

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

THE SOCIETY OF LLOYD'S,)
)
 Plaintiff,)
)
 v.) Case No. 4:03CV01113 HEA
)
 ROBERT W. FUERST, et al.,)
)
 Defendants.)

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff's Motion to Convert Its Judgments Against Defendants from Pounds to Dollars, [#204], and plaintiff's Motion for Protective Order, [# 202]. For the reasons set forth below, the Motion to Convert is granted. The Motion for Protective Order is denied, as moot.

Background

On July 12, 2004, this Court entered summary judgment in favor of plaintiff and against defendants. This Order found that plaintiff was entitled to recognition and enforcement of its English judgments against all defendants. In its motion for summary judgment, plaintiff requested that the Court enter judgment in its favor and requested specific amounts against each defendant, which were denominated in British pounds. The judgment was entered based on this request.

On December 20, 2004, plaintiff filed a petition in the Circuit Court of Missouri, St. Louis County, seeking to register the Court's July 12, 2004, Judgments. Defendants have challenged this petition, arguing that this Court's judgments are not enforceable under Missouri law because the amounts stated are not stated in dollars.

Plaintiff then filed the instant motion seeking to convert the amounts awarded into dollars. Plaintiff also seeks an order staying the defendants from proceeding in their efforts in the state court to have the judgments declared unenforceable.¹

Discussion

Unfortunate though it may be for the defendants, the continued attempts to forestall the inevitable must fail. While creative in their efforts, the absurdity of defendants' position cannot be overstated. Defendants appear to be arguing that the Court's entry of judgments in favor of plaintiff and against all defendants was meaningless. Query why any plaintiff would seek such relief under defendants' position, and why any court would ever enter a judgment which would, *ab initio*, be invalid, or otherwise unexecutable? Such a position flies in the face of the judicial system and would lessen the authority of the Court and the impact of its orders.

¹ Without discussing the Court's opinion regarding the propriety of an entry by this Court staying action by a state court, this motion will be denied as moot.

Clearly, this Court did not enter the judgments merely for the sake of their entry, rather, it goes without saying that the judgments were entered based on the record before the Court and are enforceable based on the Court's stated reasons articulated in the Memorandum and Order of July 12, 2004.

A judgment is a judgment. The fact that the award is stated in a foreign currency rather than United States Dollars does not render the judgment invalid. “[A]wards *may* be ordered to be paid in U.S. dollars, if the plaintiff so requests, . . . but [] a district court *is not required* to order the award to be paid in U.S. currency.” *Reliastar Life Ins. Co. v. IOA RE, Inc.*, 303 F.3d 874 (8th Cir. 2002)(emphasis in original). Further, the *Reliastar* Court held that “[o]ur reading of *Hicks [v. Guinness]*, 269 U.S. 71, 80 (1925)] is supported further by the position stated in the Restatement (Third) of Foreign Relations Law, which suggests that United States courts ordinarily enter judgments in U.S. dollars, but that nothing precludes a United States court from entering judgment in a foreign currency.” *Id.* Defendants have failed to present any persuasive argument or authority to overcome the validity and enforceability of this Court's judgments.

In order to appease defendants as to the validity of the judgment, and in order that there can be no question as to the amount defendants must pay under the July 12, 2004 Judgment, the Court, pursuant to its authority provided in Rule 60(b) of the

Federal Rules of Civil Procedure, will amend the judgment to reflect the conversion from British Pounds to U.S. Dollars.

Rule 60(b) provides, in pertinent part,

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; . . . (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1) . . . not more than one year after the judgment, order, or proceeding was entered or taken.

Because of defendants' persistence in seeking to avoid the judgments against them,² plaintiffs have been required to seek relief once again. The relief requested is justified in that under defendants' theory, operation of the judgment would serve to relieve defendants from paying the judgment which this Court has determined they are required to pay. This is precisely the type of insidious manipulation Rule 60(b) was enacted to remedy.

Having determined the judgment should be amended to reflect the conversion of pounds to dollars, the Court is next faced with the issues of the date of the conversion and the exchange rate. With respect to the date of conversion, the "judgment day" rule, *i.e.* the conversion from the foreign currency into dollars is

² Significantly, plaintiffs have been attempting to receive payment under the parties agreements since 1998.

made at the rate of exchange prevailing at judgment, *Deutsche Bank Filial Nurnberg v. Humphrey*, 272 U.S. 517, 519 (1926), is applicable. “[T]he judgment day rule applies only when the obligation arises entirely under foreign law.” *Reliastar*, 303 F.3d at 883 (quoting *In re Good Hope Chemical Corp.*, 747 F.2d 806, 811 (1st Cir. 1984)). As plaintiff correctly notes, it is undisputed that defendants’ obligations to pay plaintiff their Equitas premiums arose entirely under English law in accordance with their General Undertakings. As such, the judgment herein clearly arises entirely under foreign law requiring application of the judgment day rule. The applicable conversion date, therefore is July 12, 2004.

On July 12, 2004, according to the Federal Reserve Bank of New York certification, the conversion rate from British pounds to U.S. dollars was 1.8640 pounds to the dollar. Under this conversion rate, the judgments, as of July 12, 2004 (including interest from entry of the English Judgment to July 12, 2004), are as follows:

| | |
|----------------|------------------------------|
| Robert Fuerst: | £184,366.34 = \$1,020,956.32 |
| Hord Hardin: | £98,289.44 = \$544,296.28 |
| Harold F. Ilg | £123,273.42 = \$682,649.77 |
| Walter Klein | £99,364.09 = \$550,247.38 |
| Meade McCain | £381,210 = \$1,071,115.22 |

| | |
|--------------------|---------------------------|
| John Shillington | £88,282 = 256,277.12 |
| Cynthia Todorovich | £198,246 = \$522,121.35 |
| Michael Todorovich | £846,759 = \$2,379,205.39 |

Conclusion

Based upon the foregoing,

IT IS HEREBY ORDERED that plaintiff's Motion to Convert Its Judgments Against Defendants from Pounds to Dollars, [#204], is granted.

IT IS FURTHER ORDERED that plaintiff's Motion for Protective Order, [# 202], is denied, as moot.

A separate Amended Judgment reflecting this conversion, *nunc pro tunc*, will be entered this same date.

Dated this 25th day of February, 2005.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE