United States District Court

EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

FELD MOTOR SPORTS, INC.	§	
	§	
v.	§	CASE NO. 4:14-CV-543
	§	LEAD
	§	Judge Mazzant
TRAXXAS, LP	§	

MEMORANDUM OPINION AND ORDER

Pending before the Court are Plaintiff Feld Motor Sports, Inc.'s Motion for Attorneys' Fees (Dkt. #164), Feld Motors Sports, Inc.'s Motion for Bill of Costs (Dkt. #167), and Feld Motor Sports, Inc.'s Supplemental Motion for Attorneys' Fees and Expenses (Dkt. #184). After reviewing the relevant pleadings, the Court finds that the motions should be granted in part and denied in part.

BACKGROUND

On April 14, 2014, Traxxas LP ("Traxxas") filed its action against Feld Motor Sports, Inc. ("Feld") in the 429th District Court of Collin County, Texas, in which it sought declaratory relief, stating that it did not owe Feld royalties on the two-wheel drive Brushless Stampede ("the Stampede VXL"), the Nitro Stampede, and the Stampede 4x4 (*See* Dkt. #3 in 4:14-cv-463). On July 11, 2014, the case was removed to the Eastern District of Texas, and filed as *Traxxas, LP v. Feld Motor Sports, Inc.*, No. 4:14-cv-463 (E.D. Tex. 2014) (Dkt. #1).

On July 11, 2014, Feld filed its action against Traxxas in the United States District Court for the Eastern District of Virginia, in which it alleged that Traxxas has breached the License Agreement, breached the implied covenant of good faith and fair dealing, and failed to pay audit expenses, and failed to pay interest on late payments (Dkt. #1). On August 15, 2014, the case

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was transferred to the Eastern District of Texas, and filed as *Feld Motor Sports, Inc. v. Traxxas, LP*, No. 4:14-cv-543 (E.D. Tex. 2014) (Dkt. #21).

On April 3, 2015, Traxxas filed its Motion for Summary Judgment (Dkt. #51). On April 27, 2015, Feld filed its response (Dkt. #84). On May 11, 2015, Traxxas filed its reply (Dkt. #97). On May 21, 2015, Feld filed its sur-reply (Dkt. #105).

On April 3, 2015, Feld filed its Motion for Summary Judgment (Dkt. #54). On April 27, 2015, Traxxas filed its response (Dkt. #81), and filed its objections to Feld's Summary Judgment Evidence (Dkt. #80). On May 11, 2015, Feld filed its reply (Dkt. #92), and filed its response to Traxxas's objections (Dkt. #96). On May 21, 2015, Traxxas filed its sur-reply (Dkt. #109), and its reply to its objections (Dkt. #108). On June 1, 2015, Feld filed its sur-reply to Traxxas's objections (Dkt. #111). On May 11, 2015, Traxxas filed its objections to Feld's summary judgment opposition evidence (Dkt. #100). On May 21, 2015, Feld filed its response (Dkt. #104). On June 1, 2015, Traxxas filed its reply (Dkt. #112). On June 11, 2015, Feld filed its sur-reply (Dkt. #113). On July 31, 2015, the Court denied both Traxxas's Motion for Summary Judgment and Feld's Motion for Summary Judgment, finding that material fact issues existed in the case (Dkt. #118).

On June 12, 2015, Feld filed its Motion to Consolidate Cases and to Remain as Plaintiff (Dkt. #98 in 4:14-cv-463). Also on June 12, 2015, Traxxas filed its Unopposed Motion to Consolidate Cases and Opposed Motion to Establish Order of Proof (Dkt. #99 in 4:14-cv-463). On June 23, 2015, Feld filed its response to Traxxas's motion (Dkt. #101 in 4:14-cv-463). On June 24, 2015, Traxxas filed its response to Feld's motion (Dkt. #102 in 4:14-cv-463). On June 24, 2015, the Court held a hearing on consolidation. Following the hearing, the Court ordered the matters *Feld Motor Sports, Inc. v. Traxxas, LP*, No. 4:14-cv-543, and *Traxxas, LP v. Feld*

