FIRST DISTRICT
SECOND DIVISION
July 9, 2019

No. 1-18-2677

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BEE-ZEE BODY SHOP, INC.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant and Cross-Appellee,	)	Cook County, Illinois.
	)	
v.	)	No. 18 CH 9178
	)	
BEE-ZEE SERVICE, INC., d/b/a	)	Honorable
COLLISION AND SERVICE CENTER; and	)	Raymond Mitchell,
ALEX ZATS,	)	Judge Presiding.
	)	
Defendants-Appellees and Cross-Appellants.	)	

JUSTICE MASON delivered the judgment of the court.
Justices Pucinski and Hyman concurred in the judgment.

ORDER

¶ 1 *Held*: *Res judicata* as well as a settlement agreement and release barred plaintiff's action. No Rule 137 sanctions were warranted because plaintiff's action was not frivolous.

¶ 2 Bee-Zee Body Shop, Inc. (Body Shop) appeals the dismissal on *res judicata* grounds of its complaint, asserting improper use of intellectual property against defendants Bee-Zee Service, Inc. (Repair Shop) and its owner, Alex Zats.[1] An action by Body Shop sought a "corporate divorce" from Repair Shop and Zats, and was dismissed with prejudice based on the parties' settlement agreement.

[1]Due to the similarity in the parties' names, we refer to them in this order as Body Shop and Repair Shop.

On appeal, Body Shop asserts that *res judicata* did not bar this action because the use and ownership of intellectual property was not addressed in the parties' settlement agreement and Repair Shop's improper use of the intellectual property arose after the settlement. Body Shop also alleges that its consumer fraud and deceptive trade practices count survives dismissal because Repair Shop engaged in purposeful conduct to create confusion and deception regarding ownership of the two businesses after the settlement agreement was executed.

¶ 3 Repair Shop cross-appeals, arguing that the trial court abused its discretion in finding that Rule 137 sanctions (Ill. S. Ct. R. 137 (eff. July 1, 2013)) were not warranted because the parties' prior settlement agreement resolved all of the claims alleged in Body Shop's later action. We affirm the trial court's judgment in its entirety.

¶ 4 BACKGROUND

¶ 5 In 1982, Yosef Bega and Zats formed Repair Shop, an automobile repair shop, as a corporation with each individual owning 50% of the business. In 1987, Bega and Zats formed Body Shop, an automobile body shop, as a corporation with each individual having equal ownership interest. Since 1987, Bega exclusively managed Body Shop and Zats exclusively managed Repair Shop. The two businesses operated as a common law partnership, and were marketed as one brand with two different locations. For nearly three decades, the two businesses shared the same employees, office supplies, open charge accounts, vendors, marketing budgets, and advertising campaigns.

¶ 6 Around 2001, a cartoon car logo and the tagline "never too busy to serve you" were created for both businesses and they immediately began using the logo and tagline in their joint advertising campaigns. In 2006, the businesses' advertising campaigns were revamped, including the cartoon car logo and tagline, which now featured higher quality artwork. Both businesses used the revamped logo and tagline in their joint advertising.

¶ 7 In January 2016, Bega filed an action for a "corporate divorce" to unwind and completely separate his business dealings from Zats, asserting Zats engaged in conduct to oppress and freeze Bega out of his investment and rights in Body Shop. On September 20, 2017, Bega and Zats executed a settlement agreement, which, along with its exhibits, spanned more than 70 pages. The settlement agreement extensively addressed the parties' business dealings, unraveled their business relationship, and partitioned the businesses' assets. As part of the settlement, Zats acquired Bega's entire 50% ownership interest in Repair Shop and Bega acquired Zats' entire 50% ownership interest in Body Shop. The settlement agreement did not specifically address rights to the logo and tagline or give either company the exclusive rights to use the logo and tagline. But the agreement did address ownership rights of other property, providing that each business would own the assets in its possession as of the settlement date. In the agreement, the parties stipulated that they would "take no action, directly or indirectly, to interfere with, harm, damage, impede or otherwise affect [each other's] running of [his] business through the Closing Date and continuing after the Closing Date." The agreement also provided that neither party "shall be restricted in any way from competing against each other."

¶ 8 In conjunction with the settlement agreement, Zats and Bega executed a general release, surrendering each party's right to bring any and all claims against the other "that relate, either directly or indirectly to any of the dealings of the parties in connection with Bee Zee Service, Inc. and/or Bee Zee Body Shop, Inc." The settlement agreement also included an integration and superseding clause, specifying that the settlement agreement comprised the partners' entire agreement and superseded "any and all prior written and/or oral understandings, agreements and/or promises, and any and all contemporaneous oral understandings, promises, and/or agreements." On February 1, 2018, the trial court entered an agreed order dismissing with prejudice Bega's corporate divorce action based on the parties' settlement, and retained jurisdiction for purposes of enforcing the settlement agreement.

¶ 9 As a result of the separation of businesses, Repair Shop was required to open new vendor and service accounts, including a new account with PartsTrader, an online database of parts for use in repairing vehicles insured by StateFarm. A Repair Shop employee contacted PartsTrader to ask general questions about the database and allegedly attempted to order parts under Body Shop's account. The PartsTrader's representative learned that the individual's telephone number was linked to its long-term customer, "Bee-Zee." Curious as to why a long-term customer would ask basic questions about its database, the PartsTrader representative called "Bee-Zee" and reached Body Shop. Upon learning that no one from Body Shop had called, the PartsTrader employee realized that there were now two companies with the name "Bee-Zee."

¶ 10 After the parties executed the settlement agreement and release, Repair Shop and Body Shop continued to use the logo and tagline in their now separate advertising campaigns. Around February 15, 2018, two weeks after dismissal of its first lawsuit, Body Shop registered the words "Bee Zee" over a cartoon car as a servicemark with the Illinois Secretary of State**.** On February 28, 2018, counsel for Body Shop sent Repair Shop a cease and desist letter, instructing Repair Shop to cease using the registered servicemark or any similar mark in its advertising. Repair Shop responded, asserting that both companies used the logo and tagline before the settlement, and both companies had the right to continue using the intellectual property under the settlement agreement.

¶ 11 On June 28, 2018, Body Shop filed a complaint seeking an injunction[2] prohibiting Repair Shop from using the now registered logo and tagline, which Bega claimed to have owned since their creation and orally permitted Repair Shop to use while Zats and Bega were partners. In a separate count, Body Shop alleged that Repair Shop engaged in consumer fraud and deceptive trade practices when it wrongfully attempted to gain access to and improperly use Body Shop's PartsTrader account.

[2]Count I of Body Shop's complaint is labeled "Injunction" although it is well-settled that an injunction is a remedy, not a cause of action. *Kopnick v. JL Woode Management Co.*, 2017 IL App (1st) 152054, ¶ 34; *Town of Cicero v. Metropolitan Water Reclamation District of Greater Chicago*, 2012 IL App (1st) 112164, ¶ 46.

¶ 12 Repair Shop moved to dismiss the complaint pursuant to section 2-619(a)(4) of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(4) (West 2018)), asserting that the claims were barred by the doctrine of *res judicata* pursuant to the trial court's order dismissing with prejudice Body Shop's corporate divorce action. Repair Shop also moved for Rule 137 sanctions (Ill. S. Ct. R. 137 (eff. July 1, 2013)), arguing that Body Shop's complaint included demonstrably false factual allegations and groundless claims given that Bega and Body Shop never exclusively owned the logo and tagline. The trial court dismissed Body Shop's complaint, finding that the elements of *res judicata* were met, and dismissal was also warranted under the parties' general release executed in conjunction with the settlement agreement. Based on the record, the trial court denied Rule 137 sanctions. Body Shop and Repair Shop timely appealed the trial court's rulings.

¶ 13 ANALYSIS

¶ 14 A. Body Shop's Appeal

¶ 15 Body Shop appeals the trial court's dismissal of its complaint based on the doctrine of *res judicata*, arguing that the parties' settlement agreement was not a final adjudication on the merits and there was no identity of claims between the instant action and the prior corporate divorce action.

¶ 16 A section 2-619 motion to dismiss admits the legal sufficiency of the pleading, but asserts that certain defenses, defects, or other affirmative matters defeat the plaintiff's claims. *Mack Industries, Ltd. v. Village of Dolton*, 2015 IL App (1st) 133620, ¶ 19. Section 2-619(a)(4) permits the dismissal of an action if it is barred by a prior judgment. 735 ILCS 5/2–619(a)(4) (West 2018); *Currie v. Wisconsin Central, Ltd.*, 2011 IL App (1st) 103095, ¶ 27. When ruling on a 2-619 motion, courts may consider "all facts presented in the pleadings, affidavits, and depositions found in the record." *Stone Street Partners, LLC v City of Chicago Department of Administrative Hearings*, 2017 IL 117720, ¶ 4.

¶ 17 Few rules are more essential or more firmly rooted in our jurisprudence than that of *res judicata*. *Village of Bartonville v. Lopez*, 2017 IL 120643, ¶ 49. The doctrine recognizes the practical

necessity for there to be an end to litigation and that once a controversy is decided on its merits, it shall remain in repose. *Id.*

¶ 18 Three requirements must be met for *res judicata* to apply: (i) a final judgment on the merits rendered by a court of competent jurisdiction, (ii) an identity of cause of action, and (iii) identity of parties or their privies. *A & R Janitorial v. Pepper Construction Co.*, 2018 IL 123220, ¶ 16. When these factors are established, the final judgment rendered in the first litigation bars any subsequent action between the same party or their privies involving the same claim, demand, or cause of action. *Wilson v. Edward Hospital*, 2012 IL 112898, ¶ 9; *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 334 (1996). *Res judicata* operates to bar not only what was actually decided in the first action, but also claims that could have been raised or decided. *Id.* The applicability of *res judicata* raises a question of law that we review *de novo*. *Pepper Construction Co.*, 2018 IL 123220, ¶ 16.

¶ 19 Here, the parties do not dispute that the third requirement, identity of parties, was satisfied, and we agree because the parties have remained the same since Body Shop filed its corporate divorce action. Thus, we turn our analysis to the applicability of the first two *res judicata* requirements.

¶ 20 Body Shop argues that the first requirement, a final judgment on the merits rendered by a court of competent jurisdiction, was not satisfied because there was no adjudication on the merits rendered by a court. As both parties recognize, there is a split of authority in Illinois as to whether a dismissal with prejudice pursuant to a settlement agreement is a final judgment on the merits subject to *res judicata,* or merely a recordation of the agreement between the parties. See *Goodman v. Hanson*, 408 Ill. App. 3d 285, 300 (2011) (noting the split in authority).

¶ 21 We agree with the line of authority finding that *res judicata* applies to a court's order dismissing an action with prejudice pursuant to a settlement agreement. *Nelson v. Chicago Park District*, 408 Ill. App. 3d 53, 61 (2011); see *Keim v. Kalbfleisch*, 57 Ill. App. 3d 621, 624 (1978) (a dismissal "with prejudice" pursuant to a court approved settlement is "as conclusive of the rights of the

parties as if the suit had been prosecuted to a final adjudication" adverse to the plaintiff and is a bar to further proceedings). We base this conclusion on the recognition that *res judicata* is an equitable doctrine aimed at encouraging judicial economy by preventing a multiplicity of lawsuits between the same parties involving the same facts and issues. *Tebbens v. Levin & Conde*, 2018 IL App (1st) 170777, ¶ 23. The doctrine of *res judicata* serves to protect litigants from being forced to bear the unjust burden of re-litigating essentially the same case. *Arvia v. Madigan*, 209 Ill. 2d 520, 533 (2004). Equally important is Illinois public policy that strongly favors settlements, and the recognition that settlements have the effect of avoiding costly and time-consuming litigation. *Rakowski v. Lucente*, 104 Ill. 2d 317, 325 (1984); *Security Pacific Financial Services v. Jefferson*, 259 Ill. App. 3d 914, 919 (1994). Applying *res judicata* to dismissals with prejudice pursuant to a settlement agreement serves both these purposes.

