

FILED
Clerk
District Court

OCT 06 2023

for the Northern Mariana Islands
By 
(Deputy Clerk)

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS**

IMPERIAL PACIFIC INTERNATIONAL
(CNMI), LLC,

Plaintiff,

v.

COMMONWEALTH CASINO
COMMISSION, AS AGENCY OF THE
COMMONWEALTH OF THE NORTHERN
MARIANA ISLANDS,

Defendant.

Civil Case No. 1:22-cv-00007

**DECISION AND ORDER GRANTING
DEFENDANT'S MOTION
FOR AWARD OF FEES**

Before the Court is a motion by Defendant Commonwealth Casino Commission (the “CCC”) pursuant to Federal Rules of Civil Procedure 65(c) to enter an order awarding costs in the amount of \$100,000 from the security bond that Plaintiff Imperial Pacific International (CNMI), LLC (“IPI”) posted when this Court granted IPI’s motion for a temporary restraining order (“TRO,” ECF No. 11) and subsequent injunction compelling arbitration (Def.’s Mot., ECF No. 41). The CCC filed the instant motion after the Ninth Circuit reversed this Court’s decision issuing an injunction against the CCC and directing it to proceed with arbitration (“Appellate Memo. Decision,” ECF No. 38). Plaintiff IPI filed its opposition to the award motion (Pl.’s Opp., ECF No. 45), to which the CCC responded (Def.’s Resp., ECF No. 46). At a hearing on September 28, 2023, the Court took the matter under submission. (Mins., ECF No. 50.) Having reviewed the record, considered the briefs, and heard counsels’ arguments, the Court hereby GRANTS the

1 motion and awards the CCC all fees and costs it incurred and has proven in the amount of
2 \$94,068.15 from the \$100,000 security bond IPI posted for its TRO and subsequent injunction.

3 **I. FACTUAL AND PROCEDURAL BACKGROUND**

4 In 2014, the Commonwealth of the Northern Mariana Islands (“CNMI”) sought to issue its
5 first exclusive casino gaming license. (Compl. ¶ 2, ECF No. 1.) Later that same year, Best Sunshine
6 International Limited (BVI) (“Best Sunshine”) was selected to be the licensee, the Commonwealth
7 License Agreement (“CLA”) was prepared, and Best Sunshine formed IPI to enter into the CLA
8 with the CNMI. (*Id.* ¶¶ 6, 8.) Although the original authority over granting the exclusive casino
9 license was vested in the Commonwealth Lottery Commission, Public Law 18-63 and the CLA
10 expressly ended that authority upon issuance of the license. (CLA 2, ECF No. 1-2.) The CCC
11 thereafter, among other things, possessed the power to suspend and revoke IPI’s license in
12 accordance with the CNMI’s Administrative Procedure Act where violations occurred. (*Id.*)

13 **A. Proceedings Before the CCC and Executive Director Complaints**

14 In 2020, the Executive Director of the CCC initiated five complaints against IPI alleging
15 IPI’s violation of the CLA by failing to make timely payments; the five complaints were
16 consolidated into two Enforcement Actions for which the CCC held two evidentiary proceedings.
17 (Memo. Decision 6, ECF No. 32; Compl. ¶ 42.) The CCC found that IPI violated the CLA for all
18 complaints and IPI’s force majeure defense was not applicable to any complaint. (Memo. Decision
19 6.) Months later, the Executive Director of the CCC again filed five new complaints (“Enforcement
20 Actions 2021-001-005”). (*Id.* at 7.) Based on these new complaints, the CCC scheduled a
21 revocation hearing for May 24-25, 2022. (*Id.*) In preparation for the hearing, the Executive Director
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1 of the CCC filed motions in limine seeking to exclude any evidence of IPI's alleged force majeure
 2 defense in connection with these new complaints against IPI. (*Id.* at 7-8.)

3 **B. IPI's Requested Temporary Restraining Order and Injunction**

4 A day before the CCC's scheduled revocation hearing, on May 23, 2022, IPI filed this civil
 5 action seeking an injunction in aid of arbitration, an order compelling arbitration, and an order
 6 appointing an arbitrator.¹ (Compl. ¶¶ 15, 17, 19.) IPI also filed an emergency motion for a TRO
 7 "enjoining Defendant Commonwealth Casino Commission . . . from proceeding with Enforcement
 8 Actions 2021-001-005 (consolidated), including convening the Enforcement Hearing scheduled
 9 for May 24-25, 2022." (Pl.'s Emergency Mot. for TRO, ECF No. 5.) The Court granted the TRO
 10 that same day, directed IPI to post a \$100,000 security bond within two days, and set a hearing to
 11 determine IPI's motion for an injunction to continue the enjoinder of the CCC revocation hearing
 12 and to compel arbitration. (TRO; Mins., ECF No. 14.) IPI posted the bond.

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 15 Thereafter, the Court granted both IPI's motion for an order enjoining the CCC from
 16 convening the revocation hearing and motion to compel the CCC to engage in arbitration to address
 17 the dispute over IPI's asserted force majeure defense. (Mins. ECF No. 28; Memo. Decision.) The
 18 CCC filed an appeal, and the Ninth Circuit reversed this Court's decision. (Appellate Memo.
 19 Decision 2, ECF No. 38.)

20 **II. LEGAL STANDARD**

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 22 "The court may issue a preliminary injunction . . . only if the movant gives security in an
 23 amount that the court considers proper to pay the costs and damages sustained by any party found
 24 to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). "The Ninth Circuit has held
 25 that in order for a party to recover a bond posted pursuant to Fed. R. Civ. P. 65(c), the enjoined
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 28 ¹ IPI subsequently obtained an arbitrator, and therefore this cause of action was rendered moot.
 (Pl.'s Notice, ECF No. 25.)

1 party must make a showing as to the following three items: (1) existence of a bond; (2) wrongful
2 issuance of the injunction; and (3) monetary damages.” *Qualcomm, Inc. v. Motorola, Inc.*, 185
3 F.R.D. 285, 287 (S.D. Cal. 1999) (footnote omitted) (citing *Buddy Sys., Inc. v. Exer-Genie, Inc.*,
4 545 F.2d 1164, 1169 n.10 (9th Cir. 1976)). “A party has been wrongfully enjoined within the
5 meaning of Rule 65(c) when it turns out the party enjoined had the right all along to do what it was
6 enjoined from doing.” *Nintendo of Am., Inc. v. Lewis Galoob Toys, Inc.*, 16 F.3d 1032, 1036 (citing
7 *Blumenthal v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 910 F.2d 1049, 1054 (2d Cir. 1990)).
8 “Put another way, the question is whether the [party] ‘ought not to have been enjoined.’”
9 *Blumenthal*, 910 F.2d at 1055 (citing *Russel v. Farley*, 105 U.S. 433, 439 (U.S. 1881)).

11 Moreover, a “court’s injunction [that] prevented [the party] from doing precisely what [the
12 party] had a contractual right to do . . . is the very definition of being ‘wrongfully enjoined.’”
13 *Gopher Protocol, Inc. v. Discovery Growth Fund, LLC*, No. 2:19-CV-1039 JCM (BNW), 2020
14 WL 4018928, at *1 (D. Nev. July 15, 2020).

16 III. DISCUSSION

17 The CCC, as the prevailing party on appeal, seeks the release of the full \$100,000 of the
18 security bond posted by IPI to pay for fees and costs incurred for participating in the forced
19 arbitration and for damages sustained from the delay of the revocation proceeding. IPI opposed
20 the motion on three grounds: the CCC cannot show it was wrongfully enjoined, the CCC’s
21 recovery must be limited based on proved damages, and the CCC should be disallowed from
22 recovering its expert fees. For the reasons that follow, the Court finds that the CCC has met its
23 burden to establish its entitlement to proven damages under the bond as a party that was wrongfully
24 enjoined to participate in arbitration.

26 The first requirement for recovery—the existence of a bond—is not in dispute. The Court
27 directed IPI to post the bond pursuant to Federal Rules of Civil Procedure 65(c) in the present
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1 action (TRO 2; Mins., ECF No. 14), and IPI does not contest that the CCC has met this element.
2 IPI disputes the remaining two elements.

3 **A. Wrongful Issuance of the Injunction**

4 Although the Ninth Circuit did not use the precise words “wrongfully enjoined,” the Ninth
5 Circuit reversed this Court’s order (1) enjoining the CCC from proceeding with the May 24-25,
6 2022, license revocation proceedings against IPI and (2) mandating arbitration. (*See* Appellate
7 Memo. Decision 5.)

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9 IPI does not contest in its opposition brief or at the motion hearing that the CCC was
10 wrongfully enjoined to arbitrate. In essence, IPI’s arguments are twofold: first, the CCC did not
11 have the right to hold² the May 24-25 revocation proceeding; and second, the CCC did not have
12 the right to terminate IPI’s license. The first is erroneous given the Ninth Circuit’s decision, and
13 the second is not relevant to the claim for fees and costs actually incurred by the CCC’s wrongful
14 enjoinder to arbitrate.
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16 To clarify, the CCC seeks award of fees for the wrongful enjoinder to arbitrate in the
17 amount of \$94,068.15, which is a separate ground from the CCC’s wrongful enjoinder from
18 proceeding with the May 24-25 revocation hearing.³ (Memo. in Supp. 4.)

19 Because this Court enjoined the CCC to participate in arbitration and the Ninth Circuit held
20 “[t]he plain language of the CLA makes clear that license revocation proceedings are *not* arbitrable
21 disputes under the agreement” (Appellate Memo. Decision 2 (emphasis added)), the CCC had the
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² IPI also uses various terms such as initiate and grant.

26 ³ The CCC also argues that it incurred additional monetary damages due to the wrongful
27 enjoinder from proceeding with the May 24-25 revocation hearing. (Memo. in Supp. 4.) These
28 potential damages from having been prevented from proceeding with the revocation hearing have
not been proven. Nevertheless, they are separate from those incurred by the CCC when it was
wrongfully enjoined into arbitration.

1 right all along not to participate in arbitration. Therefore, the CCC was wrongfully enjoined to
 2 arbitrate.

3 **B. Monetary Damages**

4 The Ninth Circuit has reasoned that “there is a rebuttable presumption that a wrongfully
 5 enjoined party is entitled to have the bond executed and recover *provable* damages up to the
 6 amount of the bond.” *Nintendo of Am., Inc.*, 16 F.3d at 1036 (emphasis added) (citing *Nat’l Kidney*
 7 *Patients Ass’n v. Sullivan*, 958 F.2d 1127, 1134 (D.C. Cir. 1992), *cert. denied* 506 U.S. 1049
 8 (1993). “Damages on an injunction bond are limited to those actually and proximately resulting
 9 from the effect of the injunction itself . . .” *Sioni Corp. v. Moorehea*, 299 F. Supp. 2d 1082, 1086
 10 (S.D. Cal. Dec. 3, 2003) (citing *Matek v. Murat*, 862 F.2d 720, 733 (9th Cir. 1988)).

11 The CCC contends that it incurred costs as a direct result of this Court’s order mandating
 12 arbitration in the amount of \$94,068.15 for administrative fees to the American Arbitration
 13 Association, payment to the arbitrator, expert fees, travel expenses, and other associated costs.
 14 (Def.’s Memo in Supp. 4.) Out of these expenses, IPI only contests that the CCC should not be
 15 awarded \$25,000 for its expert fees if this Court determined that the CCC is owed some portion of
 16 the security bond. The Court does conclude that the CCC is owed some portion of the security
 17 bond as discussed above. Therefore, the only contested issue that remains is whether the CCC is
 18 entitled to its \$25,000 in expert fees.

19 The Court holds that the CCC is entitled to the \$25,000 expert fees because the expert fees
 20 were both an actual and proximate cause of the CCC’s wrongful enjoinder. Actual or “[b]ut for”
 21 cause “exists if the defendant’s act helped cause the final result and if that result would not have
 22 happened without the defendant’s act.” *Katt v. Riepe*, No. CV-14-0842-PCT-DGC, 2015 WL
 23 3935354, at *11 (D. Ariz. June 26, 2015, *on reconsideration in part*, No. CV-14-08042-PCT-
 24 DGC, 2015 WL 4603231 (D. Ariz. July 31, 2015). “[P]roximate cause . . . is that which, in a
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1 natural and continuous sequence, unbroken by an efficient intervening cause, produces an injury,
 2 and without which the injury would not have occurred.” *Katt*, No. CV-14-0842-PCT-DGC, 2015
 3 WL 3935354, at *11 (citation omitted). “An original actor may be relieved from liability for ‘the
 4 final result when, *and only when*, an intervening act of another was unforeseeable by a reasonable
 5 person in the position of the original actor[.]’” *Id.* (citation omitted) (emphasis added). But for IPI
 6 obtaining an order enjoining the CCC from proceeding with the May 24-25 revocation proceeding
 7 and an order mandating arbitration, the CCC would not have incurred its expert fees. Additionally,
 8 the Court concludes that a party in IPI’s position would reasonably foresee that a party mandated
 9 to arbitrate would hire an expert for which they rely upon. IPI’s other arguments requesting the
 10 Court to adopt a standard not supported by any legal authority are unavailing. Therefore, the Court
 11 finds the CCC proved, and IPI was unable to overcome the rebuttable presumption, that the CCC
 12 is owed \$94,068.15 from the security bond.

15 IV. CONCLUSION

16 For the foregoing reasons, the Court finds that the CCC was wrongfully enjoined when the
 17 Court issued the TRO and subsequent injunction prohibiting the CCC from proceeding with its
 18 May 24-25 revocation proceedings and mandating the CCC to partake in arbitration. The Court
 19 therefore GRANTS the CCC’s motion and awards it fees and costs proven in the amount of
 20 \$94,068.15.

22 The Clerk is directed to immediately release the \$94,068.15 from the bond to the
 23 Commonwealth Casino Commission.

24 IT IS SO ORDERED this 6th day of October, 2023.

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 27 RAMONA V. MANGLONA
 28 Chief Judge