UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:	:	
	:	
APPLICATION OF INTERNATIONAL MINERAL RESOURCES, B.V. FOR AN ORDER TO TAKE DISCOVERY PURSUANT TO 28 U.S.C. § 1782,	:	**Miscellaneous Case No. 14-mc-340 (GK)**
	:	
Applicant.	:	

MEMORANDUM ORDER

On May 18, 2014, Applicant IMR filed a Motion to Compel Production of Documents [Dkt. No. 27] that Rinat Akhmetshin ("Mr. Akhmetshin) had refused to produce on the grounds of privilege. On June 18, 2015, Mr. Akhmetshin and Intervenor EuroChem Volga-Kaliy LLC (ECVK) filed their Oppositions [Dkt. Nos. 38, 39], and on June 25, 2015, IMR filed its Reply [Dkt. No. 43]. On July 28, 2015, the Court issued a Memorandum Opinion and Order [Dkt. Nos. 47, 48] requiring Mr. Akhmetshin to submit the documents at issue for *in camera* review. After having reviewed the 261 documents and privilege log submitted by Mr. Akhmetshin to the Court, the Court concluded that the overwhelming majority of the documents were not privileged and that a great many of the assertions of privilege were frivolous. Consequently, the Court ordered Mr. Akhmetshin to immediately produce to counsel for IMR all non-privileged documents.

Because the Court found that actions taken by Mr. Akhmetshin and ECVK had unnecessarily delayed the proceedings and most probably needlessly increased the costs of litigation for the Parties, the Court ordered Mr. Akhmetshin and ECVK to show cause, by September 1, 2015, why their unwarranted assertions of privilege did not violate Rule 11(b) of the Federal Rules of Civil Procedure.

The standard for determining whether sanctions should be imposed has been well established in this Circuit. "The test for sanctions under Rule 11 is an objective one: that is, whether a reasonable inquiry would have revealed that there was no basis in law or fact for the asserted claim." Scruggs v. Getinge USA, Inc., 258 F.R.D. 177, 180 (D.D.C. 2009); see also Horani v. Mirtchev, 796 F.3d 1, 17 (D.C. Cir. 2015) ("courts must apply an objective standard of reasonableness in determining whether there has been a violation of the Rule[.]"). In Lucas v. Duncan, 574 F.3d 772, 776 (D.C. Cir. 2008), the Court of Appeals stated that "only actions 'akin to a contempt of court' should be subjected to the *sua sponte* imposition of Rule 11 sanctions."[1]

After wading through more than 80 pages of briefing from Mr. Akhmetshin and ECVK, and after learning a great deal more information about the documents which Mr. Akhmetshin and ECVK had argued were privileged, the Court now concludes that the standard for applying Rule 11 sanctions has not been met. 'Rule 11 sanctions are an extreme punishment." Stanford v. Potomac Elec. Power Co., Civ-Act #1:04-1461, 2006 WL 1722329, 2006 U.S. Dist. LEXIS 41468, *27 (D.D.C. June 21, 2006). Given the extensive additional information provided by Mr. Akhmetshin and ECVK, the Court is convinced that the privilege objections raised by them were reasonable.

However, both Mr. Akhmetshin and ECVK ask the Court to consider modifying its prior August 19, 2015 ruling and ordering that the Memorandum Opinion and Order be kept sealed in some fashion. The Court sees no reason to modify its earlier Memorandum Opinion and Order since they were issued on the basis of the information presented to the Court at that time.

[1] A number of other Circuits have adopted these standards, including the Second, Fourth, Ninth, and Eleventh.

The Court kept the Memorandum Opinion and Order under seal for 30 days in order to give all Parties the opportunity to appeal. No Party filed an appeal and, thus, the Court unsealed the Memorandum Opinion and Order. Because these papers have already been made available to the public, there is no reason to reconsider the Court's decision to unseal.

WHEREFORE, it is this 18th day of November, 2015, hereby

ORDERED, that no sanctions will be imposed.

Gladys Kessler
Gladys Kessler
United States District Judge

Copies via ECF to all counsel of record