NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Courthouse
4110 Chain Bridge Road
Fairfax, Virginia 22030-4009

703-246-2221 • Fax: 703-246-5496 • TDD: 703-352-4139

August 17, 2021

Elaine Charlson Bredehoft, Esq.
Adam S. Nadelhoft, Esq.
Clarissa K. Pintado, Esq.
David E. Murphy, Esq.
CHARLSON BREDEHOFT COHEN & BROWN, P.C.
11260 Roger Bacon Dr., Suite 201
Reston, VA 20190

J. Benjamin Rottenborn, Esq.
Joshua R. Treece, Esq.
Elaine D. McCafferty, Esq.
WOODS ROGERS, PLC
10 S. Jefferson St., Suite 18400
Roanoke, VA 24011

Benjamin G. Chew, Esq.
Andrew C. Crawford, Esq.
BROWN RUDNICK, LLP
601 Thirteenth St. N.W., Suite 600
Washington, DC 20005

Camille M. Vasquez, Esq.
BROWN RUDNICK, LLP
2211 Michelson Drive
Irvine, CA 92612

Jessica N. Meyers, Esq.
BROWN RUDNICK, LLP
7 Times Square
New York, NY 10036

Re: *John C. Depp, II v. Amber Laura Heard*, Case No. CL-2019-2911

Dear Counsel:

This came before the Court on July 22, 2021, for a hearing on Defendant Amber Laura Heard's Supplemental Plea in Bar to Plaintiff John C. Depp II's Complaint. Having taken the matter under advisement and after reviewing the memoranda of law and arguments submitted by Counsel, the Court issues the following opinion overruling Defendant's Supplemental Plea in Bar.

BACKGROUND

In the underlying action for defamation, Plaintiff John C. Depp II ("Plaintiff") is suing Defendant Amber Laura Heard ("Defendant") for statements Defendant made in an op-ed published by *The Washington Post* in 2018. Plaintiff, believing that Defendant's statements falsely characterized him as a domestic abuser, filed his defamation claim on March 1, 2019.

OPINION LETTER

Prior to the commencement of Plaintiff's suit in Fairfax County Circuit Court, Plaintiff brought suit in the United Kingdom ("UK") against News Group Newspapers, the publisher of *The Sun* newspaper, for claims of defamation regarding *The Sun's* publication of a 2018 column referring to Plaintiff as a "wife beater". On November 2, 2020, the Judge in the UK litigation ruled against Plaintiff, finding *The Sun's* statements were substantially true and thus a defense to defamation. On March 25, 2021, the UK Court of Appeal upheld the trial court's ruling against Plaintiff and denied his application for permission to appeal. Plaintiff's litigation in the UK against *The Sun* became final on April 6, 2021, and Defendant subsequently moved for leave to amend her plea in bar to dismiss Plaintiff's Complaint based on collateral estoppel, res judicata, comity, and the Uniform Foreign-Country Money Judgments Recognition Act.

Ultimately, Defendant argues the UK's finding that Plaintiff is a "wife beater" should be given preclusive effect in this Court given Plaintiff's previous opportunity to fully and fairly adjudicate such issue.

ANALYSIS

I. LEGAL STANDARD

A plea in bar is a defensive pleading alleging a single issue of facts or circumstances, which if proven, constitutes a complete bar to the plaintiff's claims. *Smith v. McLaughlin*, 289 Va. 241, 252 (2015). Such pleading "does not address the merits of the issues raised by the bill of complaint." *Nelms v. Nelms*, 236 Va. 281, 289 (1988). The burden of establishing the grounds of a defense in a plea in bar rests with the party raising the defense. *Cooper Indus., Inc. v. Melendez*, 260 Va. 578, 594-95 (2000).

II. COLLATERAL ESTOPPEL

"Collateral estoppel is the preclusive effect impacting a subsequent action based on a collateral and different cause of action. In the subsequent action, the parties to the first action and their privies are precluded from litigating any issue of fact actually litigated and essential to a valid and final personal judgment in the first action." *Bates v. Devers,* 214 Va. 667, 671 (1974). Accordingly, the following requirements must be met for the doctrine of collateral estoppel to apply:

> (1) the parties to the two proceedings must be the same; (2) the issue of fact sought to be litigated must have been actually litigated in the prior proceeding; (3) the issue of fact must have been essential to the prior judgment; and (4) the prior proceeding must have resulted in a valid, final judgment against the party against whom the doctrine is sought to be applied.

Glasco v. Ballard, 249 Va. 61, 64 (1995).

Ordinarily, for estoppel to be effective there must be privity or mutuality amongst the parties. *Nero v. Ferris*, 222 Va. 807, 812 (1981). Accordingly, "a litigant is generally prevented

from invoking the preclusive force of a judgment unless he would have been bound had the prior litigation of the issue reached the opposite result." *Id.*

A. Privity

As mentioned above, collateral estoppel precludes a party or a party's privies from relitigating a factual issue determined in the prior litigation. *Nero*, 222 Va. at 812. "There is no [single] fixed definition of privity" for purposes of res judicata or collateral estoppel. *See id.* at 813; *Storm v. Nationwide Mut. Ins. Co.*, 199 Va. 130, 134 (1957); *see also State Water Control Bd. v. Smithfield Foods, Inc.*, 261 Va. 209, 214 (2001). For privity to exist, Virginia law holds that a party must be "so identical in interest with another that he represents the same legal right." *Nero*, 222 Va. at 813. Whether privity exists is determined by a careful review of the "circumstances of each case." *Id.*

More recently, the Virginia Supreme Court held privity, in the context of collateral estoppel or res judicata, "does not embrace relationships between persons or entities, but rather it deals with a person's relationship to the subject matter of the litigation." *Lane v. Bayview Loan Servicing, LLC*, 297 Va. 645, 656 (2019) (internal citations omitted). The Court also articulated that Virginia narrowly construes privity. *See id.* (finding that "an attorney does not share the same legal interest as . . . [the attorney's] client merely by virtue of . . . [the attorney's] representation of that client."). *Cf. Nero*, 222 Va. at 813 (finding that an employer and employee were in privity for the purpose of collateral estoppel). While the Virginia Supreme Court did note in *Lane* that privity deals with a person's relationship to the subject matter of the case, the Court has not expounded the constraints of such statement. *Lane*, 297 Va. at 656. Consequently, this Court looks to the legal rights and interests of the parties and whether they are identical.

Defendant argues she was in privity with *The Sun* because they both had the same interest in the case. However, for privity to exist, Defendant's interest in the case must be *so identical* with *The Sun's* interest such that *The Sun's* representation of its interest is also a representation of Defendant's legal right. *The Sun's* interests were based on whether the statements the newspaper published were false. Defendant's interests relate to whether the statements she published were false. Although the claims are similar in the sense they both relate to claims of abuse by Plaintiff, the statements being defended in the UK case are inherently different than the statements published by Defendant. Therefore, given Virginia's narrow construction of privity, Defendant and *The Sun* are not in privity.

B. Mutuality

Defendant argues, "[t]he U.S. Supreme Court and the majority of jurisdictions in the United States allow defensive use of nonmutual estoppel." Def.'s Mem. 19. However, the Virginia Supreme Court "made a considered, unanimous decision to resist the so-called 'modern trend' and not to abrogate the mutuality requirement." *Selected Risks Ins. Co. v. Dean*, 233 Va. 260, 264 (1987) (discussing *Norfolk & W. Ry. Co. v. Bailey*, 221 Va. 638, 641 (1980). Therefore, Virginia upholds the mutuality requirement, thus "limit[ing] the influence of [an] initial adjudication by requiring that to be effective the estoppel of the judgment must be mutual." *Id.*

Although mutuality is typically required for issue preclusion, few exceptions to this rule exist. *Norfolk & W. Ry. Co. v. Bailey Lumber Co.*, 221 Va. 638, 641 (1980). There are two kinds of nonmutual collateral estoppel. *Id.* One kind, nonmutual defensive collateral estoppel, occurs when "the defendant, a stranger to the prior proceeding, attempts to preclude the plaintiff, a party to the former proceeding, from relitigating an issue plaintiff lost in the earlier case." *Id.* The second kind, nonmutual offensive collateral estoppel, occurs when "a plaintiff, who was a stranger to the former litigation, seeks to preclude the defendant, a party to the prior action, from relitigating an issue defendant lost in the prior case." *Id.* Here, because Defendant was not a party of the UK litigation but seeks to preclude Plaintiff, who was a party of the UK litigation, from relitigating the issue of whether Plaintiff abused Defendant, nonmutual defensive collateral estoppel is sought.

The Court in *Bates* held mutuality of parties need not be "mechanistically applied when it is compelling clear" that the party against whom collateral estoppel is asserted has "fully and fairly litigated and lost an issue of fact which was essential to the prior judgment." *Bates*, 214 Va. at 670 n.7 (refusing to apply collateral estoppel despite the existence of privity between the nonmutual parties because no essential issue was actually litigated in the first case). Defendant appears to rely on this language to assert mutuality is not required when the issue has been fully and fairly litigated in the prior case. Notably, however, the Court in *Bates* held collateral estoppel was not applicable, and the discussion of mutuality was constricted to a single footnote. *Id.*

After the *Bates* case, the Virginia Supreme Court reexamined the issue of mutuality in *Bailey*, noting "a litigant is generally prevented from invoking the preclusive force of a judgment unless he would have been bound had the prior litigation of the issue reached the opposite result." *Bailey*, 221 Va. at 640. *See also TransDulles Center, Inc. v. Sharma*, 252 Va. 20, 23 (1996). Finally, the Virginia Supreme Court again confirmed the mutuality requirement in *Angstadt v. Atlantic Mut. Ins. Co.*, 249 Va. 444, 447 (1995) (holding nonmutual defensive collateral estoppel was inappropriate when the nonmutual party "would not be bound by the prior litigation had the "opposite result been reached").

Defendant relies heavily on a Virginia Supreme Court case decided in 1927, prior to *Bailey* and *Angstadt*. In *Eagle Star*, Heller sought to recover under a fire insurance policy for damages done to a stock of goods. *Eagle, Star & British Dominions Ins. Co. v. Heller*, 149 Va. 82, 85 (1927). Prior to such recovery, Heller was convicted for the willful burning of those same goods with the intent to injure his insurer. *Id.* The Virginia Supreme Court noted, in overturning the trial court's refusal to apply res judicata, that lack of mutuality was not fatal given "the different rules of evidence and procedure which prevail in civil and criminal cases and the differing degrees of proof required." *Id.* at 88.

However, *Eagle Star* is an "exception to the general rule." *Smith v. New Dixie Lines, Inc.*, 201 Va. 466, 473 (1959). Typically, criminal convictions are not admissible in subsequent civil actions for "the truth of the facts on which it was rendered," partly because there is a lack of mutuality and partly because the "*procedures* of the two trials are different." *Godbolt v. Brawley*, 250 Va. 467, 470 (1995) (emphasis added) (internal citations omitted). Further, the Virginia Supreme Court appeared to narrow the *Eagle Star* exception in *Godbolt* to apply "when a

plaintiff attempts to recover for a harm that is the *direct* result of his or her own criminal conduct, and the dispositive issue in the civil action is the precise issue that the criminal conviction addressed." *Id.* at 471 (emphasis in original). This exception exists because "courts will not assist the participant in an illegal act who seeks to profit from the act's commission." *Zysk v. Zysk*, 239 Va. 32, 34 (1990).

The case before this Court is markedly different than *Eagle Star* and *Bates*. The initial criminal conviction in *Eagle Star* required proof beyond a reasonable doubt. *Eagle Star*, 149 Va. at 88. The subsequent civil case only required proof by a preponderance of the evidence. *See id.* The burden of the UK trial and the burden here are not so drastically different. While it is true *The Sun* held the burden of proof in the UK litigation, such burden was by a preponderance of the evidence. That is the same burden applicable here. *See Pendleton v. Newsome*, 290 Va. 162, 174 (2015) (noting that a plaintiff in a defamation action based on libel-by-implication must prove the plaintiff's case by a preponderance of the evidence). Further, the Court in *Bates* did not touch on the issue of mutuality or privity, as an essential issue was not previously litigated in the initial case. *Bates*, 214 Va. at 672.

