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Contracts - Accord and Satisfaction

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CONTRACTS

Accord and Satisfaction

An architectural firm was hired to design and plan a clinic for the defendants. The plans proved unacceptable to defendants who dismissed the firm and requested a bill for services rendered. The plaintiffs submitted to defendants a bill for \$1729. Defendants felt the bill was excessive and took no action with regard to it until plaintiffs threatened to hire a lawyer several months later. Defendant then sent a check for \$600 marked, "Paid in full" accompanied by a letter explaining that the check was intended to be a reasonable settlement of the account. The day following receipt of the check plaintiffs informed defendants that they could not accept the check as full payment but instead were accepting it as a partial credit on the full account. Defendants reiterated that this was all they intended to pay and the check was not intended to be partial payment. The check was then endorsed by plaintiff, "Accepted in partial payment only on account," and deposited in the bank. Defendants had no knowledge of the wording of the endorsement until it had been paid by the bank and returned to them. The trial court held, as a matter of law, that there had been a valid accord and satisfaction and entered summary judgment for defendants. On appeal, *held*, reversed. Although defendant's desired or intended their check for architectural services to be in satisfaction of the firm's demand for a larger sum, because there was no acceptance of the sum as payment in full by plaintiff firm which cashed the check, there was no accord and satisfaction.¹

It is impossible to reconcile this case with the established law of Virginia and other jurisdictions. The court reasons that under the Code of Virginia the burden of proof is on the debtor to show that the partial payment was, "expressly accepted by the creditor in satisfaction and rendered in pursuance of an agreement for that purpose."² The

¹ *Atkins v. Boatwright*, 132 S.E. 2d 450 (1963).

² VA. CODE ANN. Sec. 11-12 (1957 Rep. Vol.).

court continues its reasoning with other broad statements of general law such as, "both giving and acceptance in satisfaction are essential requisities to an accord and satisfaction,"³ and, "accord and satisfaction is a method of discharging a contract or cause of action, whereby the parties agree to give and accept something in settlement of the claim or demand of the one against the other, and perform such agreement."⁴ Then the court, citing no authority, says that where the creditor rejects the debtor's offer before depositing the check in the bank, there has been no meeting of the minds so no valid accord and satisfaction has occurred.

The common law and better reasoning says that the moment the check is deposited or used for the creditor's benefit with the knowledge that it is offered in full satisfaction of a disputed claim he agrees to the condition and is estopped from denying such agreement. It is then that the minds of the parties meet and the contract of accord and satisfaction becomes complete.⁵

The fact that the creditor protests against accepting the tender in full payment will not prevent the transaction from constituting a good accord and satisfaction where the debtor still insists that it must be accepted in full payment or not at all. One who accepts and cashes a check tendered as full payment of a disputed claim cannot vary the legal effect of such acceptance as an accord and satisfaction by merely ignoring the condition and protesting that he is accepting the check as partial payment only, or by indorsing on the check that it is accepted as part payment.⁶

Some authorities explain that if the creditor receives what the debtor offers as full satisfaction, and by a state-

³ *Virginia Carolina Electrical Works v. Cooper*, 192 Va. 78, 63 S.E. 2d 717 (1951).

⁴ *Owen v. Wade*, 185 Va. 118, 124, 37 S.E. 2d, 759, 762 (1946).

⁵ 1 Am Jur 2d *Accord and Satisfaction*, § 18 at 315 (1962).

⁶ 1 Am Jur 2d *Accord and Satisfaction*, § 18 at 315 (1962), 1 C.J.S. *Accord and Satisfaction*, § 34, at 528 (1936).

ment attempts to overcome the debtor's wish, then the acceptance would be tortious. The debtor's terms must be assented to if the money is used at all, otherwise the creditor is asserting that he, himself, is a tortfeasor when he may, by accepting, avoid the effect of any legal wrong.⁷ The check submitted as an accord and satisfaction when initially received has the effect of being an unsolicited offer to the creditor to act, and mere silence or inaction cannot operate as an acceptance of an offer *except* where the offeree exercised control over the object offered and such control is inconsistent with the rights of the offeror. If this occurs the offeror may, at his option treat it as an acceptance though the offeree manifests an intention not to accept.⁸

Thus the creditor should have had the following choices: either accept the compromise offer; return the check unused, thus rejecting the offer, and preserving his claim to the full amount; or, he could have held the check without cashing it and have preserved a cause of action for the full amount.⁹ The instant case is now law in Virginia, however, and the creditor has a fourth choice: deposit the check and notify the debtor that he is not accepting it in full settlement and still sue for the balance.

With this decision the law of accord and satisfaction is severely limited in Virginia, for what debtor will now dare to compromise his claim when by mere words of refusal at the time the creditor spends the compromise money he may preserve his right to claim the full amount of the debt. In cases of bona fide disputes the parties should be encouraged to settle out of court. This decision encourages the opposite if a mere protest to the debtor after accepting his tender can keep the minds of the parties from meeting.

⁷ Restatement, Contracts § 420 (1932).

⁸ Restatement, Contracts § 72 (1932).

⁹ *Kasco Mills, Inc. v. Ferebee*, 197 Va. 589, 90 S.E.2d 866 (1956).