney’s fees if the contract provides for such

1 recovery. Cal. Civ. Code § 1717(a); *Gil v. Mansano*, 121 Cal. App. 4th 739, 742
2 (2004). Courts apply traditional rules of contract interpretation to interpret an
3 attorneys’ fees provision in a contract. *Gil*, 121 Cal. App. 4th at 743; *Windsor Pac.*
4 *LLC v. Samwood Co.*, 213 Cal. App. 4th 263, 274 (2013). This requires the Court to
5 “give effect to the mutual intention of the contracting parties at the time the contract
6 was formed,” which the Court must ascertain “solely from the written contract if
7 possible.” *Windsor Pac.*, 213 Cal. App. 4th at 274. “If contractual language is clear
8 and explicit and does not involve an absurdity, the plain meaning governs.” *Id.*

9 **IV. DISCUSSION**

10 **A. Attorney’s Fees**

11 Fantastic Sams argues that both franchise agreements provide for the recovery
12 of attorney’s fees by the prevailing party in this action. (Mot. at 6, ECF No. 129.)
13 However, they plainly do not. The provisions that Fantastic Sams relies on each state:
14 “Any cost or other expenses, including attorney’s fees and cost incurred by the
15 successful party, arising out of or occurring because of *the arbitration proceeding*,
16 will be assessed against the unsuccessful party.” (Rodriguez Decl., Ex A at 24, Ex. B
17 at 23, ECF No. 129 (emphasis added).) This action is not an arbitration proceeding,
18 and thus this provision obviously does not apply here. Moreover, the franchise
19 agreements specifically exclude from arbitration “matters relating to the collection of
20 monies owed to Salons Corp by Licensee” (Rodriguez Decl., Ex A at 23, Ex. B at 22),
21 thus making it crystal clear that the parties did not contemplate the recovery of
22 attorney’s fees in collection actions at all. Accordingly, the Court declines to award
23 any such fees.

24 **B. Costs**

25 Fantastic Sams seeks, by this motion, an award of costs in the amount of
26 \$3,203.17. “Unless a federal statute, these rules, or a court order provides otherwise,
27 costs--other than attorney’s fees--should be allowed to the prevailing party.” Fed. R.
28 Civ. P. 54(d)(1). “Within 14 days after the entry of judgment, the party entitled to

1 costs shall file and serve, in accordance with L.Rs. 5-3 and 5-4.1, a completed Form
2 CV-59 ‘Application to the Clerk to Tax Costs.’ All costs shall be specified on Form
3 CV-59 so that the nature of the claim can be readily understood.” C.D. Cal. L.R. 54-
4 2.1. The court may review the Clerk’s taxation of costs upon motion by either party,
5 but “[t]hat review [is] limited to the record made before the Clerk.” C.D. Cal. L.R.
6 54-8; *see also* Fed. R. Civ. P. 54(d)(1) (“The clerk may tax costs on 14 days’ notice.
7 On motion served within the next 7 days, the court may review the clerk’s action.”).
8 Here, Fantastic Sams failed to seek an initial determination of taxable costs from the
9 Clerk; it simply moved this Court in the first instance to award costs. Because the
10 Local Rules (and arguably Rule 54(d)(1)) limit the Court to reviewing the Clerk’s
11 taxation of costs, Fantastic Sams’ Motion fails.

12 **V. CONCLUSION**

13 For the reasons discussed above, the Court **DENIES** Fantastic Sams’ Motion in
14 its entirety. (ECF No. 129.) Finally, as the Court more fully explained above,
15 Fantastic Sams had no reasonable basis on which to assert that “[h]ere, attorney’s fees
16 are authorized by contract.” (Mot. at 6.) The Court therefore **ORDERS** Fantastic
17 Sams’ counsel to **SHOW CAUSE**, in writing only, no later than **June 14, 2017**, why
18 the Court should not impose sanctions in the amount of \$1,000 jointly and severally
19 against Jonathan Michaels, Kathryn Harvey, Kristen Rodriguez, and MLG
20 Automotive Law, APLC, for making a factual and legal assertion to the Court without
21 any reasonable basis. Fed. R. Civ. P. 11(b). No hearing will be held.

22
23 **IT IS SO ORDERED.**

24
25 June 7, 2017

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OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE