Superior Court of California
County of Los Angeles

Department 26

ROOM FULL OF SPOONS INC.; RICHARD HARPER; FERNANDO FORERO MCGRATH; MARTIN RACICOT D.B.A. ROCKHAVEN PICTURES; PARKTOWN STUDIOS INC.; and RICHARD STEWART TOWNS, Petitioners, v. WISEAU STUDIO, LLC; and TOMMY WISEAU D.B.A. WISEAU-FILMS, Respondents.	Case No.: 21STCP03990 **[PROPOSED]** **STATEMENT OF DECISION**

Procedural Background

On December 6, 2021, Petitioners Richard Harper, Fernando Forero McGrath, Martin Racicot D.B.A. Rockhaven Pictures, Room Full of Spoons Inc., Parktown Studios Inc. and Richard Stewart Towns (collectively "Petitioners") filed the instant petition to recognize a Canadian foreign judgment against Respondents Wiseau Studio, LLC and Tommy Wiseau

D.B.A. Wiseau-Films (collectively "Respondents") pursuant to the Uniform Foreign-Country Money Judgments Recognition Act – *i.e.*, Code of Procedure Sections 1713, *et seq.*

On June 2, 2023, the Parties stipulated that there would be no in-person testimony and that trial would be conducted by written briefing with a ruling pursuant to California Rules of Court, Rule 3.1590. (Stipulation filed 6/2/23.) The Parties stipulated that the Petitioners' Trial Brief filed on May 18, 2023 and the Respondents' Amended Trial Brief filed on May 26, 2023 would serve as each party's opening statement, closing briefs would be submitted on June 7, 2023, and any rebuttal briefs would be filed on June 9, 2023. (Stipulation filed 6/2/23.) The Parties further stipulated that the evidence would consist of Trial Exhibits 1-9; 200-221; 229-236; and 237-240. (Stipulation filed 6/2/23.)

On June 7, 2023, Petitioners and Respondents each filed closing arguments. On June 9, 2023, Petitioners and Respondents each filed rebuttals. On June 16, 2023, the Court took the matter under submission.

On July 13, 2023, the Court noted that the exhibits received did not correspond to the June 2, 2023 stipulation and that the Court was not in receipt of certain exhibits. (Minute Order 7/13/23.) Accordingly, the Court took the matter out of submission and ordered the parties to clarify the evidentiary record by August 1, 2023. (Minute Order 7/13/23.)

On August 1, 2023, the Parties filed an amended stipulation specifying that the Court would receive into evidence Trial Exhibits 1-9, 200- 221, and 229-236 and that exhibit 240 would be offered by Respondents and objected to by Petitioners in part. The Parties further electronically filed all Trial Exhibits. On August 1, 2023, the Court took the matter under submission. (Minute Order 8/1/23.) The Court rules on the petition as follows.

Request for Judicial Notice

In conjunction with the trial brief, Respondents request judicial notice of the following foreign laws and rules:

A. Courts of Justice Act, R.S.O. 1990, Chapter C. 43 at Section 131 Historical version for the period January 1, 2020 to July 7, 2020
B. Courts of Justice Act, R.R.O. 1990, Reg. 194 Rules of Civil Procedure at Rule 57.01 Historical version for the period March 23, 2020 to June 25, 2020

As the Court may take judicial notice of "[t]he law of an organization of nations and of foreign nations and public entities in foreign nations[,]" (Evid. Code, § 452(f)), and the parties stipulated to the Court taking judicial notice of these rules, Respondents' requests for judicial notice are GRANTED.

Evidentiary Objections

Petitioners object to portions of Trial Exhibit 240 – which consists of excerpts from the January 19, 2023 Deposition of Petitioner Richard Harper. The Court rules as follows:

1. At Page 19:4-6 – Overruled
2. At Page 19:11-25 – Overruled
3. At Pages 20:24-21:5 – Sustained, Relevance
4. At Pages 22:21-23:24 – Overruled
5. At Pages 24:25-25:7 – Overruled
6. At Pages 26:17-29:4 – Overruled
7. At Page 36:13-18 – Overruled
8. At Page 61:16-20 – Overruled
9. At Pages 63:10-64:4 – Overruled
10. At Pages 66:21-67:13 – Overruled
11. At Pages 71:9-72:6 – Overruled
12. At Page 75:12-15 – Overruled
13. At Page 76:17-21 – Overruled
14. At Pages 78:14-79:13 - Overruled
15. At Page 87:4-10 - Overruled

Summary of Underlying Proceeding

In 2003, Respondents released the feature film *The Room* which despite opening to a box office flop and to terrible critical reviews became a cultural phenomenon. Described as the "Citizen Kane of bad movies," *The Room* is still shown monthly in theaters around the world. (Ex. 2, ¶ 15.) Petitioner Richard Harper attended a substantial number of these showings, developing a certain affliction to the film. Motivated by this affliction, Harper had the idea of making a documentary about *The Room*. Petitioners worked on this documentary for several years, making contributions from their personal funds, as well as raising money for it through crowdfunding on Kickstarter. The documentary was named *Room Full of Spoons*, in honor of one of the most infamous flaws in the film. (Ex. 2, ¶ 29.)

After initially expressing no objection to the making of *Room Full of Spoons,* Respondent Wiseau began showing his disapproval of the documentary in March 2015. (Ex. 2, ¶ 31.) Respondent Wiseau's efforts included demands towards the Petitioners to stop using footage from *The Room* and a web-series titled "Shame on You" on YouTube. (Ex. 2, ¶ 35.) Despite these attempts, the documentary was completed in January 2016. *Room Full of Spoons* is 109 minutes long, 7 minutes of which are clips from *The Room* itself. (Ex. 2, ¶ 37.) In 2016 and 2017, the documentary had limited screenings in Europe and North America. These efforts were cut short by Respondent Wiseau's threats to exhibitors, as a result of which Petitioners lost the significant expenses and efforts they had put into these screenings. Petitioners' most significant loss was perhaps a potential distribution agreement with Gravitas Ventures, LLC. (Ex. 2, pp. 49-51.)

On June 14, 2017, Respondent Wiseau's lawyers sought an injunction in Toronto to prevent the release of *Room Full of Spoons.* (Ex. 2, ¶ 54.) The motion proceeded *ex parte*, due to the fact that Petitioners were given inadequate notice and were unable to participate. (Ex. 2, ¶ 54.) Justice Diamond granted the injunction and set the return date for October 10, 2017. (Ex. 2, ¶ 54.) Justice Koehnen dissolved the injunction on November 1, 2017, finding that Respondents

failed to make the proper disclosures on the earlier *ex parte* hearings seeking the injunction. (Ex. 2, ¶¶ 65-69.) In the meantime, Petitioners counterclaimed against Respondents, claiming that Respondents interfered with the proper distribution of the documentary. The case was eventually tried before Judge Schabas over eight days (January 6-10, 13, 14 and 17, 2020). (Pet. Closing Brief, p. 6.)

After hearing both Respondents' claim and Petitioners' counterclaim, Judge Schabas granted damages in favor of Petitioners against Respondents. (Ex. 2, ¶ 251.) Respondents brought a motion to vary the judgment, which Judge Schabas denied. (Ex. 4.) Respondents then attempted to appeal the decision to the Court of Appeal of Ontario and the Supreme Court of Canada. (Exs. 6-9.) Respondents' efforts were unsuccessful, resulting in a dismissal of the appeal by the Supreme Court of Canada. (Ex. 9.)

The total principal amount on the Canadian judgement is $1,089,010.16 USD plus interests, $550,000 USD of which are compensatory damages, $481,521.80 of which are costs, with the rest of the amount consisting of additional awards for the post-trial motions and appeals. (Pet. Closing Brief, p. 7.) The award for costs ($481,521.80 USD) consisted of $406,456.85 USD in attorney's fees, $278,567.54 USD of which was assessed on a "substantial" indemnity basis, while $81,128.79 USD was assessed on a "partial" indemnity basis, and $75,064.95 USD in expert fees. (Ex. 3.) Additionally, Petitioners were awarded $200,000 CDN in punitive damages, which Petitioners have excluded from this petition.

Discussion

Petitioners seek to domesticate the Canadian Judgment, in the total amount of $1,089,010.16 USD plus interest.

The Uniform Foreign-Country Money Judgments Recognition Act ("The Act")– Code of Civil Procedure section 1713, *et seq.* – "applies to foreign-country judgments that grant or deny

recovery of a sum of money and that are final, conclusive, and enforceable under the law of the foreign country." (*Hyundai Securities Co., Ltd. v. Lee* (2013) 215 Cal.App.4th 682, 688.) Pursuant to the Act, within 10 years of when the foreign-country judgment becomes effective, the party seeking recognition must file an action seeking recognition. (CCP §§ 1718, 1721.)

The Act "allocates the burden of proof for establishing whether a foreign-country money judgment is within the scope of the Act and whether there is any ground for not recognizing the existence of the judgment. (§§ 1715(c), 1716.) The party seeking recognition of a foreign-country money judgment has the burden to establish entitlement to recognition under the Act, while the party resisting recognition has the burden of establishing a specified ground for nonrecognition. (*Ibid.*) The Act specifies that if the court finds that a foreign-country money judgment is entitled to recognition in California then, to the extent the judgment grants or denies recovery of a sum of money, it is conclusive between the parties to the same extent as the judgment of a sister-state entitled to full faith and credit in this state would be conclusive, and the foreign-country money judgment is enforceable in the same manner and to the same extent as a judgment rendered in this state. (§ 1719.)" (*Hyundai Securities Co., Ltd, supra,* 215 Cal.App.4th at p.689.)

A myriad of defenses can be raised, which include "in essence, when the foreign-country money judgment was rendered under circumstances that violated due process or lacked impartiality or integrity, was without jurisdiction, was without notice, or was in conflict with California public policy or another judgment." (*Hyundai Securities Co., Ltd, supra,* 215 Cal.App.4th at p.689.) Further, the Act does not apply to a fine or penalty. (CCP § 1715(b)(2).)

However, "[u]nless one of the specified defenses applies, the court 'shall recognize a foreign-country judgment to which [the Act applies].'" (*Hyundai Securities Co., Ltd, supra,* 215 Cal.App.4th at p.689.)

The Act Applies to the Canadian Judgment

As noted above, the Act "applies to foreign-country judgments that grant or deny recovery of a sum of money and that are final, conclusive, and enforceable under the law of the foreign country." (*Hyundai Securities Co., Ltd., supra,* 215 Cal.App.4th at p.688.) However, the Act "does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is any of the following: … (2) A fine or other penalty." (CCP § 1715(b)(2).)

Here, a final, conclusive, and enforceable Canadian judgment was entered against Respondents. On April 23, 2020, the Ontario Superior Court of Justice entered a money judgment in favor Petitioners against Respondents for compensatory damages of $550,000 USD, $25,488.36 USD in prejudgment interest, and $481,521.80 in Costs.[1] (Ex. 1 [Canadian Judgment]; Ex. 2 [Reasons for Canadian Judgment]; Ex. 3 [Reasons for Costs].) On June 5, 2020, Respondents brought a motion to vary the judgment, which the Canadian trial court denied, and the Canadian trial court awarded Petitioners $20,000.00 in costs. (Exs. 4-5.) On July 23, 2021, Respondents' appeal with the Court of Appeal for Ontario was dismissed. (Ex. 8.) On April 14, 2022, the Supreme Court of Canada dismissed Respondents' application for leave to appeal from the Court of Appeal for Ontario's judgment. (Ex. 9.) Given that all appeals in Canada have concluded, there is a final, conclusive, and enforceable Canadian judgment entered against Respondents.

Respondents do not dispute these facts. Rather, in opposition, Respondents contend that the Canadian judgment is a fine or a penalty and is thus unenforceable under the Act. Specifically, Respondents argue that the damages the Canadian court awarded are completely disconnected from the wrongful injunction and are thus penal in nature. According to

[1] The Canadian Judgment also included $200,000.00 CDN in punitive damages, which Petitioners do not seek to confirm and are not at issue in the instant action. (Exs. 1-2.)

Respondents' argument, the Canadian court awarded these damages not to compensate Petitioners for the wrongful issuance of the injunction but rather to punish Respondents' conduct from 2015 through the trial. (Res. Closing Brief, p. 12.) Respondents also claim that the costs Judge Schabas assessed are fines or penalties. (Res. Closing Brief, p. 12.) Respondents cite mainly to Judge Schabas' "Reasons for Costs," particularly focusing on the portions that describe some of the policies behind the award for costs. (Ex. 3, ¶ 26 ["[C]osts serve a purpose beyond indemnification including encouraging settlement, deterring frivolous actions, and preventing abuse of the court's process."].) Respondents' argument that the damages totaling $550,000 USD are penal in nature is unfounded.

"Courts generally hold that the test for whether a judgment is a fine or penalty is determined by whether its purpose is remedial in nature, with its benefits accruing to private individuals, or it is penal in nature, punishing an offense against public justice." (*Hyundai Sec. Co., Ltd. v. Lee* (2015) 232 Cal. App. 4th 1379, 1388 ("*Lee II*").) "[F]actors in determining whether the judgment is for a fine or penalty include whether the judgment is for punishment rather than compensation; the judgment is payable to the state as opposed to a private party; the judgment arose from the penal laws of the country rather than a civil action; the damages were designed to make the defendant an example or punish the defendant; and a mandatory fine, sanction or multiplier was imposed on the defendant." (*Lee II* at p.1389.)

All of these factors militate against the conclusion that the Canadian Judgment here is a penalty. Applying the record here to the factors enumerated above, the Court finds that it is clear that the purpose of the award was to compensate Petitioners for their injuries sustained as a result of the wrongful injunction. When assessing the damages Petitioners sustained, Judge Schabas relied on the evidence of expert witness Doug Bania, who recounted in his affidavit the potential earnings that the documentary could have netted if the injunction had not prevented its release. (Ex. 2, ¶ 236.) The judge considered a variety of factors, including the timing of the injunction,

the aforementioned potential distribution deal with Gravitas Ventures, LLC, and also the future earning potential of the documentary. (Ex. 2, ¶ 237.) On the latter point, the judge actually reduced expert witness Bania's estimate for damages, finding that the documentary still had some earning potential due to the continued interest in *The Room*. (Ex. 2, ¶ 238.) All of this points to the fact that the goal of this award was to grant Petitioners fair compensation for their losses and not to punish Respondents to the fullest possible extent. The judgment here was clearly awarded in the context of a civil action, payable to Petitioner Room Full of Spoons Inc., and not to the state or any of its organs. (Ex. 2, ¶ 240.) Consequently, the compensatory damages totaling $550,000 USD do not constitute a penalty or a fine. These compensatory damages are enforceable under section 1715.

Respondents' claim that the costs assessed in the amount of $481,521.80 USD constitute a fine or a penalty is similarly unconvincing. A significant portion of the costs award, $406,456.85 USD to be exact, comprised of attorney's fees. Part of these were assessed on a "partial" indemnity basis, and the rest on a "substantial" indemnity basis. (Ex. 3.) In *Java Oil v. Sullivan*, the Court of Appeal was not convinced that "because attorney fees are a weapon in deterring groundless litigation and akin to punitive damages they are 'clearly penal'." (*Java Oil Ltd. v. Sullivan* (2008) 168 Cal. App. 4th 1178, 1188.) The Court of Appeal noted that the attorney's fees were ordered to compensate the winning party for the expenses incurred in defending a lawsuit, that they were payable to the party and not to the state, and that the judgment arose from a civil case. (*Ibid.*) Thus, analyzing the award under the relevant factors, the Court of Appeal determined that it "was not a penalty within the meaning of the [Act]." (*Ibid.*)

Notwithstanding the distinctions between "partial" and "substantial" indemnity, the costs here are similar to the attorney's fees in *Java Oil*. Judge Schabas, considering the various relevant factors, awarded Petitioners' attorney's fees as compensation for having to defend the

lawsuit. (Ex. 3.) Although this award was partly motivated by a policy of deterring frivolous litigation and abuse of the court's process, it was ultimately granted as compensation to Petitioners and not as a punishment against public justice. In fact, Judge Schabas found it unnecessary to award Petitioners the full costs requested. This goes to show that the judge was not motivated by the need to punish the respondents, but was acting in his discretion to arrive at a fair compensation for the expenses incurred by the Petitioners throughout the lawsuit. (Ex. 3.) Similar to the attorney's fees in *Java Oil*, the attorney's fees here were also payable to Petitioners and not to the state, with the judgment arising from a civil action. Consequently, the attorney's fees portion in the award for costs did not constitute a fine or a penalty.

The same essential analysis applies to the award of $75,064.95 USD in expert fees. The fees serve to compensate Petitioners' expert witness for the detailed report and other work prepared for the lawsuit. (Ex. 3, ¶ 24.) The analysis for the remaining factors is identical to the analysis of the attorney's fees portion of the award. In light of the above, this court finds that no portion of the $1,089,010.16 USD Canadian judgment constituted a fine or a penalty.

As the Canadian Judgment is not a penalty and is a final, enforceable, money judgment, the Act applies, and unless a specified defense applies, the Court must recognize the foreign judgment. (*Hyundai Securities Co., Ltd, supra,* 215 Cal.App.4th at p.689, ["Unless one of the specified defenses applies, the court 'shall recognize a foreign-country judgment to which [the Act applies].'"].) Accordingly, Respondents have the burden in showing that a specific ground for nonrecognition applies. (*Lee II* at p.1386, ["The party seeking recognition of a foreign-country money judgment has the burden to establish entitlement to recognition under the Act, while the party resisting recognition has the burden of establishing a specified ground for nonrecognition."].)

Compatibility with the Requirements of Due Process of Law

Respondents contend that the specific proceedings at the Canadian trial court were not "compatible with the requirements of due process of law." (CCP § 1716(c)(1)(G).) Respondents claim that the Canadian trial court denied them their right to counsel and that the Canadian judges were biased against them.