Defendant also appears to rely on *Nero* as "recognizing the existence of 'nonmutuality grounds' that do not require a showing of privity." Def.'s Mem. 19. To be clear, the holding in *Nero* expressly declines "the invitation of the parties that the issue be decided on a broader ground, the so-called 'nonmutuality rule,' that would not require a showing of privity." *Nero*, 222 Va. at 813. It is fallacious to suggest the Court in *Nero* recognized the existence of nonmutuality grounds in Virginia.

This is not a matter of first impression; it is a matter of stare decisis. Based on the abundance of binding case law holding mutuality is still a requirement in Virginia, collateral estoppel is not appropriate here. However, even if an exception to mutuality applied, the Court is not persuaded by Defendant's argument that Plaintiff had a full and fair opportunity to litigate the UK Action. Defendant was not a party in the UK action and was not treated as one. Because she was not a named defendant, she was not subject to the same discovery rules applicable to named parties. In fact, Defendant *could not* have been a named defendant to the UK litigation because her allegedly defamatory statements were made *after* the UK action commenced.

Attachment 3 to Defendant's Reply Brief includes a ruling from the UK Judge regarding whether Defendant should be ordered to make certain third-party disclosures. Def.'s Reply Mem. Att. 3. Such third-party disclosures *may* be ordered *only* when the documents sought "are likely to support the case of the applicant or adversely affect the case of one of the parties" and "disclosure is necessary in order to dispose fairly of the claim." Senior Courts Act 1981 c. 54, § 34; CPR 31.17.[1] Thus, to argue Plaintiff fully and fairly participated in the UK Trial action because Defendant "was an active participant, providing evidence, seven witness statements, and sitting for four days of live testimony" is incongruous with the UK Judge's ruling regarding Defendant's discovery obligations. Specifically, the judge "refuse[d] the Claimant's application for a third-party disclosure order against Ms. Heard." Def.'s Reply Mem. Att. 3.

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1 Compare this standard to Virginia's discovery rules in Rule 4:1(b)(1) of the Supreme Court of Virginia.

Accordingly, Defendant and *The Sun* were not in privity. Defendant and *The Sun* were not mutual. Defendant did not persuasively present an applicable exception to the general rule of mutuality. Thus, collateral estoppel is inappropriate in this matter.

III. RES JUDICATA

Res judicata "encompasses four preclusive effects": merger, bar, direct estoppel, and collateral estoppel. *Bates*, 214 Va. at 670. Res judicata-bar is commonly referred to as simply "res judicata" and works by barring the re-litigation of a same cause of action, "or any part thereof which could have been litigated between the same parties and their privies." *Id.* at 670-71. Here, res judicata-bar will be referred to as "res judicata".

The current governing law of res judicata and claim preclusion in the Commonwealth is Rule 1:6. The rule states in pertinent part:

> A party whose claim for relief arising from identified conduct, a transaction, or an occurrence, is decided on the merits by a final judgment, is forever barred from prosecuting any second or subsequent civil action against the same opposing party or parties on any claim or cause of action that arises from that same conduct, transaction or occurrence, whether or not the legal theory or rights asserted in the second or subsequent action were raised in the prior lawsuit, and regardless of the legal elements or the evidence upon which any claims in the prior proceeding depended, or the particular remedies sought. A claim for relief pursuant to this rule includes those set forth in a complaint, counterclaim, cross-claim or third-party pleading.

Va. R. Sup. Ct. 1:6. Essentially, res judicata applies if:

(1) The first case involves a final judgment on the merits;
(2) The claim arises from the same transaction or occurrence, unless such claim involves property damage or personal injury; and
(3) The parties are the same or in privity.

"Under the common law doctrine of res judicata, a final judgment on the merits of a claim precludes the parties from further litigation based on that claim." *State Water Control Bd.*, 261 Va. at 214. Such doctrine is designed to protect litigants from duplicative lawsuits and ensure the finality of judgments. *Id.* Res judicata applies "unless specifically abrogated by statute." *Id.* The party asserting the defense of res judicata must prove by a preponderance of the evidence that the claim "should be precluded by the prior judgment." *Bates*, 214 Va. at 671-72. Further, res judicata bars subsequent litigation for the same cause of action or any part thereof which could have been litigated in the original case. *Id.* at 670. Because res judicata requires the parties be the same or in privity, the privity analysis discussed for collateral estoppel is also applicable, and fatal to Defendant's claim of res judicata.

