

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

DEC 17 2009

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

ROBERT G. GALLAGHER, AKA Bobby  
Freeman; BETTY FRANKLIN,

Plaintiffs - Appellants,

and

JOHN FALCONI,

Plaintiff,

v.

RICHARD S. LONG; CYNTHIA A.  
LONG; TRUSTEES FOR THE  
RICHARD S. AND CYNTHIA A. LONG  
TRUST; LGF ENTERPRISES, LLC,

Defendants - Appellees.

No. 08-16418

D.C. No. 3:07-cv-00223-BES-  
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MEMORANDUM\*

Appeal from the United States District Court  
for the District of Nevada  
Brian E. Sandoval, District Judge, Presiding

Argued and Submitted October 7, 2009  
San Francisco, California

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

Before: SCHROEDER and BERZON, Circuit Judges, and STROM,<sup>\*\*</sup> District Judge.

Plaintiffs Robert Gallagher and Betty Franklin appeal the district court's dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6) of their diversity action against Richard and Cynthia Long, the Long trust, and a related company. The complaint alleged that the Longs had breached a settlement agreement intended to resolve a longstanding dispute over the parties' interest in a collection of celebrity memorabilia.

The underlying dispute was litigated in the courts of Delaware and resulted in a final judgment in favor of the Longs. This action was instituted while the Delaware litigation was still pending. There is no reason why the claims sought to be litigated here could not have been raised in the Delaware litigation, and for that reason the district court correctly dismissed the action as barred by res judicata. As our court has stated, res judicata means that "a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." Holcombe v. Hosmer, 477 F.3d 1094, 1097 (9th Cir. 2007) (quoting Allen v. McCurry, 449 U.S. 90, 93 (1980)). The same

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<sup>\*\*</sup> The Honorable Lyle E. Strom, Senior United States District Judge for the District of Nebraska, sitting by designation.

principle has been recognized by the courts of Delaware. LaPoint v. AmerisourceBergen Corp., 970 A.2d 185, 191-92 (Del. 2009).

AFFIRMED.