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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

CAMDEN TECHNOLOGIES, INC.,

Plaintiff and Appellant,

v.

ORACLE USA, INC.,

Defendant and Respondent.

B232126

(Los Angeles County
Super. Ct. No. SC109527)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Linda Lefkowitz, Judge. Affirmed.

The Law Office of Joseph A. Cardella, Joseph A. Cardella for Plaintiff and Appellant.

Crone Hawxhurst, Daryl M. Crone, Joshua P. Gelbart for Defendant and Respondent.

Plaintiff Camden Technologies, Inc. (Camden) appeals the judgment entered following defendant Oracle USA, Inc.'s successful demurrer to its complaint. Finding no error, we affirm.

FACTUAL AND PROCEDURAL SUMMARY¹

Camden is a software reseller. In 2004, BEA Systems, Inc. (BEA) was a vendor of middleware, a type of enterprise infrastructure software. In 2008, Oracle USA, Inc. acquired BEA; Oracle America, Inc. has since succeeded to the interest of Oracle USA, Inc. These three entities are hereafter referred to, individually and collectively, as Oracle.

In addition to its sales staff, Oracle maintained a Value Added Reseller (VAR) program through which it contracted with third parties to sell its products to end users and to provide ongoing service and support to them. In 2004, Camden became an authorized VAR for Oracle through execution of a written VAR agreement. That agreement was periodically renewed in writing, most recently in February 2008.

On April 24, 2008, Camden sued Oracle and one of its employees, Tony Sanders, in Los Angeles Superior Court (the First Action). In its first amended complaint, Camden alleged Oracle breached the parties' VAR agreement. Camden also alleged causes of action for negligent misrepresentation; statutory unfair trade and business practices; intentional and negligent interference with prospective economic advantage; and intentional interference with contractual relations. Camden specifically identified four client accounts in California with which Oracle had intentionally interfered in the months prior to the filing of the complaint: Affinity Mobile, Zenith, San Diego Superior Court, and Northrup Grumman.

While the First Action was pending, Oracle committed additional contractual breaches and business torts by interfering with Camden's contractual relationship with

¹ For purposes of this opinion, we accept as true the well-pleaded material facts of the complaint, as well as those facts of which we may take judicial notice, but not deductions, contentions, or conclusions of fact or law. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

True Credit, a subsidiary or division of TransUnion Interactive Inc. (hereafter TransUnion or True Credit). Among the facts underlying these alleged torts was Oracle's instruction to TransUnion to stop payment on a \$43,900 check dated on or about December 5, 2008 which it had tendered to Camden in payment of the renewal of its software and support contract with Camden.

Based on this conduct, in December 2008, Camden filed suit against TransUnion and Oracle in state court in Chicago, Illinois.

On April 30, 2009, the court in the First Action issued its tentative ruling granting summary judgment to Oracle. Included in that ruling was a discussion of the evidence concerning Oracle's interference with Camden's relationship with TransUnion. The court stated: "There is no admissible evidence from which the court may infer that there is a triable issue whether defendants acted wrongfully insofar as plaintiff's prospective or contractual relationship with TrueCredit." Judgment was entered on May 11, 2009. That judgment was affirmed on appeal in an unpublished opinion. (B217783, filed Feb. 22, 2012.)

Oracle sought to dismiss the complaint in the Illinois lawsuit on the basis of another action pending between the same parties for the same cause – the First Action – and forum non conveniens. That motion was denied on September 2, 2009. After Camden filed an amended complaint, Oracle again moved to dismiss the complaint, on substantially the same grounds. On May 18, 2010, the Illinois court granted that motion based on forum non conveniens, stating on the record that it was not considering the alternative grounds for dismissal.

On September 8, 2010, Camden re-filed this Second Action in California. Oracle demurred to the complaint on the ground of another action pending – the First Action. Oracle relied both on Camden's discovery activity and declarations it presented in opposition to summary judgment to support its position that Camden had in fact litigated in the First Action the causes of action based on its relationship with TransUnion. Specifically, Oracle pointed to the following evidence:

- On February 6, 2009, in opposition to Oracle's demurrer to Camden's first amended complaint in the First Action, Camden argued that it had sufficiently alleged that Oracle was "instructing customers to stop payment on checks and they Defendant Oracle sold them the products. (E.g., Transunion)."
- In response to a form interrogatory, after identifying the October/November 2008 timeframe, Camden recounted Oracle's efforts to cause TransUnion to stop payment on its check to Camden in payment for service and software support.
- Camden noticed the deposition of Dan Johnson, the Oracle employee who had allegedly interfered with Camden's TransUnion deal.
- On March 6, 2009, Camden served requests for admissions demanding that Oracle admit various facts supporting its claim of interference with its relationship with TransUnion, such as: "Admit that in 2008 YOUR employee Dan Johnson instructed Tru[e] Credit to not pay CAMDEN concerning the sale of YOUR software maintenance CAMDEN sold in December 2008 to Tru[e] Credit."
- At the summary judgment hearing in the First Action, Camden's counsel argued that evidence of Oracle's interference with Camden's relationship with TransUnion in late 2008 warranted denial of Oracle's motion.

The trial court granted Oracle's demurrer pursuant to Code of Civil Procedure section 430.10, subdivision (c). The court also granted Oracle's motion for sanctions, pursuant to Code of Civil Procedure section 128.7, and entered an order striking Camden's complaint. Camden timely appealed the judgment subsequently entered.

DISCUSSION

"A plea in abatement pursuant to section 430.10, subdivision (c), may be made by demurrer or answer when there is another action pending between the *same parties* on the *same cause of action*. (*Lawyers Title* [(1984)] 151 Cal.App.3d [455,] 459; *Childs v.*

Eltinge [(1973)] 29 Cal.App.3d [843,] 848.) In determining whether the causes of action are the same for purposes of pleas in abatement, the rule is that such a plea may be maintained only where a judgment in the first action would be a complete bar to the second action. (*Lord v. Garland* (1946) 27 Cal.2d 840, 848.) Where a demurrer is sustained on the ground of another action pending, the proper order is not a dismissal, but abatement of further proceedings pending termination of the first action. ([Code Civ. Proc.,] § 597; *Lord v. Garland*, *supra*, at p. 850; *Franchise Tax Board v. Firestone Tire & Rubber Co.* (1978) 87 Cal.App.3d 878, 884; *Childs v. Eltinge*, *supra*, at p. 848.)" (*Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 787-788, original italics.) Code of Civil Procedure section 597 makes appealable the interlocutory judgment entered after a demurrer is sustained pursuant to section 430.10, subdivision (c).

"Res judicata precludes parties from relitigating an issue that has been finally determined by a court of competent jurisdiction. (*Whittlesey v. Aiello* (2002) 104 Cal.App.4th 1221, 1226.) There are three elements to a res judicata defense: (1) The issue decided in the prior adjudication is identical to the issue in the present action; (2) there was a final judgment on the merits of that issue; and (3) the party against whom the doctrine is asserted was a party to or in privity with a party to the prior adjudication. (*Ibid.*)" (*Miller v. Campbell, Warburton, Fitzsimmons, Smith, Mendel & Pastore* (2008) 162 Cal.App.4th 1331, 1342.)

In its demurrer, Oracle maintained that Camden's claims in this case were actually litigated to judgment in the First Action, thereby invoking the principles of res judicata.² Camden counters that the "Transunion incident" was not pleaded in the complaint, either as originally filed or as amended, in the First Action, and that in fact, the incident did not occur until after that complaint was filed. As the trial court remarked, it is true that the operative complaint in the First Action contained no allegations specific to TransUnion or

² There is no dispute that Camden and Oracle were parties to both the First and Second Actions, and that the judgment entered in the First Action was on the merits and, upon resolution of Camden's appeal, final.

True Credit. However, paragraph 6 of the complaint alleged unspecified violations of the VAR Agreement in addition to those specifically mentioned, and in subsequent papers submitted to the court, Camden identified Oracle's conduct in connection with the "Transunion incident" as wrongful conduct for which it was seeking recompense. The court's ruling on summary judgment specifically addressed this claim, finding that there was no admissible evidence to show a triable issue of material fact as to whether Oracle "acted wrongfully insofar as plaintiff's prospective or contractual relationship with TrueCredit." The record clearly supports the trial court's conclusion that "[t]he issue decided in the prior action regarding True Credit/TransUnion is identical to the issue in this action." Because the principles of res judicata bar Camden from relitigating the "Transunion incident" (*Miller v. Campbell, Warburton, Fitzsimmons, Smith, Mendel & Pastore, supra*, 162 Cal.App.4th at p. 1342; *Planning & Conservation League v. Castaic Lake Water Agency* (2009) 180 Cal.App.4th 210, 226), the trial court properly sustained Oracle's demurrer.

DISPOSITION

The judgment is affirmed.

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ARMSTRONG, J.

We concur:

TURNER, P. J.

KRIEGLER, J.