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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GROLSCH	BIE	BROUWERIJ	NEDERLAND,)	Case No. C 11-00763 SC
B.V.,)	
)	ORDER GRANTING MOTION FOR
Plaintiff,)	<u>ATTORNEY'S FEES AND COSTS</u>
)	
v.)	
)	
DOVEBID, INC.;	GOINDUSTRY	USA,)	
INC., DOES 1 THROUGH 50,)	
inclusive,)	
)	
Defendants.)	
)	

I. INTRODUCTION

Defendants Dovebid, Inc. ("Dovebid") and GoIndustry USA, Inc. ("GoIndustry") (collectively, "Defendants'") move the Court for an order awarding them attorney's fees and costs as the prevailing party in this matter following the dismissal of Plaintiff Grolsche Bierbrouwerij Nederland, B.V.'s ("Plaintiff") First Amended Complaint ("FAC"). ECF No. 33 ("Mot."). The Motion is fully briefed. ECF Nos. 36 ("Opp'n"), 37 ("Reply"), 38 ("Obj. to Bill of Costs"); 39 ("Resp. to Obj. to Bill of Costs"). For the reasons set forth below, the Court GRANTS Defendants' Motion.

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1 **II. BACKGROUND**

2 On or about July 10, 2003, Plaintiff entered into a written
3 agreement ("the Agreement")¹ with Hamerbod B.V. f/k/a Dovebid
4 Netherlands B.V. ("Hamberbod"), a United Kingdom corporation. ECF
5 No. 19 ("FAC") ¶ 9. Under the Agreement, Hamerbod agreed to sell a
6 number of Plaintiff's assets on Plaintiff's behalf and to pay
7 Plaintiff a minimum of four million Euros if certain conditions
8 were met. Id. The Agreement also provided: "If any action at law
9 or in equity is brought to enforce the terms of this Agreement, the
10 prevailing party shall be entitled to recover its reasonable
11 attorney's fees and costs from the other party." Agreement § 14.

12 Also on or about July 10, 2003, Plaintiff entered into a
13 separate agreement ("the Guarantee")² with Dovebid, a Delaware
14 corporation doing business in the Northern District of California.
15 Id. ¶¶ 3, 10. Plaintiff alleges that Dovebid is Hamerbod's parent
16 company and that, as of December 31, 2010, Dovebid was merged into
17 GoIndustry, with GoIndustry assuming all legal obligations of
18 Dovebid. Id. ¶¶ 4, 10. Under the Guarantee, Dovebid "irrevocably
19 and unconditionally" guaranteed performance of Hamerbod's
20 obligations under the Agreement. Id. ¶ 11. The Guarantee does not
21 contain a provision for the recovery of reasonable attorney's fees
22 for actions brought to enforce its terms.

23 In November 2010, Plaintiff filed a Complaint against Dovebid
24 and GoIndustry for breach of the Guarantee in state court. ECF No.
25 1 ("Not. of Removal") Ex A. ("Compl."). Defendants later removed

26 _____
27 ¹ Plaintiff attached the Agreement to its FAC. FAC Ex. A
("Agreement").

28 ² Plaintiff also attached the Guarantee to its FAC. FAC Ex. B
("Guarantee").

1 the action to federal court. Not. of Removal. Defendants moved to
2 dismiss the Complaint on March 14, 2011, but, a few days later,
3 Plaintiff filed its FAC. ECF No. 13 ("Mot. to Dismiss Compl.");
4 FAC. Defendant then filed a motion to dismiss the FAC, which the
5 Court granted on August 2, 2011 on the grounds that Plaintiff's
6 claim was time-barred. ECF Nos. 23 ("Mot. to Dismiss FAC"), 31
7 ("Aug. 2, 2011 Order").

8 Now Defendants seek reimbursement for attorney's fees and
9 costs expended in prosecuting this action. Mot. at 1. Defendants
10 bring the Motion pursuant to Rule 11 of the Federal Rules of Civil
11 Procedure on the grounds that Plaintiff's action was frivolous
12 because it was barred by the statute of limitations. Id. at 8.
13 Defendants also bring the Motion pursuant to California Civil Code
14 Section 1717 and California Code of Civil Procedure Section 1021 on
15 the grounds that Section 14 of the Agreement is enforceable against
16 Plaintiff. Id. at 1.

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18 **III. DISCUSSION**

19 **A. Rule 11 Sanctions**

20 Under Rule 11 of the Federal Rules of Civil Procedure, the
21 Court may impose sanctions against a party or attorney when a
22 pleading is filed for an improper purpose, when the legal
23 contentions are not warranted by existing law or a nonfrivolous
24 argument for the extension of existing law, or when the factual
25 contentions lack evidentiary support. Fed. R. Civ. P. 11(b)-(c).
26 "The rule provides two independent bases for the imposition of
27 sanctions: one if a pleading is frivolous and another if it has
28 been filed for an improper purpose." Westlake North Property

1 Owners Ass'n v. City of Thousand Oaks, 915 F.2d 1301, 1305 (9th
2 Cir. 1990). "The key question in assessing frivolousness is
3 whether a complaint states an arguable claim -- not whether the
4 pleader is correct in his perception of the law." Hudson v. Moore
5 Bus. Forms, Inc., 836 F.2d 1156, 1159 (9th Cir. 1987).

6 Defendants argue that they are entitled to Rule 11 sanctions
7 because, on various occasions, they "informed [Plaintiff] that its
8 action was frivolous as it was barred by the statute of
9 limitations, and otherwise improper, but [Plaintiff] refused to
10 dismiss the action voluntarily." Mot. at 8. However, Defendants
11 do not explain why Plaintiff's action failed to state an "arguable
12 claim," nor do they contend that the action was filed for an
13 improper purpose. In its Opposition, Plaintiff contends that it
14 filed the instant action based on the reasonable belief that it was
15 timely in light of the language in the Guarantee and authority
16 regarding the accrual of actions under guarantees. Opp'n at 5.

17 The Court finds that Plaintiff's arguments, while ultimately
18 unsuccessful, were not legally baseless or frivolous. The
19 circumstances of this case are not so unusual as to warrant an
20 award of Rule 11 sanctions. Plaintiff's FAC sets forth an
21 "arguable claim," even if it was ultimately unsuccessful. See
22 Hudson, 836 F.2d at 1159. Further, there is no indication that
23 Plaintiff's claims were brought for an improper purpose. An award
24 of Rule 11 sanctions would merely serve to chill zealous advocacy.
25 Accordingly, the Court finds that such sanctions are not
26 appropriate in this case.

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1 **B. The Agreement and Guarantee**

2 Defendants also argue that they are entitled to attorney's
3 fees as the prevailing party in the action pursuant to Section 14
4 of the Agreement between Hamerbod and Plaintiff. Section 14 of the
5 Agreement provides that: "If any action at law or in equity is
6 brought to enforce the terms of this Agreement, the prevailing
7 party shall be entitled to recover its reasonable attorney's fees
8 and costs from the other party." Id. at 3. Defendants contend
9 that the Agreement should be interpreted together with the
10 Guarantee, as the two documents were executed contemporaneously,
11 Plaintiff was a party to both, and Dovebid is Hamerbod's parent
12 company. Plaintiff argues that Defendants cannot enforce the
13 Agreement against Plaintiff because Defendants were not a party to
14 the Agreement. Opp'n at 2. Plaintiff also argues that the
15 Guarantee alone should govern the rights and remedies between the
16 parties. Id. As the Guarantee is the only agreement to which
17 both Plaintiff and Defendants were a party and the Guarantee does
18 not contain an attorney's fees clause, Plaintiff contends that
19 Defendants are not entitled to attorney's fees and costs. Id.

20 The parties agree that California law governs the dispute over
21 the Agreement and Guarantee. California Civil Code Section 1717
22 ("Section 1717") provides:

23 In any action on a contract, where the contract
24 specifically provides that attorney's fees and costs,
25 which are incurred to enforce that contract, shall be
26 awarded either to one of the parties or to the prevailing
27 party, then the party who is determined to be the party
28 prevailing on the contract, whether he or she is the
party specified in the contract or not, shall be entitled
to reasonable attorney's fees in addition to other costs.

1 Cal. Civ. Code § 1717(a). California courts have interpreted
2 Section 1717 to "provide a reciprocal remedy for a nonsignatory
3 defendant, sued on a contract as if he were a party to it, when a
4 plaintiff would clearly be entitled to attorney's fees should he
5 prevail in enforcing the contractual obligation against the
6 defendant." Reynolds Metals Co. v. Alperon, 25 Cal. 3d 124, 128
7 (Cal. 1979); see also Dell Merk, Inc. v. Franzia, 132 Cal. App. 4th
8 443, 451 (Cal. Ct. App. 2005).

9 Thus, the pertinent question is not whether Defendants Dovebid
10 and GoIndustry were a party to the Agreement, but whether Plaintiff
11 would have been entitled to attorney's fees were it the prevailing
12 party. Under the Guarantee, Dovebid "irrevocably and
13 unconditionally guarantees" to Plaintiff that Hamerbod "will
14 properly perform the [Agreement] and will comply with all of its
15 terms and conditions." Guarantee at 1. The Guarantee also
16 provides that Dovebid "will itself perform the payment obligations
17 of [Hamberbod] under the [Agreement]." Id. These terms indicate
18 that Defendants would have been liable for attorney's fees had
19 Plaintiff been the prevailing party. See Niederer v. Ferreira, 189
20 Cal. App. 3d 1485, 1506 (Cal. Ct. App. 1987) (guarantor liable for
21 attorney's fees where "the guaranty does, in essence, provide the
22 guarantors will 'perform' the underlying contract or make payment
23 on the note . . . in the event of default" and the underlying
24 contract provided for attorney's fees).

25 Accordingly, the Court finds that Defendants are entitled to
26 attorney's fees pursuant to the Agreement and Guarantee under the
27 reciprocal remedy provisions of California Civil Code Section 1717.

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1 **C. Reasonable Attorney's Fees and Costs**

2 Defendants seek \$41,023 in attorney's fees and \$1,053 in
3 costs. Plaintiff has not challenged the amount of Defendants'
4 attorney's fees, but did object to Defendants' Bill of Costs, ECF
5 No. 36, on the grounds that Defendants failed to attach supporting
6 documentation justifying the costs claimed. Obj. to Bill of Costs
7 at 1. Defendants subsequently filed a declaration explaining and
8 attaching supporting documentation for some of their costs.
9 Capobianco Costs Decl.³ Defendants also filed an amended Bill of
10 Costs, which excluded some of the costs initially claimed. ECF No.
11 41 ("Bill of Costs"). For the reasons set forth below, the Court
12 finds that Defendants are entitled to \$41,023 in attorney's fees
13 and \$703 in costs.

14 "It is well established that the determination of what
15 constitutes reasonable attorney fees is committed to the discretion
16 of the trial court [Citations.] The value of legal
17 services performed in a case is a matter in which the trial court
18 has its own expertise. [Citation.] The trial court may make its
19 own determination of the value of the services contrary to, or
20 without the necessity for, expert testimony. [Citations.] The
21 trial court makes its determination after consideration of a number
22 of factors, including the nature of the litigation, its difficulty,
23 the amount involved, the skill required in its handling, the skill
24 employed, the attention given, the success or failure, and other
25 circumstances in the case." PLCM Group, Inc. v. Drexler, 22 Cal.

26 _____
27 ³ Plaintiff's attorney, Anthony Capobianco ("Capobianco"),
28 submitted a declaration in opposition to Plaintiff's Objection to
Defendants' Bill of Costs. ECF No. 39 ("Capobianco Costs Decl.").

1 4th 1084, 1096 (Cal. 2000) (quoting Melnyk v. Robledo, 64 Cal. App.
2 3d 618, 623 (Cal. App. Ct. 1976)). The fee setting determination
3 ordinarily begins with the lodestar, i.e., "the number of hours
4 reasonably expended multiplied by the reasonable hourly rate." Id.
5 "The reasonable hourly rate is that prevailing in the community for
6 similar work." Id. at 1095.

7 In the instant action, Defendants' attorneys, paralegals, and
8 case clerks spent a total of 111.10 hours on this case. Capobianco
9 Decl. in Supp. of Mot.⁴ ¶ 9. These hours were expended for initial
10 settlement offers, compliance with local rule pretrial
11 requirements, drafting Defendants' two motions to dismiss,
12 reviewing relevant documents, and drafting the instant Motion. Id.
13 Attorneys' hourly rates for this matter ranged from \$300 to \$395
14 and the hourly rates for support staff ranged from \$110 to \$220.
15 Id. ¶¶ 12-14. Defendants' attorney has declared that these rates
16 are consistent with the prevailing market rate. Id. ¶ 15. In
17 light of these facts declared in the Capobianco Declaration and the
18 fact that Plaintiff has not challenged the amount of Defendants'
19 attorney's fees, the Court finds Defendants' attorney's fees to be
20 reasonable.

21 With respect to Defendants' Bill of Costs, the Civil Local
22 Rules provide: "the bill must state separately and specifically
23 each item of taxable costs claimed. It must be supported by an
24 affidavit, pursuant to 28 U.S.C. §1924, that the costs are
25 correctly stated, were necessarily incurred, and are allowable by
26 law. Appropriate documentation to support each item claimed must

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28 ⁴ Capobianco also submitted a declaration in support of Defendants'
Motion. ECF No. 34 ("Capobianco Decl. in Supp. of Mot.").

1 be attached to the bill of costs." N.D. L.R. 54-1(a).

2 Defendants submitted a declaration supporting some, but not
3 all of the costs listed in their Bill of Costs.⁵ Additionally,
4 Defendants' Bill of Costs appears to contain inconsistencies and
5 arithmetic errors.⁶ In light of these errors and omissions, the
6 Court finds that Defendants are only entitled to costs of \$703.
7 Specifically, Defendants are entitled to \$634 for translation
8 services⁷ and \$69 for removal fees. These are the only costs which
9 are listed in Defendants' Bill of Costs, explained in the
10 Capobianco Costs Declaration, and supported by invoices submitted
11 to the Court.

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21 ⁵ For example, Capobianco's Costs Declaration does not refer to or
22 provide documentation for the \$350 filing fee listed in Defendants'
Bill of Costs.

23 ⁶ Certain items listed in the itemized Bill of Costs, which was
24 attached to the Bill of Costs, and the Capobianco Costs Declaration
do not appear in the Bill of Costs. Additionally, the itemized
25 Bill of Costs attached to the Bill of Costs mistakenly states the
sum of \$69, \$97, and \$120 (the fees for document filings) as \$186.
ECF No. 41 ("Bill of Costs").

26 ⁷ In its Aug. 2, 2011 Order, the Court took judicial notice of
27 various documents that Plaintiff filed in its pending Dutch action.
Capobianco Costs Decl. ¶ 3. Because the documents were written in
28 Dutch, Defendants retained a certified translator to translate
these documents. Id.

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IV. CONCLUSION

For the foregoing reasons, the Court GRANTS Defendants' Motion for Attorney's fees. Plaintiff Grolsche Bierbrouwerij Nederland, B.V. is ORDERED to pay Defendants Dovebid, Inc. and GoIndustry USA, Inc. \$41,023 in attorney's fees and \$703 in costs.

IT IS SO ORDERED.

Dated: October 25, 2011


UNITED STATES DISTRICT JUDGE