¶ 22 Declaring a trial court's order dismissing an action with prejudice based on the parties' settlement agreement not to be a final adjudication on the merits would not only contravene well-established equitable doctrines and public policy, but would also undermine the certainty and finality associated with settlement agreements and expose parties to the possibility of continued future litigation or double recovery. *Elliott v. LRSL Enterprises, Inc.*, 226 Ill. App. 3d 724, 728 (1992). The trial court's order dismissing Body Shop's corporate divorce action *with prejudice* was a final order because the order terminated the parties' litigation and fixed absolutely the parties' rights, leaving only the enforcement of the judgment. See *Richter v. Prairie Farms Dairy, Inc.*, 2016 IL 119518, ¶ 24 (recognizing that a dismissal "without prejudice" signals that no final decision on the merits had been reached and the plaintiff was not barred from refiling the action). Because we find the trial court's order dismissing Body Shop's corporate divorce action with prejudice constitutes a final judgment on the merits by a court of competent jurisdiction, the first requirement of *res judicata* is satisfied. See *Robinson v. Toyota Motor Credit Corp.*, 201 Ill. 2d 403, 415 (2002) (*res judicata* does not bar

subsequent causes of action that were expressly and specifically reserved by the final judgment approving a settlement agreement).

¶ 23 When analyzing the second requirement, an identity of cause of action, courts apply the "transactional test." *Pepper Construction Co.*, 2018 IL 123220, ¶ 18. Under the transactional test, separate claims will be treated as a single cause of action for *res judicata* purposes "if they arise from a single group of operative facts, regardless of whether they assert different theories of relief." *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 311 (1998). Body Shop claims that there was no identity of cause of action because, unlike the instant action, the prior litigation did not pertain to intellectual property rights. We disagree.

¶ 24 Body Shop's corporate divorce action, which was the subject of the parties' settlement agreement, and its subsequent action seeking to enjoin Repair Shop's use of the logo and tagline both arose from the same group of operative facts—the parties' decades-long business dealings and their rights and ownership interests in the assets of the two businesses. The corporate divorce action divided the two businesses' assets and liabilities and allocated to each partner ownership interest to certain assets. Contrary to the comprehensive settlement agreement that was clearly designed to effect a final separation of the two businesses, in its case filed just months after final approval of the settlement agreement, Body Shop now seeks to claim ownership over the logo and tagline and prohibit Repair Shop's continued use of that intellectual property to advertise its services. The disputed logo and tagline not only existed when the parties executed the settlement agreement, but the parties had been actively and jointly using the logo and tagline for years before the corporate divorce action. Thus, ownership and use of the logo and tagline could have been decided in the first action along with the division of the other assets. Indeed, Body Shop concedes as much. See *Hayashi v. Illinois Department of Financial & Professional Regulation*, 2014 IL 116023, ¶ 46 (*res judicata* extends to the facts and conditions existing when a judgment was rendered). Importantly, *res judicata* bars not only matters that

were actually decided in the first action, but also matters that could have been decided in that action. *Lopez*, 2017 IL 120643, ¶ 49. Here, ownership and usage rights to the logo and tagline entail the same common core of operative facts as the corporate divorce action and the settlement agreement could have explicitly identified the parties' rights to those assets along with the other business assets. Particularly in light of the fact that the settlement agreement contemplated that the two businesses would compete against each other following the settlement and contained an undertaking by both parties not to interfere with or impede the other's business, we find that the second element of *res judicata* was satisfied given that the two cases arose from the same set of operative facts, resulting in an identity of cause of action.

¶ 25 Because we find that all three *res judicata* requirements were met, the trial court properly applied the doctrine of *res judicata* to dismiss Body Shop's injunction action.

¶ 26 Even if *res judicata* did not apply, there exists an independent basis on which to affirm the trial court's ruling. See *Razavi v. School of the Art Institute of Chicago*, 2018 IL App (1st) 171409, ¶ 41 (a reviewing court may affirm the trial court's ruling on any basis appearing in the record). In particular, we find that the release executed by the parties bars Body Shop's effort to enjoin Repair Shop's use of the logo and tagline.

¶ 27 Dismissal under section 2-619 of the Code is warranted if the plaintiff's claim in the complaint has been released. 735 ILCS 5/2–619(a)(6) (West 2018). In a release, a party relinquishes the right to pursue a claim. *Hagene v. Derek Polling Construction*, 388 Ill. App. 3d 380, 382 (2009). A release is a contract and is governed by the principles of contract law. *Farm Credit Bank of St. Louis v. Whitlock*, 144 Ill. 2d 440, 447 (1991). The scope and effect of a release are controlled by the parties' intention, and that intent is discerned from the language used in the release and the circumstances of the transaction. *Martin v. Illinois Farmers Insurance*, 318 Ill. App. 3d 751, 761 (2000). The language of a general release is restricted to the things or persons intended to be released and courts refuse to

interpret generalities in a release to defeat a valid claim not then in the minds of the parties. *Id.* In other words, the language of a release will not be construed to include claims not within the parties' contemplation. *Id.*

¶ 28 Body Shop's contention that it was unaware of any claim relating to the use of the logo and tagline when the release was executed is belied by the record. As stated, Repair Shop was using the intellectual property when the release was executed and had been doing so for years as part of the businesses' joint advertising campaign. The lengthy and comprehensive settlement agreement extensively delineated the parties' rights to and ownership of business assets, but did not separately address ownership and usage of the logo and tagline. The settlement agreement's silence regarding use of the logo and tagline suggests that the parties contemplated their respective continued use of the logo and tagline in advertising their services and, as noted, the agreement specifically provided that the two businesses would compete with each other post-settlement. Because Bega executed a general release in conjunction with the settlement agreement surrendering the right to bring any and all future claims and actions against Zats and Repair Shop "directly or indirectly" relating to the parties' business dealings, Body Shop's claims against Repair Shop's continued use of the intellectual property are subject to the release and must be dismissed. When the parties executed the settlement agreement and release, the circumstances were such that both businesses were using the logo and tagline, and accounting for the parties' future rights to use the logo and tagline would have been obvious considerations contemplated by the parties. Indeed, Body Shop registered the intellectual property as a servicemark shortly after the trial court dismissed its corporate divorce action with prejudice. Bega, on behalf of Body Shop, certainly cannot claim that he was unaware of any claims regarding use of the logo and tagline when the release was executed. Thus, any claim against Repair Shop's continued use of the logo and tagline was precluded by Bega's execution of the general release.

¶ 29 Moreover, Bega's claim based on his purported oral agreement to allow use of the logo and tagline by Repair Shop and later alleged revocation of that permission are precluded under the agreement's integration clause, specifically disavowing the existence of any other agreements or understandings between the parties. Likewise, the claim based on any alleged oral agreement would also be barred under the settlement agreement's superseding clause, specifying that the settlement agreement superseded any and all oral understandings and agreements. Consequently, the general release, as well as the integration and superseding clauses incorporated in the settlement agreement, provide further grounds to dismiss Body Shop's later filed action wholly apart from *res judicata*.

¶ 30 Finally, Body Shop asserts that its deceptive business trade practices count should have survived dismissal. Body Shop claims that Repair Shop engaged in fraudulent and deceptive practices after execution of the settlement agreement and release by attempting to access Body Shop's PartsTrader account allegedly pretending to be Body Shop and engaged in other wrongful conduct to create confusion with customers and vendors regarding ownership of the two businesses.