California courts have routinely held that the discretionary due process requirement of the Act is satisfied as long as the foreign procedures are "fundamentally fair" and do not offend "basic fairness." (*AO Alfa-Bank v. Yakovlev* (2018) 21 Cal. App. 5th 189, 215, ["The discretionary due process exception [under subdivision (c)(1)(G)] is reserved for challenges as to the 'integrity or fundamental fairness with regard to the particular proceeding leading to the foreign-country judgment.'"].) However, "'[f]oreign courts are not required to adopt "every jot and tittle of American due process."' [Citation.]" (*Ibid.*) Thus, "[i]n determining whether the specific proceeding that resulted in the judgment conformed to due process requirements, the question is whether the foreign proceeding conformed to what the Seventh Circuit has termed the 'international concept of due process.'" (*Id.* at p.216.)

"For example, in *Bank Melli Iran v. Pahlavi* (9th Cir. 1995) 58 F.3d 1406 (*Bank Melli Iran*), the evidence established that the defendant 'could not expect fair treatment from the courts of Iran, could not personally appear before those courts, could not obtain proper legal representation in Iran, and could not even obtain local witnesses on her behalf.' (*Id.* at p.1413.) These were not 'mere niceties of American jurisprudence' but rather 'ingredients of basic due process.' (*Ibid.*)" (*AO Alfa-Bank, supra,* 21 Cal.App.5th at p.215.)

Respondents first claim that the Canadian proceedings were inconsistent with due process because the Canadian judges overseeing the action effectively denied Respondents their right to counsel by allowing their attorneys to withdraw and not continuing the case. In support of this contention, Respondents rely on *Oliveros v. County of Los Angeles* (2004) 120 Cal.App.4th 1389

and *Vann v. Shilleh* (1975) 54 Cal.App.3d 192. However, Respondents' reliance on these cases is misplaced.

As a preliminary matter, *Oliveros* and *Vann* do not involve the recognition of a foreign judgment but rather involved whether the denial of a continuance violated American constitutional rights. However, "'[f]oreign courts are not required to adopt "every jot and tittle of American due process."' [Citation.]" (*AO Alfa-Bank, supra,* 21 Cal. App. 5th at p.215.) Thus, the mere fact that the Canadian action may not have comported with every nicety of American due process rights is insufficient.

Moreover, even if the Court were to apply the reasoning of *Oliveros* and *Vann* to the recognition of a foreign judgment, the underlying facts are distinguishable. In *Vann*, the defendant moved for a continuance at trial following the withdrawal of his attorney one court day before trial. (*Id.* at p.195.) The trial court denied Defendant's request for continuance because it "operate[d] under the policy of no continuance[s]." (*Ibid.*) The Court of Appeal concluded that this denial was an abuse of discretion. (*Id.* at p.196.) "A denial of a request for a continuance constitutes an abuse of discretion where the ruling is arbitrary, capricious, and contrary to the interests of justice under all the circumstances. [Citation.] It cannot be held that litigants in all cases may demand a continuance by engaging counsel just prior to a trial date, where there is no showing of any necessity for any change of counsel, but a necessary substitution of counsel just prior to trial may justify the granting of a continuance, in some cases." (*Ibid.*) The Court of Appeal concluded that no discretion was exercised as the trial court denied the continuance solely based on its policy against continuances. (*Id.* at pp.198-198.)

The Court of Appeal in *Vann* mentioned that "[t]here is a constitutional basis for the right to counsel in noncriminal proceedings and, in its narrowest definition, it is the right to appear by counsel in any adversary proceedings in which the adversary party has the benefit of the right to counsel." (*Id.* at p.200.) However, the Court of Appeal expressly declined to address whether

the court's denial of a continuance violated a constitutional right to due process. (*Ibid.*, ["However, in view of our holding that we reverse on the grounds that the denial of the continuance was an abuse of discretion, ..., we need not also decide whether the court denied to defendants a constitutional right to due process of law."].)

Similarly, in *Oliveros*, the defendant's counsel had an unexpected scheduling conflict with the trial of a prior filed action and requested a continuance which the trial court denied. (*Id.* at p.1392-1294.) The Court of Appeal noted that "[w]hile it is true that a trial judge must have control of the courtroom and its calendar and must have discretion to deny a request for a continuance when there is no good cause for granting one, it is equally true that, absent [a lack of diligence or other abusive] circumstances which are not present in this case, a request for a continuance supported by a showing of good cause usually ought to be granted.'" (*Id.* at p.1396.) In reversing the trial court, the Court of Appeal found that "the judge's reported comments suggest that the only factor he took into consideration, and which became the decisive factor in his ruling, was the impact of a continuance on the court's calendar. While this is a valid factor to be weighed with the other facts and circumstances presented, it cannot be the be-all and end-all. The court's failure to carefully balance all of the competing interests at stake, guided by the strong public policy in favor of deciding cases on the merits, constituted an abuse of discretion." (*Id.* at p.1399.)

