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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

VISCHER AG, a Swiss limited liability company, Plaintiff, Cross-defendant, and Appellant, v. APOLLO ENTERPRISE SOLUTIONS, INC., et al., Defendants, Cross-complainants, and Appellants.	B289410 (Los Angeles County Super. Ct. No. BC637791)

APPEALS from an order of the Superior Court of Los Angeles, William F. Fahey, Judge. Affirmed.

Schwartz, Steinsapir, Dohrmann & Sommers and Henry M. Willis for Plaintiff, Cross-defendant, and Appellant.

Barry E. Cohen for Defendants, Cross-complainants, and Appellants.

Plaintiff Vischer A.G. (plaintiff), appellant and cross-respondent here, brought an action under the Uniform Foreign-Country Money Judgments Recognition Act (Code Civ. Proc.,[1] § 1713 et seq.) (UFCMJRA) seeking recognition and enforcement of a judgment by a Swiss court against defendants Apollo Enterprise Solutions, Inc. and Apollo Enterprise Solutions, Ltd. (defendants), respondents and cross-appellants here. After months of litigation the parties settled, with defendants paying plaintiff a portion of the Swiss judgment. In light of the settlement, the trial court dismissed the case, and accordingly did not decide whether to recognize the Swiss judgment.

Plaintiff then filed a motion to recover attorney fees incurred in its UFCMJRA action. Plaintiff contended that it was entitled to fees under Swiss law as the prevailing party, and therefore also entitled to them under California law through the UFCMJRA. Defendants filed their own motion arguing that no party should recover fees, but to the extent the trial court disagreed, the court should deem defendants the prevailing party.

The trial court denied both motions, ruling that because the court had not recognized the Swiss judgment, that judgment could not provide a basis to award fees, nor was there any independent basis under California law to award fees. Plaintiff appeals from the denial of its attorney fees motion, and defendants cross-appeal.

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[1] Further unspecified statutory citations are to the Code of Civil Procedure.

We agree with the trial court that, absent recognition of the Swiss judgment, there was no basis to award attorney fees in this matter. Accordingly, we affirm.

PROCEDURAL BACKGROUND

On November 3, 2016, plaintiff filed a complaint under the UFCMJRA requesting that the trial court recognize and enforce a judgment allegedly entered by the Commercial Court of the Canton of Zurich, Switzerland in plaintiff's favor against defendants (the Swiss judgment). Plaintiff alleged that the Swiss judgment, purportedly entered in an action for breach of contract for the provision of legal services, entitled plaintiff to $160,607.95, postjudgment interest, and attorney fees and costs.

Defendants contested plaintiff's request for recognition and enforcement of the Swiss judgment, filing, among other things, an unsuccessful demurrer and an answer asserting numerous affirmative defenses. The parties ultimately settled on October 18, 2017, with defendants agreeing to pay plaintiff $90,000. The settlement agreement provided that "plaintiff and/or defendant may file a motion for attorney's fees and costs . . . ." It further provided that "[n]othing in this agreement precludes either party from relying on the terms of the Swiss Judgment in connection with a motion for attorney's fees in this action."

Plaintiff then filed a motion for attorney fees in the trial court, arguing that Swiss law allowed plaintiff to recover attorney fees incurred in enforcing its contract with defendants, and thus under the UFCMJRA, plaintiff could also recover the fees incurred enforcing the judgment in California. Plaintiff argued that it was the "prevailing party" because the settlement largely achieved what plaintiff had sought through its recognition and enforcement action.

Defendants also filed a motion for attorney fees, arguing that neither Swiss nor California law provided a basis to award fees to the prevailing party in the action, but if the trial court ruled otherwise, then defendants should be deemed the prevailing party.

In the hearing on the motions on February 15, 2018, the trial court announced a tentative ruling to deny both motions for attorney fees. The trial court stated that "[i]n a settlement there's no prevailing party" and there was no statutory basis to award attorney fees.