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Motor Sports, Inc., No. 4:14-cv-463, to be consolidated (Dkt. #103 in 4:14-cv-463). However, the Court held its determination as to which case would be the lead case until a later date (Dkt. #103 in 4:14-cv-463). On July 31, 2015, after considering the relevant pleadings, the Court determined that Feld would remain as Plaintiff in the consolidated cases, and that the No. 4:14-cv-543 case would be the lead case in the consolidated action (Dkt. #119 in 4:14-cv-543).

The trial began on August 24, 2015. At the close of Feld's case-in-chief, Traxxas made a motion for judgment as a matter of law, in which it requested that the Court grant judgment as a matter of law in favor of Traxxas, as Feld had not proved its case. The Court denied Traxxas's motion. On August 31, 2015, Feld requested judgment as a matter of law, which the Court denied. On September 1, 2015, the jury rendered its verdict and found the following: (1) the parties intended the License Agreement to include (a) the Stampede Brushless VXL; (b) the Stampede Brushed 4x4; (c) the Stampede Brushless 4x4 VXL; and (d) the Nitro Stampede, when calculating royalties; and (2) Traxxas owed Feld $955,620.30 in unpaid royalties under the License Agreement (Dkt. #162).

On September 14, 2015, the Court entered its Final Judgment, in which it ordered judgment in favor of Feld in the amount of $955,620.30, plus costs and expenses, against Traxxas (Dkt. #163 at p. 1). The Court also stated that "[p]ostjudgment interest is payable to Plaintiff on the foregoing judgment amount at the contractually provided rate of twelve percent (12%) *per annum* from the date this judgment is entered until judgment is paid." (Dkt. #163 at p. 1). The Court also awarded Plaintiff its attorneys' fees and stated that "[c]ourt costs are taxed to Defendant." (Dkt. #163 at p. 1).

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On September 28, 2015, Feld filed its Motion for Attorneys' Fees (Dkt. #164). On October 22, 2015, Traxxas filed its response (Dkt. #172). On November 9, 2015, Feld filed its reply (Dkt. #178). On November 19, 2015, Traxxas filed its sur-reply (Dkt. #182).

On September 29, 2015, Feld filed its Motion for Bill of Costs (Dkt. #167). On October 22, 2015, Traxxas filed its response (Dkt. #171). On November 9, 2015, Feld filed its reply (Dkt. #177). On November 19, 2015, Traxxas filed its sur-reply (Dkt. #180).

On December 11, 2015, Feld filed its Supplemental Motion for Attorneys' Fees (Dkt. #184). On December 29, 2015, Traxxas filed its response (Dkt. #186). On January 4, 2016, Feld filed its reply (Dkt. #187).

LEGAL STANDARD

"State law controls both the award of and the reasonableness of fees awarded where state law supplies the rule of discretion." *Mathis v. Exxon Corp.*, 302 F.3d 448, 461 (5th Cir. 2002). Therefore, because this case utilizes New York law, the Court will look to determine the reasonableness of the attorneys' fees.[1] [2]

"New York follows the 'American Rule' on the award of attorneys' fees, meaning that 'attorneys' fees and disbursements are incidents of litigation and the prevailing party may not collect them from the loser unless an award is authorized by agreement between the parties or by

[1] As a preliminary matter, the parties agree that New York law controls this diversity action under the terms of the License Agreement. "When the laws of two or more states may apply to the various claims in a federal diversity action, the court must apply the choice of law rules of the forum state." *Quicksilver Res., Inc. v. Eagle Drilling, LLC*, 792 F. Supp. 2d 948, 951 (S.D. Tex. 2011) (citing *Mayo v. Hartford Life Ins. Co.*, 354 F.3d 400, 403 (5th Cir. 2004)). Therefore, Texas choice of law rules determine which law applies to each claim in the present case. Generally, Texas law gives effect to contractual choice of law provisions. *Quicksilver Res., Ins.*, 792 F. Supp. 2d at 951; *see Caton v. Leach Corp.*, 896 F.2d 939, 942 (5th Cir. 1990); Restatement (Second) of Conflict of Laws § 187 (1971). Therefore, based upon the language of the License Agreement, the Court will apply New York law to determine Feld's Motion for Attorneys' Fees, Motion for Bill of Costs, and Supplemental Motion for Attorneys' Fees (Trial Ex. 11 at p. 10 ¶ 25).

[2] "New York courts frequently look to federal case law in determining whether an award of attorney's fees is reasonable." *Expeditors Int'l of Wash., Inc. v. Rubie's Costume Co., Inc.*, No. 03 CV 3333 SLT WDW, 2007 WL 430096, at *1 n. 2 (E.D.N.Y. Feb. 2, 2007); *see, e.g., Bell v. Helmsley*, No. 111085/D1, 2003 WL 21057630, at *1 (N.Y. Sup. Ct. Mar. 27, 2003); *see also Matthews v. LFR Collections LLC*, No. 4:13-cv-2311, 2015 WL 502040, at *4 (S.D. Tex. Feb. 4, 2015).

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statute or court rule.'" *Versatile Housewares & Gardening Sys., Inc. v. Thill Logistics, Inc.*, 819 F. Supp. 2d 230, 241 (S.D.N.Y. 2011) (quoting *A.G. Ship Maint. Corp. v. Lezak*, 503 N.E.2d 681, 683 (N.Y. 1986). "[A] contract provision that one party to a contract pay the other party's attorneys' fees in the event of breach is enforceable 'so long as those amounts are not unreasonable.'" *Weiwei Gao v. Sidhu*, No. 11 Civ. 2711 (WHP) (JCF), 2013 WL 2896995, at *5 (S.D.N.Y. June 13, 2013); (quoting *F.H. Krear & Co. v. Nineteen Named Trustees*, 810 F.2d 1250, 1263 (2d Cir. 1987)); *see Wells Fargo N.W., N.A. v. Taca Int'l Airlines, S.A.*, 315 F. Supp. 2d 347, 353 (S.D.N.Y. 2003). In the present case, the parties agree that the License Agreement awarded damages to the prevailing party of any litigation (Trial Ex. 11 at p. 8 ¶ 14(c)) ("In the event that litigation of any nature with respect to performance, non-performance or breach by Licensee of its duties and obligations hereunder is initiated, then and in such event, the non-prevailing party shall promptly reimburse the prevailing parties for the prevailing party costs and expenses, *including reasonable attorneys' fees*, incurred in connection with said litigation.") (emphasis added)).

Under New York law, courts determine the reasonableness of attorneys' fees using the lodestar analysis. *Gonzalez v. Scalinatella, Inc.*, 112 F. Supp. 3d 5, 20-21 (S.D.N.Y. 2015); *Cho v. Koam Med. Servs. P.C.*, 524 F. Supp. 2d 202, 206 (E.D.N.Y. 2007). "[The lodestar] assessment results in a 'presumptively reasonable fee,' which is 'calculated by multiplying the number of hours reasonably billed…by the appropriate hourly rate.'" *Gonzalez*, 112 F. Supp. 3d at 21 (quoting *Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cty. of Albany*, 522 F.3d 182, 190 (2d Cir. 2007); *In re Nortel Networks Corp. Sec. Litig.*, 539 F.3d 129, 132 n. 4 (2d Cir. 2008)). "[T]he lodestar method involve[s] two steps: (1) the lodestar calculation; and (2) adjustment of the lodestar based on case-specific considerations." *Arbor Hill*, 522 F.3d at 186.

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