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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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BRUNO RIMINI (FURNITURE)
LIMITED, a United Kingdom
company,

Plaintiff,

v.

CONNOR MARKETING, INC., a
California Corporation,

Defendant,

CIV. NO. 1:14-01906 WBS SAB

MEMORANDUM AND ORDER RE: MOTION
FOR PARTIAL SUMMARY JUDGMENT

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Plaintiff Bruno Rimini (Furniture) Limited, a United Kingdom company, brought this action for breach of contract to recover the price of goods delivered to defendant Connor Marketing, Inc., a California company. Plaintiff now moves for partial summary judgment on its breach of contract claim pursuant to Federal Rule of Civil Procedure 56. Defendant opposes the motion and, in the alternative, asks the court to defer consideration under Rule 56(d).

1 "[A] party may file a motion for summary judgment at
2 any time until 30 days after the close of all discovery." See
3 Fed. R. Civ. P. 56(b). In this case, plaintiff moved for summary
4 judgment on May 29, 2015, the same day as the deadline to
5 exchange initial disclosures pursuant to the court's April 22,
6 2015 Scheduling Order. (See Docket No. 29.)

7 Federal Rule of Civil Procedure 56(d) provides that if
8 a party opposing summary judgment "shows by affidavit or
9 declaration that, for specified reasons, it cannot present facts
10 essential to justify its opposition, the court may: (1) defer
11 considering the motion or deny it; (2) allow time to obtain
12 affidavits or declarations or to take discovery; or (3) issue any
13 other appropriate order." Fed. R. Civ. P. 56(d). To satisfy
14 Rule 56(d), the requesting party "must show: (1) it has set forth
15 in affidavit form the specific facts it hopes to elicit from
16 further discovery; (2) the facts sought exist; and (3) the
17 sought-after facts are essential to oppose summary judgment."
18 Family Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortg. Corp., 525
19 F.3d 822, 827 (9th Cir. 2008) (citing California v. Campbell, 138
20 F.3d 772, 779 (9th Cir. 1998)).

21 "Courts are reluctant to deny Rule 56(d) requests."
22 Freeman v. ABC Legal Servs., Inc., 827 F. Supp. 2d 1065, 1071
23 (N.D. Cal. 2011). Typically, "unless plaintiffs failed to
24 exercise due diligence in conducting discovery, filed an untimely
25 Rule 56(d) request, or failed to explain how additional facts
26 would oppose summary judgment, the request is generally granted
27 with liberality." Id.

28 A declaration made by defendant's president, Ron Kuber,

1 identifies seven individuals he says have "knowledge which will
2 support CMI's position in this case." (Kuber Decl. ¶ 21 (Docket
3 No. 34-1).) First, he states that five individuals--including
4 Simon Wigley, Sean Quinn, Liz England, Keith Bolsen, and Ruthie
5 Bolsen--have "knowledge of the relationship between CMI and BRFL,
6 the quality of the purple film and CMI's efforts to develop the
7 brand domestically." (Id.) Another individual, identified as
8 Carlo Banchemo, has "knowledge of the availability of orange
9 Silostop, and the departure of Simon Wigley from Bruno Rimini,
10 Ltd., and the scope of business of BRFL." (Id.) The final
11 person, Marco Forzano, has "knowledge of the relationship between
12 CMI and BRFL and the quality of the purple film." (Id.)

13 At oral argument on July 24, 2015, defendant's counsel
14 represented that all of these witnesses reside outside the United
15 States, with the exception of Keith and Ruthie Bolsen, who
16 reportedly live in Texas. Counsel acknowledged that many of the
17 witnesses would therefore not necessarily be subject to service
18 of process compelling them to attend a deposition. However,
19 counsel represented that the Bolsens would testify to facts
20 relevant to oppose summary judgment and stated that defendant
21 would endeavor to obtain testimony from the remaining foreign
22 witnesses to the fullest extent possible.

23 Plaintiff argues that these representations fall short
24 of Rule 56(d)'s requirements because defendant identifies only
25 generalized topics, not specific facts, for further discovery and
26 fails to explain why these topics are relevant to summary
27 judgment. (See Pl.'s Reply at 12-15.) Plaintiff points out that
28 several of the topics, such as the business relationship between

1 defendant and plaintiff, should already be within defendant's
2 knowledge. The remaining topics are not relevant to the breach
3 of contract claim at issue here, plaintiff argues, because they
4 are excluded by the parol evidence rule.

5 Although more specificity would help defendant's
6 request, the court is sufficiently persuaded that defendant
7 should be afforded the opportunity to depose the individuals it
8 has identified. Plaintiff's decision to file its motion on the
9 same day the parties exchanged initial disclosures would give
10 even a diligent party little, if any, time for meaningful
11 discovery. Defendant's request for additional time is thus
12 understandable. The court's interest in ensuring a thorough
13 adjudication of this matter therefore weights in favor of
14 deferring consideration. See Freeman, 827 F. Supp. 2d at 1071.

15 Moreover, the court cannot say at this stage that the
16 sought-after facts will not aid defendant in opposing summary
17 judgment. Although the parol evidence rule prohibits the use of
18 extrinsic evidence where a contract "is intended to be a final
19 expression of that agreement and a complete and exclusive
20 statement of the terms," see Cal Code Civ. Proc. § 1856(a); Cal.
21 Com. Code § 2202, California law allows a party to "present
22 extrinsic evidence to show that a facially unambiguous contract
23 is susceptible of another interpretation."¹ Maffei v. N. Ins. Co.

