

not designating or maintaining a resident agent for service of process in Texas. Tex. Bus. Org. Code 5.251(1), (2); Tex. Civ. Prac. & Rem. Code 17.026.

3. Defendant PDVSA Services, Inc. is a Netherlands company and a subsidiary of Bariven, with its principal place of business at 1293 Eldridge Parkway, Houston, Harris County, Texas 77077. PDVSA is being served through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

II. JURISDICTION AND VENUE

4. This Court has original jurisdiction of this civil action because the amount in controversy exceeds the sum of \$75,000, exclusive of interest and cost, and is between citizens of different states. 28 U.S.C. § 1332.

5. Venue is proper in this Court because it is the judicial district in which a substantial part of the events or omissions giving rise to the claim occurred. 28 U.S.C. § 1391(a).

III. FACTUAL BACKGROUND

A. Defendants Breached Their Contract With Marlew.

6. Marlew is an Argentinian company that manufactures electrical conductors. Bariven procures equipment, machinery, services, materials, and equipment necessary for activities conducted in the exploration, production, and refining in the petroleum and petrochemicals industry. Bariven is a subsidiary of PDVSA, and PDVSA is a subsidiary of *Petróleos de Venezuela, S.A.*, the state-owned Venezuelan oil and gas company. PDVSA is the purchasing agent for Bariven.

7. On February 25, 2015, Bariven, through its purchasing agent PDVSA, issued purchase order number 5100121448 to Marlew for the purchase of approximately 34,390 feet of flexible power cable, the kind used in the oil industry in drilling equipment. *See* Purchase Order of Bariven, S.A. c/o PDVSA Services, Inc. to Marlew S.A., attached hereto as Exhibit A. Two

days later, Bariven, again, through its purchasing agent PDVSA, issued a change to the original purchase order. *See* Change to Purchase Order of Bariven, S.A. c/o PDVSA Services, Inc. to Marlew S.A., attached hereto as Exhibit B.

8. In March 2015, Marlew issued an invoice to Defendants for a total amount due of \$367,918.20. *See* Invoice of Marlew to Bariven S.A. c/o PDVSA Services, Inc., attached hereto as Exhibit C. Beginning in April 2015, Marlew sought payment from Defendants for the materials Marlew provided.

9. On May 14, 2015, Marlew exported the cable to Defendants from Argentina to Venezuela. Marlew and Defendants communicated via email throughout the months of April, May, and June 2015 regarding Marlew's shipment of the cable, Defendants' receipt of the same, and the monies owed by Defendants to Marlew. On June 18, 2015, Defendants confirmed receipt of the cable. Twelve days later, on June 30, 2015, Defendants acknowledged that they owed the invoiced amount of \$367,918.20 to Marlew. In mid-July 2015, Defendants again confirmed the amount due, and informed Marlew that the amount owed for the purchase of cable had been approved; however, Defendants could not say when the debt would be paid, since payment was to be made from Defendants' executive offices in Venezuela.

10. Defendants' own purchase order required them to promptly pay Marlew the amounts owed. "Purchaser shall issue payment within thirty (30) days of receipt of correct and conforming Seller invoice at Agent#s (sic) offices in Houston, Texas." Exhibit A at paragraph 4.II.

11. Additionally, Defendants' payment to Marlew was "contingent upon delivery by Seller of conforming Materials." *Id.*

12. Notwithstanding the parties' clear agreement, including Marlew providing the flexible cable and issuing a conforming invoice to Defendants, Defendants have failed to pay the purchase price for the goods under the purchase order and invoice.

13. Over the past several years, Marlew has attempted to collect the debt Defendants owe to no avail. At various times over the last four years, PDVSA and Bariven have assured Marlew that payment was forthcoming. Despite repeated demands, however, Defendants have failed to pay the debt they owe for the product Marlew provided as required by the parties' agreement. As a result, Bariven and PDVSA have breached their contract with Marlew.

