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Jurisdiction	U.S.A.
Tribunal	U.S. District Court for the Central District of California
Date of the decision	21 June 2023
Case no./docket no.	CV 18-10164-CJC (GSJx)
Case name	*Texmont Design Ltd. v. Halston Operating Comp. LLC et al.*

Order Granting Plaintiff's Motion in Limine to Bar Evidence Regarding Statute of Frauds Defense

I. Introduction

Plaintiff Texmont Design Limited brings this breach of contract action against Defendants Halston Operating Company, LLC, House of Halston, LLC, and Xcel Brands, Inc. Texmont, a Hong Kong-based clothing manufacturer, alleges that Defendants failed to pay it more than $1 million due on manufacturing purchase orders. Now before the Court is Texmont's motion in limine to exclude evidence relating to Xcel's statute of frauds affirmative defense. For the following reasons, Texmont's motion is **granted**.[1] 1

II. Legal Standard

A motion in limine is a procedural tool to expedite trial and prevent anticipated prejudicial evidence before it is offered. *Luce v. United States*, 469 U.S. 38, 40 n. 2 (1984); *see also* Fed. R. Civ. P. 16(a)(1) (permitting courts to consider matters that will aid in the disposition of the action); Fed. R. Evid. 403 (authorizing exclusion of probative evidence that is «substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence»); Fed. R. Evid. 104(c) (authorizing hearing on a preliminary question outside the hearing of the jury). The advantage of a motion in limine is «to avoid the futile attempt to unring the bell in the event a motion to strike is granted in the proceedings before the jury.» *Amtower v. Photon Dynamics, Inc.*, 158 Cal. App. 4th 1582, 1593 (2008) (citation and quotes omitted). 2

[1] Having read and considered the papers presented by the parties, the Court finds these matters appropriate for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15.

III. Discussion

Texmont argues that testimony or evidence in support of Xcel's statute of frauds defense is irrelevant. The Court agrees. 3

The claims in this case concern an agreement for the international sale of goods, and accordingly are governed by the United Nations Convention on the International Sale of Goods (the «CISG»). And under the CISG, «[a] contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses.» CISG, Art. 11. 4

As a result, «there is no statute of frauds requiring that all materials contract terms be in writing» under the CISG. *Urica, Inc. v. Pharmaplast S.A.E.*, 2014 WL 3893372, at *11 (C.D. Cal. Aug. 8, 2014), *aff'd sub nom. Urica, Inc. v. Medline Indus., Inc.*, 669 F. App'x 421 (9th Cir. 2016); *see also Fercus, S.r.l. v. Palazzo*, 2000 WL 1118925, *3 (S.D.N.Y. 2000) («Unlike the U.C.C., the Statute of Frauds does not apply to the C.I.S.G. and parol evidence is permitted to prove that a contract has been agreed to by the parties»); *Filanto, S.p.A. v. Chilewich International Corp.*, 789 F. Supp. 1229, 1238 n. 7 (S.D.N.Y. 1992) («It should also be noted that, in provisions potentially relevant to this motion, the [CISG] essentially rejects both the Statute of Frauds and the parol evidence rule.»). Because Xcel cannot rely on the statute of frauds affirmative defense, evidence or testimony on that topic is irrelevant and thus inadmissible. 5

Xcel argues that (1) the CISG only covers contracts directly for the sale of goods and excludes non-sale of goods contracts, and (2) Texmont's claims in this case are for a guaranty, which «arguably relat[es] to a sale of goods transaction,» but «is not itself a contract for the sale of goods subject of the CISG.» In support, Xcel points to a line in Texmont's opposition to its motion for summary judgment in which Texmont argued that Xcel's CEO «offered to guaranty the payment of amounts due [to Texmont] in exchange for [Texmont's] agreement to manufacture garments under the Xcel-owned brands name.» Xcel's argument is unavailing. The SAC alleges that Xcel agreed to pay for the goods that Texmont delivered. While Texmont did use the word «guaranty» in its opposition to summary judgment, that does not change the fundamental nature of Texmont's breach of contract claims. 6

IV. Conclusion

For the foregoing reasons, Texmont's motion in limine to exclude evidence and testimony regarding Excel's statute of frauds affirmative defense is **granted.** 7