¶ 31 We agree that post-settlement conduct by Repair Shop giving rise to a new claim that did not exist when the settlement agreement was executed would not be extinguished by the release. But Body Shop fails to develop this argument in any meaningful way, provides no citation to the record, and fails to cite to any case law whatsoever in support of its arguments. In fact, Body Shop's entire argument consists of two sentences.[3]

¶ 32 A reviewing court is "not simply a repository into which a party may dump the burden of argument and research." *People ex rel. Illinois Department of Labor v. E.R.H. Enterprises*, 2013 IL 115106, ¶ 56. Body Shop has forfeited this claim and we will not review it. Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018); *Vancura v. Katris*, 238 Ill. 2d 352, 370 (2010) (points raised by a party lacking

[3]Further, it appears from the record that Body Shop's claim that Repair Shop was trying to "hack" its PartsTrader account was a mischaracterization of Repair Shop's attempt to set up its own PartsTrader account.

developed arguments and without proper citation to authority and legal reasoning are forfeited for appellate review).

¶ 33 B. Repair Shop's Cross-Appeal

¶ 34 Repair Shop cross-appeals, claiming the trial court abused its discretion in refusing to impose Rule 137 sanctions based on Body Shop's false and frivolous injunction action.

¶ 35 The purpose of Rule 137 is to prevent abuse of the judicial process by penalizing parties who file vexatious and harassing pleadings based upon unsupported allegations of fact or law. *Clark v. Gannett Co.*, 2018 IL App (1st) 172041, ¶ 66. Rule 137 is not intended to punish parties for making losing arguments, but to discourage frivolous filings. *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 15. Because Rule 137 is penal in nature and must be strictly construed, courts reserve sanctions for egregious cases. *Gannett Co.*, 2018 IL App (1st) 172041, ¶ 66. Trial courts use an objective standard to determine whether a party made a reasonable inquiry into the facts and law supporting his or her allegations when submitting the pleading. *Id*.

¶ 36 We review a trial court's ruling on a motion for section 137 sanctions for an abuse of discretion. *Arnold*, 2015 IL 118110, ¶ 16; *Dore v. Quezada*, 2017 IL App (1st) 162142, ¶ 30. A trial court abuses its discretion when its "decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court." *Seymour v. Collins*, 2015 IL 118432, ¶ 41.

¶ 37 In support of its motion for sanctions, Repair Shop alleges that Body Shop's complaint included: (i) multiple false factual allegations; (ii) frivolous claims regarding use of Body Shop's PartsTrader account; and (iii) actions barred by the parties' settlement agreement, release, and decades-long usage of the intellectual property. The gist of Body Shop's claims was that Repair Shop used the intellectual property without authorization after the corporate divorce. Because the settlement agreement was silent regarding the parties' rights to the intellectual property, there was an arguably reasonable basis for Body Shop's claims regarding the rightful use of the intellectual property, even if

Body Shop's position was ultimately incorrect and unpersuasive. *Watkins v. Ingalls Memorial Hospital*, 2018 IL App (1st) 163275, ¶ 79 (sanctions not warranted based on a party's failure to investigate facts and law before filing a pleading if objectively reasonable arguments were presented supporting his or her position). This is true even though Body Shop alleged inaccurate facts in its complaint regarding Repair Shop's improper intellectual property use. Likewise, although there was an innocent explanation for Repair Shop's attempted access to Body Shop's PartsTrader account, given the contentious events leading to the corporate divorce, Body Shop's deceptive practices claim against Repair Shop was also objectively reasonable. *Id*. Moreover, there was *bona fide* dispute between the parties on the issue of whether a settlement agreement constitutes a final adjudication on the merits based on the split of authority on that issue. Consequently, after thoroughly reviewing the record before us, we find that the trial court did not abuse its discretion in denying sanctions.

¶ 38 CONCLUSION

¶ 39 For the reasons stated, we affirm the trial court's (i) dismissal of Body Shop's injunction action and (ii) denial of Repair Shop's request for Rule 137 sanctions.

¶ 40 Affirmed.