Res judicata also requires that the claim in the first litigation and the second litigation arise from the same transaction or occurrence. Va. R. Sup. Ct. 1:6. The elements of a defamation claim include: "(1) publication of (2) an actionable *statement* with (3) the requisite intent." *Schaecher v. Bouffault*, 290 Va. 83, 91 (2015) (emphasis added) (internal citations omitted).

Previously, to determine if two things arose from the same transaction or occurrence, courts would implement a "same-evidence" test, precluding a second action if the evidence for maintaining the second action would be based on the same evidence needed to sustain the first one. *Funny Guy, LLC v. Lecego*, LLC, 293 Va. 135, 145 (2017). The General Assembly later adopted Rule 1:6 in 2006, thus superseding the "same-evidence" test. *Id.* at 150. Now, courts consider "whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage." *Id.* at 146. No single factor is dispositive. *Id.* at 155.

Defendant's claim of res judicata is especially puzzling. At the time Plaintiff initiated his suit against *The Sun*, Defendant had not even released her op-ed. Plaintiff's defamation claim in the UK was based on completely different statements than the present case. The specific statements uttered in defamation cases are incredibly important. *See Carwile v. Richmond Newspapers, Inc.*, 196 Va. 1, 8 (1954). That is why this Court, after Defendant's demurrer, analyzed the four statements originally sued upon to determine if each statement met the requirements for defamation. The statements from *The Sun* and from Defendant are not related in time; several months passed between the publication of the two collective statements. They are not related in motivation; they are not related in space. The only relation is the origin, as both statements arose from Plaintiff's alleged abuse. However, it would be nonsensical to find that any statement relating to whether Plaintiff abused Defendant arose from the same transaction or occurrence simply because they come from the same origin. Therefore, given the lack of privity and the separate occurrences in question, res judicata is inapplicable.

IV. COMITY

The Virginia Supreme Court has recognized the doctrine of comity. *McFarland v. McFarland*, 179 Va. 418, 430 (1942). Comity is defined as

> the recognition and effect which a forum jurisdiction gives within its territory to the legislative, executive, and judicial acts of a foreign jurisdiction, giving due regard to a number of factors, including: duty; mutual interests in reciprocity; courtesy; convenience; the public policy and preservation of valued morals in the forum; the rights of the forum's citizens and those under the protection of its laws; and the factual circumstances surrounding each claim for its recognition.

Clark v. Clark, 11 Va. Ct. App. 286, 296-97 (1990). When determining whether to afford comity to a foreign judgment, trial courts must consider the following four factors:

(1) Did the foreign court have personal and subject matter jurisdiction?
(2) Are the procedural and substantive law applied by the foreign court reasonably comparable to that of Virginia?

(3) Was the foreign court's order falsely or fraudulently obtained?
(4) Is enforcement of the foreign court's order contrary to the public policy of Virginia?

Am. Online, Inc. v. Nam Tai Elec., Inc., 264 Va. 583, 591-92 (2002). Put another way, Virginia courts "should grant comity to any order of a foreign court of competent jurisdiction, entered in accordance with the procedural and substantive law prevailing in its judicatory domain, when that law, in terms of moral standards, societal values, personal rights, and public policy, is reasonably comparable to that of Virginia." *Am. Online, Inc. v. Anonymous Publicly Traded Co.*, 261 Va. 350, 360 (2001). However, "[c]omity is not a matter of obligation. It is a matter of favor or courtesy." *Id.* at 361. Defendant relies on the factors in *Hilton* for her position that comity is appropriate in this case. *Hilton v. Guyot*, 159 U.S. 113, 123 (1895) (noting comity is appropriate when (1) "there has been opportunity for a full and fair trial before a foreign court of competent jurisdiction", (2) the trial was conducted "on regular proceedings", (3) there is personal jurisdiction over the defendant, and (4) the foreign judgment was created "under a system of jurisprudence likely to secure an impartial administration of justice between the citizens" of its own country and those of foreign countries).