24
25 ¹ Both parties cite the United Nations Convention on
26 Contracts for the International Sale of Goods ("CISG") in their
27 discussion of contract law. (See Pl.'s Mem. at 5-6; Pl.'s Reply
28 at 4-5; see also Def.'s Opp'n at 7 ("CMI does not dispute the
law.")) However, "the only circumstance in which the CISG could
apply is if all the parties to the contract were from Contracting
States." Prime Start Ltd. v. Maher Forest Products, Ltd., 442 F.

1 of N.Y., 12 F.3d 892, 898 (9th Cir. 1993); see also Dore v.
2 Arnold Worldwide, Inc., 39 Cal. 4th 384, 391 (2006) (“[E]ven if a
3 contract appears unambiguous on its face, a latent ambiguity may
4 be exposed by extrinsic evidence which reveals more than one
5 possible meaning to which the language of the contract is yet
6 reasonably susceptible.” (quotation marks and citation omitted)).

7
8 Supp. 2d 1113, 1118 (W.D. Wash. 2006) (quoting Impuls I.D.
9 Internacional, S.L. v. Psion-Teklogix Inc., 234 F. Supp. 2d 1267,
10 1272 (S.D. Fla. 2002)); see also Princesse D’Isenbourg Et Cie
11 Ltd. v. Kinder Caviar, Inc., Civ. No. 3:09-29 DCR, 2011 WL
12 720194, at *4 n.3 (E.D. Ky. Feb. 22, 2011) (“In United States
13 courts, the CISG is not applicable when a contract is between
14 parties having places of business in different States and only
15 one State is a Contracting State.” (internal quotation marks and
16 citation omitted)).

17 The United States is a “Contracting State,” but the
18 United Kingdom is not. See Impuls I.D. Internacional, 234 F.
19 Supp. 2d at 1271; Princesse D’Isenbourg Et Cie Ltd., 2011 WL
20 720194, at *4 n.3; Prime Start Ltd., 442 F. Supp. 2d at 1118.
21 For a list of signatories to the CISG, see United Nations
22 Convention on Contracts for the International Sale of Goods
23 (Vienna, 1980) (CISG), United Nations Commission on International
24 Trade Law, [http://www.uncitral.org/uncitral/en/uncitral_texts/
25 sale_goods/1980CISG_status.html](http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG_status.html) (last visited July 17, 2015).
26 Accordingly, because plaintiff operates in a country that has not
27 signed the CISG, the CISG cannot govern this dispute.

28 Federal Rule of Civil Procedure 44.1 requires a party
“who intends to raise an issue about a foreign country’s law must
give notice by pleading or other writing.” See Fed. R. Civ. P.
44.1. At oral argument on July 24, 2015, the parties
acknowledged that they have neither cited to United Kingdom law
nor suggested that United Kingdom law applies. In the Ninth
Circuit, “where both parties have failed to prove the foreign
law, the forum may say that the parties have acquiesced in the
application of the local law of the forum.” Prime Start Ltd.,
442 F. Supp. 2d at 1119 (quoting Commercial Ins. Co. of Newark,
N.J. v. Pacific-Peru Constr. Corp., 558 F.2d 948, 952 (9th Cir.
1977)); see also Miller v. Glenn Miller Prods., Inc., 454 F.3d
975, 989-90 & n.7 (9th Cir. 2006) (applying California law to an
agreement in “the absence of any argument by the parties that
California law does not govern”). The court will therefore
assume for purposes of this motion that the parties have
acquiesced to the application of California law.

1 Although defendant is unable to state precisely what the
2 proffered witnesses will say, defendant has sufficiently
3 identified areas of inquiry germane to the opposition of
4 plaintiff's motion.

5 Accordingly, the court will deny plaintiff's motion
6 without prejudice at this time. It will further allow defendant
7 to depose the seven identified witnesses, to the extent they can
8 be compelled to attend a deposition. At oral argument,
9 defendant's counsel requested a deferral of six months. In order
10 to keep the costs and complications of discovery low, the court
11 will therefore stay all discovery, with the exception of these
12 seven depositions, for that time period.

13 This Order expresses no views on the merits of
14 plaintiff's motion for partial summary judgment, and plaintiff
15 may renew its motion at the expiration of six months or upon
16 completion of the depositions. Defendant shall follow the
17 applicable federal and local rules for opposing the renewed
18 motion.

19 IT IS THEREFORE ORDERED that plaintiff's motion for
20 summary judgment be, and the same hereby is, DENIED without
21 prejudice.

22 IT IS FURTHER ORDERED that all discovery be, and the
23 same hereby is, stayed and shall remain stayed for a period of
24 six months from the date this Order is signed, except that the
25 parties shall be permitted to take the depositions of Simon
26 Wigley, Sean Quinn, Liz England, Keith Bolsen, Ruthie Bolsen,
27 Carlo Banchemo, and Marco Forzano. All dates relating to
28 discovery set out in section four of the court's April 22, 2015

1 Scheduling Order are hereby vacated. At the expiration of six
2 months or upon completion of the above depositions, whichever
3 occurs first, plaintiff may renew its motion for partial summary
4 judgment. If plaintiff chooses to renew its motion, discovery
5 shall remain stayed until the court rules on that motion.

6 Dated: July 27, 2015

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8 **WILLIAM B. SHUBB**
9 **UNITED STATES DISTRICT JUDGE**

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