

981 F.2d 1256, 1992 WL 386798 (C.A.5 (Tex.))
(Not Selected for publication in the Federal Reporter)
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This case was not selected for publication in the Federal Reporter.

Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Fifth Circuit Rules 28.7, 47.5.3, 47.5.4. (Find CTA5 Rule 28 and Find CTA5 Rule 47)

United States Court of Appeals,
Fifth Circuit.
TRANSTECHNOLOGY CORPORATION,
Plaintiff-Appellee,
v.
W. PAT CROW FORGINGS, INC., Defendant-Appellant.

No. 92-1323.
Dec. 23, 1992.

Appeals from the United States District Court for the Northern District of Texas (CA4 85 358 K).

Before GOLDBERG, JOLLY, and WIENER, Circuit Judges.

PER CURIAM.^{FN*}

FN* 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 Pursuant to that Rule, the court has determined that this opinion should not be published.

***1** In this appeal, the sole issue is whether the district court erred when it denied the plaintiff, W. Pat Crow Forgings, Inc., all of its attorney's fees because Crow failed to segregate its fees incurred

in prosecuting its claim from the fees incurred in defending against the defendant's counter claim. Finding that the district court committed no reversible error, we affirm.

In this diversity case, Texas law governs whether the plaintiff can recover attorney's fees. The general rule in Texas is that the plaintiff in a contract action can recover the attorney's fees he incurs while prosecuting his claim, but he cannot recover attorney's fees he incurs while defending against a counterclaim. See *Tex. Civ. Prac. & Rem.Code Ann. § 38.001* (West 1986); *Flint & Assoc. v. Intercon. Pipe & Steel*, 739 S.W.2d 622, 624 (Tex.Ct.App.1987). The plaintiff can, however, recover the attorney's fees associated with defending against a counterclaim "if they arise out of the same transaction and are so interrelated that their prosecution or defense entails proof or denial of essentially the same facts." *Id.*, at 624-625.

The district court found, *inter alia*, that "proof of Crow's claims rests upon different facts," and that "the record indicates that the legal work attributable to Crow's claim is easily distinguished from that required to prepare a defense to TransTechnology's counterclaim." Based on these findings, the district court explicitly ordered Crow to "segregate its attorney's fees." We cannot say that the district court erred when it ordered Crow to segregate its attorney's fee; Crow's claim and TransTechnology's counterclaim are based on different contracts and involve different facts.

Instead of complying with the district court's explicit order, Crow submitted affidavits from its attorneys claiming they could not segregate their fees. The district court found that Crow made no attempt to comply with its order. The record will support this view of the facts. Although the district court had already found that it was possible to segregate attorney's fees, the affidavits argue that they cannot segregate those fees. It is a reasonable assessment of Crow's affidavits to say that they

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challenge the court's order instead of complying with it.

Concluding that Crow's conduct deliberately inhibited the district court's duty to determine the reasonableness of Crow's claim for attorney's fees, the district court denied Crow's entire claim for attorney's fees. In this respect, the court did not exceed its authority. *See Chambers v. Nasco, Inc.*, 501 U.S. 32, 111 S.Ct. 2123 (1991).

Thus, after reviewing all of the district court's actions, we hold that the district did not commit reversible error. The judgment of the district court is therefore AFFIRMED.

C.A.5 (Tex.),1992.
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