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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

MOHAMMED AMAL GUESSOUS,

Plaintiff and Appellant,

v.

CHROME HEARTS, LLC,

Defendant and Respondent.

B228659

(Los Angeles County
Super. Ct. No. BC386105)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Zaven V. Sinanian, Judge. Affirmed.

Murphy Rosen Meylan & Davitt, Robert L. Meylan and Jodi M. Newberry for
Plaintiff and Appellant.

Blakely Law Group, Brent H. Blakely and Cindy Chan for Defendant and
Respondent.

* * * * *

Plaintiff and appellant Mohammed Amal Guessous appeals from a judgment entered on the pleadings in favor of defendant and respondent Chrome Hearts, LLC on Guessous's complaint for breach of contract and declaratory relief. We agree with the trial court that the complaint is barred by the doctrine of res judicata, and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In 1996 and 1998, Chrome Hearts sued Guessous and others in the United States District Court for the Central District of California. Both lawsuits alleged trademark and copyright infringement with respect to certain jewelry designed by Guessous. The parties settled both lawsuits. The written settlement agreement in the second lawsuit, executed on August 14, 1999, contained the following covenant not to sue: “Chrome Hearts covenants and agrees that it will not sue Guessous for trademark infringement, trade dress infringement, unfair competition, or similar or related claims whose gravamen is alleged consumer confusion or buyer confusion or potential confusion, including any claim based on the alleged similarity between the overall look and feel of Chrome Hearts' products and products designed, manufactured, or sold by Guessous. [¶] This covenant applies worldwide, from the date of the Settlement Agreement to the end of time, not only to the existing lines of clothing and jewelry manufactured and sold by Guessous and Chrome Hearts, but also to future products not yet designed, manufactured, and/or sold. Provided, however, this covenant not to sue does not apply to claims by Chrome Hearts against Guessous alleging that Guessous has used the “CHROME HEARTS” mark.”

In May and December 2007, Chrome Hearts filed two more lawsuits against Guessous in Paris, alleging trademark infringement. In the first French action, Chrome Hearts alleged trademark infringement regarding the Chrome Hearts “Banner” trademark and the Chrome Hearts “Horseshoe” community trademark, each of which contain the words “Chrome Hearts.” In the second French action, Chrome Hearts sued Guessous for infringement of the Chrome Hearts “Dagger” trademark, which also contains the words

“Chrome Hearts.” Guessous defended both lawsuits on the ground they were barred by the covenant not to sue. In both actions, the French courts noted that the allegedly infringing marks used by Guessous substituted the words “Amal Guessous” for “Chrome Hearts,” but concluded that this difference did not “modify the overall impression of similarity.” The French courts ruled that the lawsuits did not violate the covenant not to sue, and ultimately rendered final judgment in favor of Chrome Hearts.

In the first French action, the Paris Court of First Instance issued a temporary injunction against Guessous, who appealed to the Paris Court of Appeals. On January 18, 2008, the Court of Appeals issued a ruling affirming the trial court: “It stems from the very terms of this section, without doubt and without need for interpretation, that the CHROME HEARTS’ covenant not to sue Mr. Guessous for trademark infringement is limited to those marks constituted by a product and that by expressly excluding from its scope claims by CHROME HEARTS against Guessous alleging that Guessous has used the ‘CHROME HEARTS’ mark, this covenant does not extend to verbal and semi-figurative marks belonging to this company. [¶] Whereas, therefore, the trial judge’s ruling that CHROME HEARTS was entitled to act on grounds of trademark infringement in respect of the ‘Chrome Hearts’ Community Trademarks must be affirmed.” The Paris Court of Appeals also acknowledged that the settlement agreement was “subject to the law of California” and that the parties “agreed that it is applicable in France.”

On November 20, 2009, the Paris Court of First Instance rendered final judgment in favor of Chrome Hearts in the first French action. In its written judgment, the court noted that Guessous’s final briefs repeated his defense that Chrome Hearts’ lawsuit was barred by the covenant not to sue, and found, “In fact, contrary to the defendants’ position, the position of this clause [covenant not to sue] in the agreement . . . and the affidavits of Mr. Dovel indicating the history of the negotiations between the parties are not relevant given that where a contractual clause is clear in and of itself and unequivocal, which is the case of the challenged covenant, it is pointless to try and

interpret this clause. [¶] Therefore, it is appropriate to examine the action brought by Chrome Hearts.”

In the second French action, the Paris Court of First Instance rendered judgment in favor of Chrome Hearts on November 6, 2009. In its written judgment, the court stated: “Whereas it stems from the clear and precise terms of this settlement agreement which requires no interpretation at all and which is subject to California law, grants jurisdiction to the California jurisdictions . . . that the covenant made by Chrome Hearts not to sue Guessous for trademark infringement is limited to the trademarks constituted by the shape of the product and precisely excludes from its scope the claims made with respect to the use of ‘the trademark ‘Chrome Hearts’” by Guessous; [¶] Therefore, the defendants cannot rely on the said settlement agreement to defend against the trademark infringement action.”

Meanwhile in February 2008, before the French courts had issued their judgments, Guessous sued Chrome Hearts in Los Angeles Superior Court for breach of contract and declaratory relief. Guessous alleged that Chrome Hearts had breached the covenant not to sue by filing the two French actions because none of the allegedly infringing marks contained the words “Chrome Hearts,” and sought a judicial declaration or injunction precluding Chrome Hearts from proceeding with the French actions and from ever filing another lawsuit anywhere in the world alleging trademark infringement, trade dress infringement, unfair competition, or any similar or related claim, except claims against Guessous for misuse of the words “Chrome Hearts.”¹

On January 12, 2010, after the French courts issued their final judgments in favor of Chrome Hearts, Chrome Hearts filed a complaint before the trial court in the present

¹ Chrome Hearts responded by filing a special motion to strike the complaint under the anti-SLAPP statute (Code Civ. Proc., § 425.16). The trial court ruled that the statute applied to Guessous’s causes of action but found that Guessous had established a prima facie case for its claims and denied the motion. In a published opinion issued on December 1, 2009 (*Guessous v. Chrome Hearts, LLC* (2009) 179 Cal.App.4th 1177), we held that the filing of a lawsuit in a foreign country was not protected activity under the statute, and affirmed the order denying the motion.

action for recognition and enforcement of the French judgments pursuant to Code of Civil Procedure section 1713 et seq. The matter proceeded to a bench trial on April 4, 2011. The following day the court issued judgment in favor of Chrome Hearts after “having heard and considered the testimony and evidence and read and considered Plaintiff Chrome Hearts LLC’s trial brief.” The court granted Chrome Hearts’ claim for recognition and enforcement of the two French judgments against Guessous in the amounts of \$75,366 and \$12,798. Guessous did not appeal this judgment.

In July 2010, Chrome Hearts responded to Guessous’s complaint for breach of contract and declaratory relief in the present action by filing a motion for judgment on the pleadings on the ground that Guessous’s lawsuit was barred by the doctrine of res judicata. The trial court agreed, granted the motion, and entered a judgment of dismissal with prejudice.² This appeal followed.

DISCUSSION

I. Standard of Review

“A motion for judgment on the pleadings, like a general demurrer, tests the allegations of the complaint or cross-complaint, supplemented by any matter of which the trial court takes judicial notice, to determine whether plaintiff or cross-complainant has stated a cause of action. [Citation.] Because the trial court’s determination is made as a matter of law, we review the ruling de novo, assuming the truth of all material facts properly pled.’ [Citations.]” (*Nicholson v. Fazeli* (2003) 113 Cal.App.4th 1091, 1098; *Stoops v. Abbassi* (2002) 100 Cal.App.4th 644, 650.)

² In addition to res judicata, the trial court found that Guessous’s second cause of action for declaratory relief was also barred because it was moot as to enjoining the French actions, which had become final, and was premature as to enjoining any future actions. Guessous does not raise any challenge to these findings.

II. Res Judicata

“The doctrine of res judicata rests upon the ground that the party to be affected, or some other with whom he is in privity, has litigated, or had an opportunity to litigate the same matter in a former action in a court of competent jurisdiction, and should not be permitted to litigate it again to the harassment and vexation of his opponent. Public policy and the interest of litigants alike require that there be an end to litigation.