IV. CAUSES OF ACTION

COUNT ONE Breach of Contract

14. Marlew incorporates all of the preceding paragraphs by reference as if though fully set forth herein.

15. Marlew, Bariven, and PDVSA entered into a valid and enforceable contract—the purchase order issued by Bariven through PDVSA, and the invoice from Marlew to Bariven c/o PDVSA—for the purchase of approximately 34,390 feet flexible power cable for more than \$367,000.00 USD.

16. Marlew relied on the representations of Defendants contained in the purchase order that it would pay within 30 days of receipt of an invoice and upon delivery by Marlew of conforming materials.

17. By failing and refusing to pay for the goods that are the subject of the agreements—those being the purchase order and invoice—which Marlew delivered and Defendants accepted, Defendants have breached the agreements.

18. Defendants' failure to pay for the cable that Marlew provided has harmed Marlew.

19. Marlew's damages include:
 - a. The invoiced amount of \$367,918.20 USD for the flexible cable provided;
 - b. any and all interest on the invoiced amount;
 - c. attorney's fees and legal costs associated with the filing of this petition to recover these amounts from Defendants.

COUNT TWO
Sworn Account

20. Marlew incorporates all of the preceding paragraphs by reference as if though fully set forth herein.

21. Pursuant to Rule 185 of the Texas Rules of Civil Procedure, Marlew brings this claim for a suit on a sworn account.

22. Marlew sold and delivered goods to Defendants, for which Defendants agreed to pay a total of \$367,918.20 USD.

23. The prices charged were just and true because they were according to the terms of the purchase order and invoice that governed the sale, which provided that Defendants agreed to pay Marlew in exchange for the goods sold.

24. All lawful offsets, payments, and credits have been applied to the account.

25. The account remains unpaid as of the filing of this petition.

26. The damages are liquidated and total \$367,918.20 USD.

27. Attached to this petition as Composite Exhibit D is the sworn affidavit of Veronica Vanrell, Manager of the Administration and Finance Department of Marlew S.A., verifying this information, as well as a certified translation of the same.

COUNT THREE
Quantum Meruit

28. Marlew incorporates all of the preceding paragraphs by reference as if though fully set forth herein.

29. Marlew provided valuable materials to Defendants in the form of flexible cable.

30. Defendants accepted these materials from Marlew.

31. Given the circumstances of the exchange, Defendants had reasonable notice that Marlew expected compensation in exchange for the materials provided. Defendant have failed pay compensation for these materials, and as a result, have been unjustly enriched.

32. As a result of Defendants' actions, Marlew has suffered damages.

COUNT FOUR
Promissory Estoppel

33. Marlew incorporates all of the preceding paragraphs by reference as if though fully set forth herein.

34. Defendants made a promise to Marlew to pay for the flexible cable that Defendants ordered and accepted.

35. Marlew reasonably relied on Defendants' promise to its detriment. Marlew provided more than 34,000 feet of flexible cable priced at \$367,918.20 USD, for which it has received no compensation.

36. Given the circumstances of the exchange, Marlew's reliance on Defendants' promise was foreseeable by Defendants.

37. Injustice can be avoided only by enforcing Defendants' promise to pay compensation to Marlew for the flexible cable which Defendants accepted.

**COUNT FIVE
ATTORNEY'S FEES**

38. Marlew incorporates all of the preceding paragraphs by reference as if though fully set forth herein.

39. As a result of Defendants' breach, the sworn account that remains unpaid, unjust enrichment and promissory estoppel, Marlew is entitled to recover its attorney's fees and costs pursuant to Tex. Civ. Prac. & Rem. Code § 134.005(b).

V. PRAYER FOR RELIEF

40. WHEREFORE, Marlew prays that judgment be entered in its favor and against Defendants as follows:

- (a) Compensatory damages, including all pre- and post-judgment interest, against Defendants in an amount to be determined at trial;
- (b) All costs and expenses, including attorney's fees, against Defendants;
- (c) Such other relief as the Court shall deem just and proper.

Respectfully submitted,

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