Virginia courts should not recognize a foreign decree which was "falsely or fraudulently obtained or one which is contrary to the morals or public policy of this State" or that would "prejudice [Virginia's] own rights or the rights of its citizens." *McFarland*, 179 Va. at 430; *see also Williard v. Aetna Cas. & Sur. Co.*, 213 Va. 481, 483 (1973) (holding comity will not be granted where the foreign order is contrary to Virginia public policy); *Doulgeris v. Bambacus*, 203 Va. 670, 675-76 (1962) (ruling comity should not be granted to adoption proceedings in a foreign country which are offensive to the public policy of Virginia); *Eastern Indemnity Co. v. Hirschler, Fleischer*, 235 Va. 9, 14 (1988) (refusing to grant comity where to do so would prejudice the rights of the state or its citizens).

Importantly, the libel laws of Virginia are starkly different than those of England. The Declaration of Independence and the First Amendment of the United States Constitution represent major departures from the English Common Law with respect to freedom of speech and freedom of the press. *Telnikoff v. Matusevitch*, 347 Md. 561, 584 (1997). In fact, England's overreaching suppression of free speech during the eighteenth century drove the United States to relegate the freedom of speech into a solid foundation of civil liberty. *See id.* To hold that the two countries have similar libel laws is untenable.

Not only are the substantive laws of the UK different than Virginia, but so too are the procedural laws. *Compare* Va. Const. art. 1, § 11 (noting that in suits between persons, "trial by jury is preferable to any other, and ought to be held sacred"), *with* Senior Courts Act 1981, c. 54 § 69 (finding that a party in a civil trial for fraud, malicious prosecution, or false imprisonment may request a jury trial), *and* Def.'s Reply Br. Att. 3 ¶ 30(v) (noting Parliament allowed civil jury trials for libel actions in the past, but "now it is usual for defamation actions to be tried by judge alone"). In Virginia, plaintiffs are entitled to a trial by jury if so demanded. However, such right is not available in the UK. Instead, in cases of libel, judgments are based on the reasoned decision of one judge, as opposed to "a bald verdict of a jury." *See* Def.'s Reply Br. Att. 3 ¶ 30(v). Of course, this Court means no disrespect to the procedure adopted in the UK.

Notably, during oral argument Defendant maintained the position that Virginia has never denied a request to apply comity. That position is incorrect. *See Middleton v. Middleton*, 227 Va. 82, 99 (1984) (noting that the Uniform Child Custody Jurisdiction Act did not require the trial court to grant comity to an English custody order). Furthermore, many previous cases decided by Virginia appellate courts granting comity to UK cases were domestic law cases. *See Oehl v. Oehl*, 221 Va. 618, 624-25 (1980) (finding in a divorce proceeding that comity should have been granted to an English court order limiting father's access to children because English law regarding child custody and parental rights is not contrary to Virginia's laws of the same topics). Other cases relied on by Defendant, such as *Pony Express*, are not binding on this Court, and the holdings from such cases have not been recognized in Virginia. *See, e.g.*, *Schuler v. Rainforest Alliance, Inc.*, 684 Fed. App'x. 77, 79-80 (2d Cir. 2017); *Stevens v. Redwing*, 146 F.3d 538, 547 (8th Cir. 1998); *Pony Express Records, Inc. v. Springsteen*, 163 F.Supp.2d 465, 474 (D.N.J. 2001); *Apostolou v. Merrill Lynch & Co.*, No. 06 CV 4944(RJD)(LB), 2007 WL 2908074 *5 (E.D.N.Y. Oct. 5, 2007).

Given the differences between Virginia and UK law regarding trials by jury and libel laws, the Court is hesitant to apply preclusive effect to the UK finding, especially considering Defendant was not a party in the UK suit and was not subject to the same discovery requirements in that suit. Thus, even under the factors of *Hilton*, the substantive and procedural differences between this case and the UK case do not warrant a granting of comity.

Defendant draws attention to Plaintiff's "more favorable" burden of proof in the UK. Plaintiff did indeed have a more favorable burden of proof in the UK litigation—but that is not the only factor to be considered. As previously mentioned, the procedural and substantive laws regarding libel claims in the UK are vastly different than the laws in Virginia. Moreover, comity is not a matter of obligation, but rather a matter of courtesy. *See Am. Online, Inc.*, 261 Va. at 361. To enforce the UK defamation judgment in this case would go against public policy. Therefore, comity is inappropriate in this instance and does not serve to bar Plaintiff from arguing his case before a jury in the Commonwealth.

V. UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT

The Uniform Foreign-Country Money Judgments Recognition Act ("UFCMJRA") provides that the Commonwealth shall recognize certain foreign judgments of other countries. Va. Code Ann. § 8.01-465.13:3. The foreign judgments may be for a grant or denial for recovery of a sum of money. *Id.* § 8.01-465.13:2. The party seeking recognition of the foreign judgment bears the burden of establishing that the UFCMJRA applies. *Id.* However, if a party resists the recognition of the foreign judgment, that party must show that a ground for nonrecognition exists. *Id.* § 8.01-465.13:3. One ground of nonrecognition is based on whether "the cause of action on which the judgment is based is repugnant to the public policy of the Commonwealth." *Id.* If the court finds the foreign judgment is entitled to recognition, such recognition is "[c]onclusive *between the parties* to the same extent as the judgment of a sister state entitled to full faith and credit in the Commonwealth would be conclusive." *Id.* § 8.01-465.13-6 (emphasis added).

Defendant is correct in her assertion that this Court should enforce the UK Court's judgment precluding Plaintiff from recovering against *The Sun* for libel. But Plaintiff has not brought suit against *The Sun* in this case. Instead, Plaintiff brought forth a different suit with a different defendant based on different statements. Further, legal recognition of a judgment and preclusive recognition of a fact are not synonymous, and Defendant has cited no Virginia case applying the UFCMJRA when the parties are not mutual. Consequently, the UFCMJRA is inapplicable here and does not mandate the dismissal of Plaintiff's case.

VI. CHILLING EFFECT

Defendant's claim that refusing to recognize the UK Judgment in this case would set a dangerous precedent is unfounded. In fact, allegedly defamed parties are more likely to bring suit in England in general due to their more favorable defamation laws. *See, e.g.*, John Cooper, *Defamation By Satellite*, 132 Solic. J. 1021 (1988); Don J. DeBenedictis, *Moving Abroad: Libel Plaintiffs Say It's Easier Suing U.S. Media Elsewhere*, 75 A.B.A. J. 38 (Sept. 1989); Amy Dockser, *Plaintiffs Take Libel Suits Abroad, to Favorable Laws*, Wall St. J., June 6, 1989, at B1; Robin Pogrebin, *Libel Gripes Go Offshore: London is a Town Named Sue*, N.Y. Observer, Sept. 23, 1991, at 1. If anything, upholding English libel judgments in the United States would create the chilling effect and could create a dangerous precedent. Accordingly, this Court is unpersuaded by Defendant's argument.

CONCLUSION

For the foregoing reasons, Defendant's Supplemental Plea in Bar is overruled. Regarding Plaintiff's request for sanctions, such request is denied. While Defendant's Supplemental Plea in Bar was misguided and only thinly supported by preexisting law, it is not sanctionable. However, based on this opinion, Paragraph 13 of Defendant's Grounds of Defense is hereby stricken as moot. An Order is attached.

Sincerely,

[redacted]

Penney S. Azcarate, Chief Judge
Fairfax County Circuit Court

PSA/mra
Enclosure

OPINION LETTER

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II.,	)	
	)	
Plaintiff	)	**Case No.: CL-2019-2911**
	)	
v.	)	
	)	
	)	
	)	
AMBER LAURA HEARD,	)	
	)	
Defendant.	)	

ORDER

THIS MATTER CAME BEFORE THE COURT on July 22, 2021, on the Defendant's Supplemental Plea in Bar.

ADJUDGED, ORDERED, and **DECREED** as follows:

The Court, having considered the arguments of the parties and for the reasons set forth in the Court's letter opinion of today's date, hereby OVERRULES Defendant's Supplemental Plea in Bar. Paragraph 13 of Defendant's Grounds of Defense is hereby stricken as moot.

Entered this 17th day in of August, 2021.

[redacted]

Chief Judge Penney S. Azcarate

ENDORSEMENT OF THIS ORDER BY COUNSEL OF RECORD FOR THE PARTIES IS WAIVED IN THE DISCRETION OF THE COURT PURSUANT TO RULE 1:13 OF THE SUPREME COURT OF VIRGINIA.