[Citation.] The doctrine applies when 1) the issues decided in the prior adjudication are identical with those presented in the later action; 2) there was a final judgment on the merits in the prior action; and 3) the party against whom the plea is raised was a party or was in privity with a party to the prior adjudication. [Citation.] Even if these threshold requirements are established, res judicata will not be applied ‘if injustice would result or if the public interest requires that relitigation not be foreclosed. [Citations.]’ [Citation.] To determine whether to sustain a demurrer [or grant a motion for judgment on the pleadings] on res judicata grounds, judicial notice may be taken of a prior judgment and other court records.” (*Citizens for Open Access etc. Tide, Inc. v. Seadrift Assn.* (1998) 60 Cal.App.4th 1053, 1065.)

As explained in *Villacres v. ABM Industries Inc.* (2010) 189 Cal.App.4th 562, 575–576: “‘Under the doctrine of res judicata, a valid, final judgment on the merits is a bar to a subsequent action by parties or their privies on the same cause of action. . . . In California, a “cause of action” is defined by the “primary right” theory. “The most salient characteristic of a primary right is that it is indivisible: the violation of a single primary right gives rise to but a single cause of action.”’” Under the primary rights theory, the determinative factor is the harm suffered. (*Id.* at p. 577.) “‘As far as its content is concerned, the primary right is simply the plaintiff’s right to be free from the particular injury suffered. . . . It must therefore be distinguished from the *legal theory* on which liability for that injury is premised: “Even where there are multiple legal theories upon which recovery might be predicated, one injury gives rise to only one claim for relief.” . . . The primary right must also be distinguished from the *remedy* sought: “The

violation of one primary right constitutes a single cause of action, though it may entitle the injured party to many forms of relief”” (Ibid.)

A judgment from a foreign court may act as a bar under the doctrine of res judicata. (See *Bank of Montreal v. Kough* (9th Cir. 1980) 612 F.2d 467, 472–473; *Chong v. Superior Court* (1997) 58 Cal.App.4th 1032, 1038.) “Generally, ‘[a] foreign judgment will be res judicata in an American court if it has that effect in its country of rendition, and if it meets the American standard of fair trial before a court of competent jurisdiction.’” (*Beroiz v. Wahl* (2000) 84 Cal.App.4th 485, 494.)

Here, the parties dispute the French actions and the present action involves the same primary right.

III. Present Action is Barred

The subject of Guessous’s complaint in the present action is whether Chrome Hearts breached the covenant not to sue by filing the French actions for trademark infringement against Guessous. After Guessous filed his complaint, the French courts issued their judgments in favor of Chrome Hearts, expressly acknowledging that Guessous’s defense was the covenant not to sue, and ruling that the covenant did not bar Chrome Hearts from suing Guessous in Paris for trademark infringement. The issue of whether Chrome Hearts breached the covenant not to sue was therefore litigated and finally determined on the merits against Guessous. Indeed, the trial court in the present action issued a judgment expressly recognizing and enforcing the French money judgments in favor of Chrome Hearts and against Guessous.

Guessous nevertheless argues that the “public-interest exception” to res judicata applies because “the French rulings fail to meet the standard of a fair trial before a California court.” (See *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 64 [“[W]hen the issue is a question of law rather than of fact, the prior determination is not conclusive either if injustice would result or if the public interest requires that relitigation not be foreclosed”].) Guessous argues that because the settlement agreement, by its

terms, must be interpreted under California law, the French courts' failure to consider parol evidence denied Guessous a fair trial and precludes a res judicata effect.

Under California law, parol or extrinsic evidence is admissible to resolve a contractual ambiguity. (*Garcia v. Truck Ins. Exchange* (1984) 36 Cal.3d 426, 435.) The French courts expressly acknowledged that the settlement agreement was to be interpreted under California law, but found that the covenant not to sue was "clear," "precise," and "unequivocal," and needed no aid in interpretation. As the trial court here noted, Guessous did not identify any ambiguity in the covenant not to sue. Nor did he identify any parol evidence he was precluded from presenting in the French actions. Moreover, Guessous has not explained how the introduction of parol evidence would have resulted in a different interpretation by the French courts of the covenant not to sue or a more favorable result for Guessous. Guessous simply asserts that "the parties disagree as to the interpretation of the Covenant Not to Sue provision." Guessous has not shown that he was denied a fair trial in the French courts. Accordingly, there is no basis for applying the public-interest exception to res judicata.

DISPOSITION

The judgment is affirmed. Chrome Hearts is entitled to recover its costs on appeal.

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_____, Acting P. J.

DOI TODD

We concur:

_____, J.

ASHMANN-GERST

_____, J.

CHAVEZ