Plaintiff argued that by successfully collecting the majority of the Swiss judgment through settlement, it had "achieved a result that was tantamount to recognition [of the Swiss judgment] plus collection." Plaintiff contended that "if that [Swiss] judgment is recognized, then it becomes a California judgment that incorporates the law of attorney's fees of Switzerland." The trial court responded that, because the parties had settled the case, "this court never recognized that judgment," and thus there was no basis to award attorney fees.

Defendants stated that they agreed with the trial court's tentative ruling, although they made some additional arguments as to why they should be deemed the prevailing party.

The trial court stood by its tentative ruling and denied both motions. It dismissed the case without prejudice and retained jurisdiction to enforce the terms of the settlement. Plaintiff timely appealed, and defendants cross-appealed.

DISCUSSION

A. Plaintiff's Appeal

Plaintiff contends that it is entitled to attorney fees under Swiss law for enforcing the Swiss judgment, and pursuant to the UFCMJRA therefore is entitled to those fees under California law as well. We review statutory entitlement to attorney fees de novo. (*Wertheim LLC v. Currency Corp.* (2019) 35 Cal.App.5th 1124, 1131.) Applying that standard of review, we reject plaintiff's argument.

The UFCMJRA provides a mechanism by which California courts may recognize and enforce judgments entered by courts in foreign countries, which we will refer to as "foreign judgments." A party seeking recognition of a foreign judgment as an original matter must file an action in the trial court, and has the burden of establishing the judgment is entitled to recognition. (§§ 1715, subd. (c), 1718, subd. (a).) Once a party has met this burden, "a party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition . . . exists." (§ 1716, former subd. (d).)[2]

Recognition of a foreign judgment is not a foregone conclusion. The version of section 1716 in effect at the time plaintiff filed its action listed mandatory and permissive grounds to refuse recognition, including if the judgment "was rendered under a judicial system that does not provide impartial tribunals

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[2] Section 1716 was amended effective January 1, 2018. (See Stats. 2017, ch. 168, § 5.) We cite to the version in effect at the time plaintiff filed its complaint. (Stats. 2009, ch. 579, § 1, effective January 1, 2010.) The differences between the versions are not pertinent to this appeal.

or procedures compatible with the requirements of due process of law (§ 1716, subd. (b)(1)); the foreign court did not have personal jurisdiction over the defendant or over the subject matter (*id*., subd. (b)(2), (3)); the judgment was obtained without sufficient notice to enable a defense (*id*., former subd. (c)(1)); the judgment was obtained by fraud (*id*., former subd. (c)(2)); the judgment or underlying claim "is repugnant to the public policy of this state or of the United States (*id*., former subd. (c)(3)); or the foreign judgment conflicts with "another final and conclusive judgment" (*id*. former subd. (c)(4)).

If the trial court recognizes the foreign judgment, the court may enforce that judgment as if it had been rendered in California. (§ 1719, subd. (b) [[i]f the court . . . finds that the foreign-country judgment is entitled to recognition," the judgment is "[e]nforceable in the same manner and to the same extent as a judgment rendered in this state"]; see *Manco Contracting Co. (W.L.L.) v. Bezdikian* (2008) 45 Cal.4th 192, 205 (*Manco*) ["A foreign judgment must be recognized before it is enforced"].)

Plaintiff argues that the Swiss court, in accordance with Swiss law, awarded plaintiff attorney fees in its breach of contract action against defendants. Because a foreign judgment, once recognized by a California court, is "[e]nforceable in the same manner and to the same extent as a judgment rendered in this state" (§ 1719, subd. (b)), plaintiff argues that it is also entitled to its fees for enforcing the Swiss judgment in California.

Plaintiff further contends that under California law a settling plaintiff may be a "prevailing party" for purposes of recovering attorney fees if that plaintiff through settlement has achieved "some of the benefit it sought in bringing suit" under a

cause of action allowing recovery of fees.[3] Plaintiff argues that the settlement, which gave it "more than half of what it was seeking, and has converted [defendants'] abstract legal obligation into actual cash payments," meets the "prevailing party" standard.

The flaw in plaintiff's argument, as the trial court correctly noted, is that the trial court never recognized the Swiss judgment under the UFCMJRA. Absent that recognition, the Swiss judgment has no force in California courts. Thus, the unrecognized judgment cannot provide a basis to award attorney fees in California, even if plaintiff is correct that under Swiss law the judgment would entitle it to those fees—a question on which we express no opinion.

In support of its argument, plaintiff cites *Aspen Internat. Capital Corp. v. Marsch* (1991) 235 Cal.App.3d 1199 (*Aspen*), which held that a California court could award attorney fees for enforcing a Colorado judgment entered under the Sister State Money Judgments Act (§ 1710.10 et seq.) because the Colorado judgment provided for such an award. (*Aspen*, at pp. 1205–1206.) This case is inapplicable here, where the Swiss judgment, unlike the Colorado judgment in *Aspen*, has not been recognized under California law.[4]

Plaintiff cites no other basis for attorney fees apart from the Swiss judgment. The UFCMJRA independently does not

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[3] We express no opinion as to whether this is a correct statement of the law.

[4] Sister state judgments are "entered" rather than "recognized" (see, e.g., § 1710.35), under an expedited procedure that, unlike the UFCMJRA, does not require the filing of an original action. (See *Manco*, *supra*, 45 Cal.4th at p. 205.)

provide for attorney fees for parties that successfully enforce a foreign judgment, nor does California law generally provide for recovery of attorney fees in actions to enforce a judgment. (See § 685.040 ["Attorney's fees incurred in enforcing a judgment are not included in costs collectible under this title unless otherwise provided by law"].) Thus, the trial court correctly denied plaintiff's motion for attorney fees.

Plaintiff argues that "[i]f [plaintiff] did not need to obtain a judgment to be the prevailing party, then it should not have needed to wait for the court to recognize the Swiss judgment in order to enforce it through a settlement agreement." Even assuming the trial court could enforce the settlement agreement without first recognizing the Swiss judgment, the settlement agreement did not grant attorney fees to either party. Rather, the settlement agreement gave the parties the option to move for attorney fees based on the Swiss judgment. In other words, any entitlement to attorney fees arose from the Swiss judgment itself, not from the terms of the settlement agreement. Because the trial court never recognized the Swiss judgment, the trial court correctly concluded the Swiss judgment provided no basis to award attorney fees.

To the extent plaintiff argues, as it did in the trial court, that the settlement was "tantamount to recognition" of the Swiss judgment, we reject the argument. We accept arguendo that plaintiff sought recognition of the Swiss judgment solely as a step towards enforcing that judgment, and that plaintiff, through settlement, at least partially accomplished the goal of enforcement. It does not follow that, by partially achieving through settlement the ultimate goal of enforcement, the parties effectively filled in the middle step of recognizing the judgment.

Indeed, given that the UFCMJRA requires a court to recognize the foreign judgment before it has any force in California, we cannot conceive how recognition could be achieved through settlement without further involvement of the court.

Because we conclude there was no basis to award attorney fees in this matter, we do not reach plaintiff's argument that it was the prevailing party by virtue of the settlement agreement.

B. Defendants' Cross-Appeal

Defendants filed a protective cross-appeal arguing that they, not plaintiff, were the prevailing parties in this action. Defendants agree with the trial court, however, that no party in this action is entitled to recover attorney fees, and ask us to consider their cross-appeal only if we hold to the contrary. Because we conclude, as did the trial court, that no party is entitled to fees, we do not address defendants' cross-appeal.

Plaintiff filed a motion to strike portions of defendants' reply brief on cross-appeal. We deny plaintiff's motion as moot.

DISPOSITION

The order denying the parties' motions for attorney fees is affirmed. Defendants are awarded their costs on appeal.

NOT TO BE PUBLISHED.

BENDIX, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.