The proceedings in the Canada action are readily distinguishable from both *Vann* and *Oliveros*. Here, the denial of a continuance was not merely due to the policy of the Canadian trial court or solely due to the schedule of the Canadian trial court. Rather, as Judge Koehnen – the case management judge for the Canadian action – detailed in the December 2, 2019 Endorsement, the Respondents filed the instant action 2 years previously through an urgent request for an ex parte injunction that was resolved several months later. (Ex. 217 ¶ 8.) However, Respondents did not take any actions to move the action forward. (Ex. 217 ¶ 8.) In February

2019, Petitioners sought a case management conference with Judge Koehnen and Respondents' then second counsel, and at this case management conference, the court set trial for early fall 2019. (Ex. 217 ¶¶ 9-10.) Soon after Respondents' second counsel withdrew which – as concluded by Judge Koehnen – was due to a lack of Respondents failing to provide a realistic retainer and refusing to pay counsel unless the specific task to be charged was approved by Respondents in advance. (Ex. 217 ¶¶ 11, 18.) Judge Koehnen concluded that Respondents had ample opportunity to prepare in time for the trial date set at the February 2019 case management conference; Respondents had several months to retain new counsel but only did so after the court denied a request for a lengthy continuance. (Ex. 217 ¶¶ 11-12.) On May 8, 2019, Judge Koehnen set a new timetable with Respondents' third counsel, setting trial for January 6, 2020.[2] (Ex. 217 ¶ 13.) However, Respondents' third counsel then sought to be removed again due to a lack of Respondents failing to provide a realistic retainer and refusing to pay counsel unless the specific task to be charged was approved by Respondents in advance. (Ex. 217 ¶¶ 13, 18.) Judge Koehnen stated that he informed Respondents on October 4, 2019 that the matter would proceed to trial on January 6, 2020 and urged Respondents to obtain counsel immediately. (Ex. 217 ¶ 14.) Respondents appointed their fourth counsel by mid-October 2019 who by mid-November 2019 sought to be relieved again due to a lack of Respondents failing to provide a realistic retainer and refusing to pay counsel unless the specific task to be charged was approved by Respondents in advance. (Ex. 217 ¶¶ 15-16, 18.) Judge Koehnen reasonably concluded, "[t]he [Respondents] have used their lack of counsel as an excuse in the past to amend the case timetable. I have a significant concern that they will try to do so again at the opening of trial, particularly given the short amount of time between now and trial." (Ex. 217 ¶ 21.) In fact, Judge Koehnen explicitly noted that "I understand that relationships between client and counsel can breakdown through no fault of either and that accommodation must sometimes be made for that. In this situation,

[2] The December 2, 2019 Endorsement states that the date was set on May 8, 2019 for January 6, 2019. As it would be impossible to set the trial for a date earlier in time, the Court presumes that this was a typographical error.

however, the fault clearly lies with the [Respondents]. The [Petitioners] are entitled to have the matter adjudicated. The [Respondents] should not be permitted to delay adjudication any further." (Ex. 217 ¶ 22.)

Unlike the courts in *Oliveros* and *Vann*, the Canadian trial court here considered numerous factors and concluded that Respondents were at fault for prior delay and that Petitioners had a right to have the matter adjudicated without further delay. The mere fact that another court might have exercised its discretion differently and granted Respondents' request for a continuance is not a denial of American due process -- let alone the denial of the international concept of due process for purposes of refusing to recognize an otherwise valid foreign judgment.

Respondents next claim that the Canadian judges were biased against them, and thus, the proceedings were inconsistent with due process of law. Respondents further claim that only an appearance of bias is required to violate California rights, relying on *Catchpole v. Brannon* (1995) 36 Cal.App.4th 237. Even presuming that this same standard applies to recognition of a foreign judgment – which it does not (*AO Alfa-Bank, supra,* 21 Cal. App. 5th at p.215) – Respondents' reliance on *Catchpole* is misplaced. *Catchpole* is no longer good authority and has been expressly disapproved by the California Supreme Court on this point. (*People v. Freeman* (2010) 47 Cal.4th 993, 1006, Fn. 4.) Rather the legal standard for evaluating bias under the due process clause of the U.S. Constitution is an objective standard. "[W]hile a showing of actual bias is not required for judicial disqualification under the due process clause, neither is the mere appearance of bias sufficient. Instead, based on an objective assessment of the circumstances in the particular case, there must exist ' "the probability of actual bias on the part of the judge or decisionmaker [that] is too high to be constitutionally tolerable."' [Citation.]" (*Id.* at p.996.)

Respondents fail to meet this objective standard. Rather, Respondents cite to several findings adverse to them and purportedly incorrect rulings by the Canadian court. Respondents

allege that these rulings showed bias on the judges' part. Erroneous rulings are insufficient to show bias. (*McEwen v. Occidental Life Ins. Co.* (1916) 172 Cal. 6, 11 ["Erroneous rulings against a litigant, even when numerous and continuous, form no ground for a charge of bias or prejudice .... Nor are a judge's expressions of opinion, uttered in what he conceives to be the discharge of his judicial duty, evidence of bias or prejudice."].) This is especially true if the party had the opportunity to review these rulings on appeal. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1112.) Similarly, a party's belief as to a judge's bias is irrelevant, as the standard for determining judicial bias is an objective one. (*United Farm Workers of America v. Superior Court* (1985) 170 Cal.App.3d 97, 104; *Leland Stanford Junior University v. Superior Court* (1985) 173 Cal.App.3d 403, 408 ["the litigants' necessarily partisan views [do] not provide the applicable frame of reference"].)

Respondents' allegations of biased conduct on the part of the Canadian judges do not demonstrate a probability of actual bias and are thus not inconsistent with the requirements of due process. The only examples that Respondents cite for this purpose are either rulings unfavorable to them or speculation inferred from these rulings.

For example, Respondents cite to the Canadian trial court's reasoning for the judgment. Respondents argue that "[t]he court awarded [Petitioners] punitive damages because "R accused the defendants of acting illegally, which is clearly defamatory..." (Ex. 2, ¶ 241, by "illegal" the court meant copyright infringement, and circumventing digital access-controls which P admitted to.) [¶] However, the court didn't think [Petitioners]' publications that stated [Respondent] obtained his wealth through fraud were defamatory. (Ex. 2, ¶ 227.)" (Respondents' Closing Brief at p.7:20-24.) Respondents' citation to paragraph 227 is unavailing. Paragraph 227 of the reasoning for the judgment does not address defamation. In fact, the Canadian court's reasoning for the judgment indicates that Respondents did not bring a claim for defamation. (Ex. 2 ¶ 177, ["If Wiseau does not like how he is portrayed in *Room Full of Spoons*, his claim may be for

defamation."].) Regardless, Respondents at most merely show unfavorable, erroneous rulings – not bias.

If Respondents believed that these unfavorable rulings were erroneous, they had the opportunity to appeal with the higher Canadian courts, which Respondents in fact pursued. (Exs. 6-9.) Respondents' belief that that the Canadian judges were biased against them is not enough because their allegations do not support a finding of objective bias. Similarly, the judges' appropriate use of discretion and decision-making power granted to them by Canadian law cannot by itself demonstrate that they had some sort of biased agenda against Respondents. To reiterate, nothing in the records amounts to a "probability of actual bias," especially not the discretionary rulings of the Canadian judges, even if the Court were to assume that they were erroneous. Consequently, Respondents fail to show bias in the Canadian proceedings that would suggest inconsistency with the due process requirement of the Act.

Repugnancy

Respondents' next defense is that the judgment is repugnant to California public policy. Respondents claim that the Canadian judgment is repugnant to California's policies on Freedom of Speech and Right to Petition, the Right to Counsel, and the Right to Privacy.

Courts of this state have the discretion not to enforce a foreign judgment if it "is repugnant to the public policy of this state or of the United States." (CCP § 1716(c)(1)(C).) "The standard is not simply that the law is contrary to our public policy, but instead that the judgment is so offensive to our public policy as to be ' " 'prejudicial to recognized standards of morality and to the general interests of the citizens....' " '[Citation.]" (*Java Oil Ltd., supra,* 168 Cal.App.4th at p.1189.)

Respondents' contentions are unpersuasive. There is nothing in the trial record to suggest that the judgment is repugnant to California's policies on Freedom of Speech and Right to

Petition. Respondents were able to pursue their copyright infringement claims in Canada without any hinderance. In fact, the record suggests that Respondents voluntarily chose Canada as the appropriate forum to pursue their action. (Ex. 200.) The fact that they did not prevail at trial and had a judgment for money damages entered against them in accordance with the laws of Canada on wrongful injunctions does not amount to a violation of Respondents' Freedom of Speech and Freedom of Petition. The evidence offered here fails to demonstrate that the judgment was contrary to California public policy, let alone repugnant.

Nor has there been any infringement upon Respondents' right to counsel. As mentioned above, Respondents were in fact represented at trial by counsel and were not forced into self-representation. Furthermore, the discretionary rulings of Judge Koehnen on continuances and withdrawals were based on striking a balance between the competing interest of the parties, an approach that is consistent with the laws and policies of California and certainly not repugnant to it.

Finally, Respondents' claim that the judgment was repugnant to California's policies on right to privacy is also unsupported. Their argument relies heavily on the fact that the Canadian judge admitted into evidence "sealed" California court records. Respondents are correct in stating that the California Constitution recognizes and protects ones right to privacy. (Cal. Const., art. I, § 1.) However, Respondents are unable to point to any evidence in the Canadian proceedings that would show repugnancy to this constitutionally recognized California right. Again, the Canadian trial judge evaluated the evidence presented to him and ruled according to his sound discretion. The record shows that Respondents did not offer any evidence that Petitioners obtained these records illegally nor that they had knowledge of the fact that they were sealed. (Ex. 2, ¶ 94.) This, coupled with the fact that these documents were of "little relevance" to the ultimate decision, led to the Canadian judge admitting them into the evidence. (Ex. 2, ¶ 94.) This discretionary evidentiary ruling by itself is not enough to meet the high standard of

repugnancy. Moreover, Respondents' have not offered any compelling evidence that this ruling or the usage of the sealed documents affected their constitutionally recognized privacy right or that it had a prejudicial effect on the ultimate conclusion of the Canadian court. Accordingly, Respondents fail to show that the Canadian judgment was repugnant to any of the California policies enumerated herein.

Respondents further claim that all the prior arguments similarly show that the Canadian court lacked integrity. This claim too is unsubstantiated. In accordance with Code of Civil Procedure section 1716, this Court has the discretion to refuse enforcing a judgment that "was rendered in circumstances that raise substantial doubt about the integrity of the rendering court." (CCP § 1716(c)(1)(F).) As discussed above, none of the above arguments raise any doubts about the integrity of the Canadian court. Accordingly, Respondents fail to meet their burden in showing that the Canadian judgment is repugnant.

The Judgment was Not Obtained by Fraud

Finally, Respondents contend that the Canadian judgment was obtained by fraud. They allege that Petitioners were only able to obtain the favorable judgment due to presenting fraudulent evidence, which also included the aforementioned "sealed" California court records. Section 1716 in relevant part provides a discretionary ground to refuse enforcement of the foreign judgment if it "was obtained by fraud that deprived the losing party of an adequate opportunity to present its case." (CCP § 1716(c)(1)(B).) Citing the comments to the Act, the Ninth Circuit Court of Appeals has explained that the term "fraud" in this context refers only to "extrinsic" fraud. (*De Fontbrune v. Wofsy* (9th Cir. 2022) 39 F.4th 1214, 1234.) "Examples of extrinsic fraud include instances where 'the plaintiff deliberately had the initiating process served on the defendant at the wrong address, deliberately gave the defendant wrong information as to the time and place of the hearing, or obtained a default judgment against the defendant based on

a forged confession of judgment.' [Citation Omitted.] Extrinsic fraud differs from intrinsic fraud, which includes 'false testimony of a witness or admission of a forged document into evidence during the foreign proceeding.' [Citation Omitted.] Those are concerns that 'should be raised and dealt with in the rendering court.'" (*Id.* at pp.1234-1235.)

Respondents' reliance on this defense is misplaced. Respondents do not allege, and the record does not support a claim that Petitioners deprived them of the opportunity to adequately present their case. The evidence to which Respondents point concerns allegedly fraudulent testimony or the admission of forged documents, which are all allegations of "intrinsic" fraud and not "extrinsic" fraud. Furthermore, these are issues that were clearly addressed by the presiding Canadian judge. (Ex. 2, ¶¶ 90-94.) There are no allegations that Petitioners engaged in any deliberate "extrinsic" fraudulent activities, such as sending incorrect notices or incorrect information as to the time and place of a hearing, that had the practical effect of depriving Respondents of the opportunity to argue their case on the merits. Respondents chose the Canadian forum and were clearly on notice of the Canadian proceedings; they were not fraudulently deprived of an opportunity to be heard in that forum. Consequently, Respondents fail to establish the kind of fraud that would allow this court the discretion to refuse enforcement of the Canadian judgment.

CONCLUSION AND ORDER

Based on the forgoing, the petition to recognize foreign judgment is GRANTED. The foreign judgment entered in the Ontario Superior Court of Justice is entitled to recognition and is enforceable in the same manner as a judgment rendered in this state. (CCP §1719.) Judgment shall be entered in favor of Petitioners Richard Harper, Fernando Forero McGrath, Martin Racicot D.B.A. Rockhaven Pictures, Room Full of Spoons Inc., Parktown Studios Inc. and

Richard Stewart Towns and against Respondents Wiseau Studio, LLC and Tommy Wiseau D.B.A. Wiseau-Films.

This proposed statement of decision will become the final decision of the court unless any party timely files objections. Petitioners are to file and serve a proposed judgment within 10 days.

The Court Clerk shall give notice to all parties.

DATED: October 2, 2023

Elaine Lu
Judge of the Superior Court