

JUL 23 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JERRY CZAJKOWSKI,

Plaintiff - Appellant,

v.

REED ELSEVIER, INC., a Massachusetts  
Corporation,

Defendant - Appellee.

No. 08-55554

D.C. No. 3:07-cv-02383-JM-LSP

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Jeffrey T. Miller, District Judge, Presiding

Submitted July 14, 2009\*\*

Before: SCHROEDER, THOMAS, and WARDLAW, Circuit Judges.

Jerry Czajkowski appeals pro se from the district court's judgment  
dismissing his diversity action alleging breach of contract in connection with his

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without  
oral argument. See Fed. R. App. P. 34(a)(2).

ownership of preferred stock. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Mpoyo v. Litton Electro-Optical Sys.*, 430 F.3d 985, 987 (9th Cir. 2005), and we affirm.

The district court properly dismissed the action because Czajkowski's prior federal action against defendant's predecessor involved the same cause of action and resulted in a final judgment on the merits. *See id.* at 987-88 (discussing elements of res judicata); *McClain v. Apodaca*, 793 F.2d 1031, 1033-34 (9th Cir. 1986) (noting that a plaintiff cannot avoid the res judicata effect of a prior judgment by pleading a new legal theory).

Czajkowski's remaining contentions are unpersuasive.

Appellee's Motion for Frivolous Appeal Determination and Sanctions Under Federal Rule of Appellate Procedure 38 is denied.

**AFFIRMED.**