

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARLES RUSSELL LLP	:	CIVIL ACTION
	:	
v.	:	
	:	
FINANCIAL SOFTWARE	:	
SYSTEMS, INC.	:	No. 06-cv-762-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

November 16, 2006

Plaintiff Charles Russell LLP, a law firm based in London, England, brought this diversity action against its former client, a Pennsylvania corporation, to recover unpaid fees for legal services rendered in England. Defendant had retained plaintiff in April 1998 to defend it against a trademark infringement claim in England. After two days of trial in an English court in July 2002, the parties settled the dispute; defendant was not required to pay any money. During the four years of legal representation, plaintiff sent defendant periodic bills, all of which were paid in full except for two issued in July 2002 and September 2002. Defendant agreed in October 2002 to make monthly payments on the remaining bills, but stopped making such payments in January 2004. The total amount still outstanding is £189,576.25.

The case is now before this court on plaintiff's motion for summary judgment. Oral argument was held on October 24, 2006.

The motion will be denied.

Plaintiff has moved for summary judgment on the ground that this action is governed by English law and that a provision of English law, section 70 of the Solicitors Act of 1974, bars the defendant from challenging the reasonableness of the bills. Section 70, entitled "Taxation on application of a party chargeable or solicitor," provides in relevant part:

- (2) . . . on an application being made by the solicitor or, subject to subsections (3) and (4), by the party chargeable with the bill, the court may on such terms, if any, as it thinks fit (not being terms as to the costs of the taxation), order --
 - (a) that the bill be taxed; and
 - (b) that no action be commenced on the bill, and that any action already commenced be stayed, until the taxation is completed.

- (3) Where an application under subsection (2) is made by the party chargeable with the bill --
 - (a) after the expiration of 12 months from the delivery of the bill,
[. . .]
no order shall be made except in special circumstances and, if an order is made, it may contain such terms as regards the costs of the taxation as the court may think fit.

- (4) The power to order taxation conferred by subsection (2) shall not be exercisable on an application made by the party chargeable with the bill after the expiration of 12 months from the payment of the bill.

Both sides have presented their interpretations of the English law, but have offered no expert testimony. It is up to the court to make determinations of foreign law. Fed. R. Civ. Proc. 44.1; see also 42 Pa. C.S. § 5327.

While it is likely that this action should in general be governed by English law (either chosen by the parties, as plaintiff argues,¹ or in accordance with the Pennsylvania approach to conflict of laws), it does not follow that English law therefore applies to each and every issue.

Section 70 of the Solicitors Act defines the requirements for invoking the taxation power of the English courts and the effects of a taxation of the bill. There are several arguments against applying section 70 to bar defendant in this action from challenging the reasonableness of the bills. First, plaintiff has chosen to file the action in this court. Even if defendant were still within the 12 months period to apply for taxation, how can such an application be made in this court? This court does not in any event have the power to order a taxation of the bill

¹ Plaintiff alleges that a letter entitled "Terms of Business" is a contract between the parties. That letter contains the following provision:

Jurisdiction

These terms of business are governed by English Law and in the unhappy and unlikely situation that we are in dispute over any aspect of these terms of business, or over any aspect of the work which we have undertaken on your behalf, then any such dispute will be subject to the exclusive jurisdiction of the English Courts.

It is somewhat puzzling that plaintiff insists on enforcing the choice of law provision in the earlier part of the sentence, but ignores the last clause of the sentence, which vests exclusive jurisdiction over any disputes in the English courts.

or to order defendant to apply to an English court for a taxation.

Second, the time limitations in section 70(3) and (4) do not apply to the solicitor but only to the client. Plaintiff has not explained what public policy lies behind this asymmetry.

Pennsylvania law, on the other hand, does not impose such unequal time limitations on the attorney and the client who disagree over the reasonableness of legal fees.

Third, it is not clear that English law in fact affords defendant no remedy in this situation. The House of Lords' decision Harrison v. Tew [1990] 2 A.C. 523, cited by plaintiff in support of its position, held that the statutory scheme laid down in section 70 ousted the English court of its inherent jurisdiction to order taxation. Tew did not decide that the court had no jurisdiction at all to entertain challenges of the bill for unreasonableness after the statutory deadline. In fact, Lord Lowry assumed that, in theory, a client could rely on the court's ordinary jurisdiction in dealing with contested claims - which might then involve the court in referring the bill to a taxing master, but decided that this possibility was precluded by the facts of Tew:

In the course of a well-marshalled argument . . . Mr Tugendhat [the client's counsel] relied also on the ordinary jurisdiction to which Sterling J. referred to in In re Park, but on the facts of this case as

narrated by Dillon L.J. [the lower court judge], the client's action for an account of moneys come to the hand of the solicitor would have been met by a plea of settled account.

Id. at 538. This interpretation of Tew was adopted by the Court of Appeals in Turner & Co. v. O Palomo SA 1 W.L.R. 37 [1999]. In that case, a solicitor brought an action against the client after the 12-month statutory period for taxation had expired. The lower court granted summary judgment for the solicitor on liability but ordered the amount due to be assessed. The Court of Appeals affirmed the lower court's decision, holding:

a client who is sued by his solicitor for the amount of his charges is entitled to challenge the reasonableness of the sum claimed, notwithstanding that the period during which he may apply for an Order for taxation under what is now § 70 of the 1974 Act has expired.

Id. at 48. Tew was distinguished in the manner described above, as a case in which the client had sought only taxation. The Turner court also explained that the statutory power of taxation and the court's ordinary procedures for assessing what sum is due are not duplicative, because the former has certain advantages not present in the latter.

For all of these reasons, plaintiff's motion for summary judgment will be denied.

An order follows.

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FINANCIAL SOFTWARE	:	
SYSTEMS, INC.	:	No. 06-cv-762-JF

ORDER

AND NOW, this 16th day of November, 2006, IT IS ORDERED that Plaintiff's Motion for Summary Judgment is DENIED.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.