

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 91-1628

MICHAEL S. FAWER, S.A.,
A Professional Law Corporation,

Plaintiff-Appellant,

versus

DONALD S. EVANS,

Defendant-Appellee.

Appeal from the United States District Court for the
Southern District of Mississippi
(CA S89-0835(R))

(December 20, 1993)

Before REYNALDO G. GARZA, GARWOOD, and DUHÉ, Circuit Judges.*

PER CURIAM:

Plaintiff-appellant Michael S. Fawer, S.A., A Professional Law Corporation (Fawer), is the Louisiana professional law corporation of attorney Michael S. Fawer, who successfully represented defendant-appellee Donald S. Evans (Evans) in criminal defense matters in Mississippi from October 1986 through June 1988. There

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

was no written contract between Fawer and Evans. On June 7, 1988, Fawer sent Evans a bill in the amount of \$65,834.42 for legal services rendered by Fawer in those matters. After unsuccessfully trying for eighteen months to get Evans to pay his bill, Fawer finally filed this action for attorney's fees for the legal services rendered against Evans in Mississippi court on December 7, 1989. The complaint alleges that the professional legal services were furnished to Evans on open account. On the basis of diversity, Evans had the action removed to the United States District Court for the Southern District of Mississippi and moved for summary judgment on the ground that Fawer's claim was time-barred by the one-year limitations period provided by Mississippi Code § 15-1-29 for "an action based on an unwritten contract of employment."

The district court agreed with Evans, and granted Evans' motion for summary judgment, and dismissed Fawer's complaint on the ground that Fawer's action was barred by the referenced one-year limitations period. Fawer filed a timely notice of appeal.

Fawer contended below, and contends on appeal, that his action against Evans is an action "on an open account . . . and on any unwritten contract, express or implied" for which section 15-1-29 provides a three-year limitations period.

By order entered February 6, 1992, we certified to the Mississippi Supreme Court the question whether Fawer's action was governed by the referenced one-year limitations period of section 15-1-29 or by the referenced three-year limitations provision thereof.

By decision rendered December 2, 1993, the Mississippi Supreme Court answered the certified question in holding that:

"an attorney's action against his client for fees for professional legal services rendered by the attorney to the client on open account pursuant to an unwritten agreement is subject to the three-year limitations period prescribed by Miss. Code Ann. § 15-1-29 (Supp. 1992) for actions on an open account or any unwritten contract, not the one-year limitations period prescribed by the same statute for actions based on an unwritten contract of employment."

We now conclude, as we did previously, and as did the Mississippi Supreme Court, that if the referenced three-year limitations period of section 15-1-29 is applicable, the judgment of the district court must be reversed. In accordance with the decision of the Mississippi Supreme Court, we hold that the referenced three-year limitations period of section 15-1-29 is applicable, and accordingly the judgment of the district court is REVERSED and the cause is REMANDED for further proceedings.

REVERSED and REMANDED