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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

GLOBUS SU,

Plaintiff and Appellant,

v.

EAU ZONE HUILES &
FRAGRANCES LTEE,

Defendant and Respondent.

B284979

(Los Angeles County
Super. Ct. No. BC551460)

APPEAL from a judgment of the Superior Court of
Los Angeles County. Teresa A. Beaudet, Judge. Affirmed.

Franklin P. Jeffries for Plaintiff and Appellant.

The Burbank Firm and James K. Andrade for Defendant
and Respondent.

Plaintiff and appellant Globus Su challenges a judgment of dismissal entered following the trial court order granting the motion to dismiss brought by defendant and respondent Eau Zone Huiles & Fragrances Ltee. In light of plaintiff's failure to timely file a lawsuit in Canada, we conclude that the trial court did not abuse its discretion in dismissing this action. Accordingly, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On July 11, 2014, plaintiff filed the underlying action against defendant. (*Globus Su v. Eau Zone Huiles & Fragrances Ltee* (Dec. 15, 2015, B261434) [nonpub. opn.], at p. 2.) Defendant specially appeared and filed a motion to dismiss the action on the grounds that California was an improper forum. Specifically, plaintiff and defendant were parties to a contract with a forum selection clause that designates Quebec, Canada as the forum for all disputes. (*Ibid.*) Instead of opposing defendant's motion, on the day before the hearing, plaintiff filed a first amended complaint. (*Ibid.*)

On the scheduled hearing date, the trial court granted defendant's motion. Plaintiff appealed. On December 15, 2015, we reversed the trial court's order on the grounds that once plaintiff filed its first amended complaint, it became the operative pleading; defendant's motion to dismiss should have been taken off calendar. Then, if defendant chose to do so, it could file a renewed motion to dismiss directed at the first amended complaint. (*Globus Su v. Eau Zone Huiles & Fragrances Ltee*, *supra*, B261434, at pp. 2–3.)

On April 12, 2016, defendant again specially appeared and filed a motion to stay or dismiss the action on the grounds of forum non conveniens. Plaintiff opposed the motion.

At the hearing, the trial court indicated its intention to grant defendant's motion to dismiss. Before doing so, it requested further briefing on certain conditions prior to the dismissal, including whether 60 days was a reasonable time for plaintiff to file its action in Quebec, Canada.

Following the parties' submission of supplemental briefs on the issue of a conditional dismissal, on July 29, 2016, the trial court stayed the litigation in California pending resolution of this litigation in Quebec, Canada. In so ruling, the trial court found "it just and reasonable to require Plaintiff to file its action in Quebec within 60 days from the date of this Order and serve it upon [defendant] within that same time period."

Plaintiff moved for reconsideration; its motion for reconsideration was set for December 15, 2016. "After discussion with the parties," the trial court denied the motion and then "heard from Plaintiff regarding Defendant's request the court dismiss the matter with prejudice. Plaintiff still intends to file in Quebec Canada. The Court declines to take any action at this time but the parties are free to file a motion to end the stay and dismiss or to extend the stay or any other appropriate action."

On May 8, 2017, defendant filed a motion to dismiss the instant action based upon the trial court's July 29, 2016, order or, in the alternative, failure to prosecute. In particular, defendant pointed out that plaintiff still had not served either defendant or any of the alleged individual defendants in Canada. On June 27, 2017, the trial court granted defendant's motion and ordered the action to be dismissed on July 12, 2017.

Judgment was entered, and this timely appeal ensued.

DISCUSSION

I. Standard of review

A trial court has discretionary authority to dismiss a case for failure to diligently prosecute an action stayed on forum non conveniens grounds. (*Van Keulen v. Cathay Pacific Airways, Ltd.* (2008) 162 Cal.App.4th 122, 129–130 (*Van Keulen*).) Because a motion to dismiss for delay in prosecution is addressed to the trial court’s sound discretion, its determination will not be reversed absent a showing of manifest abuse resulting in a miscarriage of justice. (*Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 698.)

II. The trial court did not err

Plaintiff’s sole argument on appeal is that the trial court judgment should be reversed because the three-year statutory time period in which to prosecute a lawsuit (Code Civ. Proc., §§ 583.410, 583.340) was tolled while its first appeal was pending; thus, the trial court dismissed its lawsuit too early. The problem with plaintiff’s argument is that it ignores the fact that the trial court dismissed plaintiff’s action for various reasons, including plaintiff’s failure to comply with its July 29, 2016, order. And that order arose from defendant’s motion to dismiss on the grounds of forum non conveniens.

As recognized in *Van Keulen*, “while California’s policy favors trial on the merits, there comes a time when that policy is overridden by California’s policy requiring dismissal for failure to prosecute with reasonable diligence. As this is true for *any* action prosecuted in California courts, it must be true for an action initially filed in [a] California court but stayed on forum non conveniens grounds.” (*Van Keulen, supra*, 162 Cal.App.4th at p. 130.)

That time has come for plaintiff here. It was unreasonably dilatory in prosecuting an action in Canada. In December 2014, the trial court first granted defendant’s motion to dismiss on the grounds of forum non conveniens. After we reversed that order on a technical procedural issue, defendant renewed its motion. In lieu of dismissing plaintiff’s action outright, it opted to stay the litigation pending plaintiff’s prompt prosecution of an action in Canada. Despite being given ample time to retain counsel and file a complaint in Canada, plaintiff did not do so. After being told several times that this action needed to be litigated in Canada, plaintiff never filed a lawsuit there. And, the trial court waited to dismiss this action until nearly a year after giving plaintiff 60 days to file its complaint in Canada. Under these circumstances, we find no abuse its discretion.

DISPOSITION

The judgment is affirmed. Defendant is entitled to costs on appeal.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT