

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

SARN ENERGY LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No.: N17C-06-355 EMD CCLD
	)	
TATRA DEFENCE VEHICLE a.s.,	)	
	)	
Defendant.	)	
	)	

Submitted: September 26, 2019

Decided: October 31, 2019

*Upon SARN Energy LLC's Motion for Attorney's Fees and Costs*  
***DENIED***

Oderah C. Nwaeze, Esquire, Duane Morris LLP, Wilmington, Delaware, Ryan E. Borneman, Esquire, Duane Morris LLP, Philadelphia, Pennsylvania. *Attorneys for Plaintiff SARN Energy LLC.*

Philip Trainer, Jr., Esquire, Hayley Lenahan, Esquire, Ashby & Geddes, Wilmington, Delaware, Kenneth J. Pfaehler, Esquire, Dentons US LLP, Washington, D.C. *Attorneys for Defendant Tatra Defence Vehicle, a.s.*

**DAVIS, J.**

**I. INTRODUCTION**

This breach of contract action is assigned to the Complex Commercial Litigation Division of the Court. Tatra Defence Vehicle a.s. (“Tatra”) manufactures armored fighting vehicles called the Pandur. Tatra hired SARN Energy LLC (“SARN”) to help facilitate sales of the Pandur to the Slovak Republic or Czech Republic. The parties memorialized the deal in the Defense Policy Analysis and Advisor Agreement (the “Agreement”) on January 14, 2016.<sup>1</sup>

Section 11 of the Agreement provides:

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<sup>1</sup> The Defense Policy Analysis and Advisor Agreement will be cited as “Agreement § \_\_\_.”

11. Indemnification. Parties shall defend, indemnify and hold harmless each other and its officers, directors, employees, agents, parent, subsidiaries and other affiliates, from and against any and all damages, costs, liability, and expense whatsoever (including attorneys' fees and related disbursements) incurred by reason of (a) any failure by Parties to perform any covenant or agreement of the Parties set forth herein; (b) injury to or death of any person or any damage to or loss of property which is due to the negligence and/or willful acts of the Parties; or (c) any breach by Parties of any representation, warranty, covenant or agreement under this Agreement.<sup>2</sup>

On or about July 26, 2019, the parties resolved this civil proceeding and submitted a Stipulated Judgement and Order (the "Final Judgment") to the Court. Through the Final Judgment, Tatra and SARN agreed that "judgment would be entered in favor of SARN and against Tatra in the amount of \$960,000, plus pre-judgment interest, and the fee/expenses related to the cancelled depositions."<sup>3</sup> The Final Judgment provides that the total award against Tatra is \$1,110,436.96.<sup>4</sup> The Court approved the Final Judgment on July 26, 2019.<sup>5</sup>

## II. ANALYSIS

The remaining issue in the case relates to outstanding legal fees and related costs that SARN contends are owed to it by Tatra under Section 11.<sup>6</sup> Although not mentioned in the September Letter, SARN previously sought a smaller subset of those fees and costs that relate to certain discovery as a sanction under Civil Rule 37(b).<sup>7</sup>

The Court finds that Section 11 does not entitle SARN to indemnification for attorneys' fees and costs incurred in this civil action. Delaware typically follows the "American Rule."<sup>8</sup> The American Rule provides that litigants generally are responsible for their own litigation

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<sup>2</sup> Agreement at §11.

<sup>3</sup> Final Judgment at ¶ 9.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See September 26, 2019 Letter from Oderah C. Nwaeze, Esquire, to the Honorable Eric M. Davis (the "September Letter").

<sup>7</sup> See July 25, 2019 Letter from Oderah C. Nwaeze, Esquire, to the Honorable Eric M. Davis.

<sup>8</sup> See, e.g., *Mahani v. Edix Media Grp., Inc.*, 935 A.2d 242, 245 (Del. 2007).

costs.<sup>9</sup> An exception exists in contract litigation where a fee-shifting provision is present.<sup>10</sup> The fee-shifting provision must be a clear and unequivocal agreement in connection with a dispute between parties involving a failure to fulfill obligations under the contract.<sup>11</sup>

This Court has held that the type of language used in Section 11 does not constitute a valid fee-shifting agreement.<sup>12</sup> Instead, Section 11 is a standard indemnity provision that applies to third party actions and not to first-party claims like the one asserted here by SARN.<sup>13</sup> Accordingly, the Court rejects the contention that, under Section 11, Tatra owes SARN its attorneys' fees and expenses incurred in prosecuting this civil action.

In addition, the Court is not comfortable in awarding Civil Rule 37(b) sanctions against Tatra on the record here. SARN never sought such sanctions from the Court until it filed its motion for summary judgment. The Court was unaware of discovery disputes of this nature until after discovery closed. The Court therefore denies SARN's request for discovery sanctions under Civil Rule 37(b).

### III. CONCLUSION

For the reasons set forth above, the Court **DENIES** the Motion for Attorneys' Fees and Costs.

**IT IS SO ORDERED.**

October 31, 2019

/s/ Eric M. Davis  
Eric M. Davis, Judge

cc: File&ServeXpress

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See, e.g., *Deere & Co. v. Exelon Generation Acquisitions, LLC*, 2016 WL 6879525, at \*1-2 (Del. Super. Nov. 22, 2016); *TranSched Sys. Ltd. v. Versyss Transit Solutions, LLC*, 2012 WL 1415466 (Del. Super. Mar. 29, 2012).

<sup>13</sup> *Deere & Co.*, 2016 WL 6879525, at \*1.