

Accord and satisfaction through the use of an instrument - a continuing saga - what happens if the recipient of a check marks out "Paid in Full" and writes "No" and "Balance Due \$1,686.51" and deposits the check and receives the proceeds? The answer - it doesn't work and an accord and satisfaction results.

Helton v. Phillip A. Glick Plumbing, 277 Va. 352, 672 S.E.2d 842 (2009).

A. Background

Once again, the Virginia Supreme Court has revisited the issue of when an accord and satisfaction can be obtained through the use of a check under Virginia Code § 8.3A-311. This case contains an interesting factual twist.

Va. Code § 8.3A-311 provides in pertinent part that:

(a) If a person against whom a claim is asserted proves that (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply. For purposes of this subsection, a person does not act in good faith when tendering a check in full satisfaction of an obligation under a loan if (i) such check is for less than the amount due under the terms of the loan agreement and (ii) such check was tendered to a person without knowledge of a dispute concerning the loan.

(b) Unless subsection (c) applies [which it did not in this case], the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered in full satisfaction of the claim.

So let's summarize the law. First of all, under Va. Code § 8.3A-311, the burden of proof on the essential elements is on the debtor, the person that owes the money. That person must show that he or she "in good faith" tendered an instrument to the creditor in full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a "bona fide dispute," and (iii) the creditor obtained payment of the instrument, i.e., the check cleared and the creditor received the money evidenced by the check. The debtor must prove each of these elements, the most important of which, and sometimes the most difficult to prove, is that the check was tendered "in good faith." Also, remember that there is a special rule on good faith when the check is being tendered to pay off a loan.

So what must the debtor do? The debtor must either write something on the check itself or state something in an accompanying letter or other written communication that is a "conspicuous" statement to the effect that the instrument is being tendered in full satisfaction of the claim. In other words, something on the check or something in an accompanying piece of correspondence or other written communication must be sufficient to bring to the attention of the

recipient that the recipient had better watch out and that the debtor is attempting to take advantage of the “gotcha” rule.

B. Facts of the Case

In this case, the debtor, a homeowner, contracted with a plumber to have a hot water heater installed on a time and materials basis. The homeowner kept track of the hours related to the installation and after receiving the invoice, he told the plumber that the amount billed was “considerably high based on the hours worked multiplied by the rate per hour.”

Subsequently, the homeowner sent a letter to the plumber containing detailed allegations concerning wasted time. After sending this letter, the homeowner mailed a cashier’s check to the plumber in an amount which was substantially less than the amount billed. The cashier’s check included the words “paid in full” on the memo line on the front of the check. Accompanying the check the homeowner also sent another letter stating that the amount was reduced from the total amount billed due to the previously reported issue of overbilling of hours. Both the letter and the check indicated that no more payments would be made.

In response, the plumber mailed the homeowner another invoice asking for the remainder of the amount billed and he deposited the homeowner’s check in his account after crossing out the words “paid in full” on the check, and writing on the check “no” and “balance due \$1,686.51.”

C. The Court held the Plumber Couldn’t Have His Cake (the proceeds of the check) and Eat it Too (preserve a claim against the homeowner)

The court held that an accord and satisfaction had occurred notwithstanding the action by the plumber. The court found that the homeowner acted in good faith, the check had been properly tendered to the plumber, it was clearly marked “paid in full,” the accompanying letter indicated that the homeowner was submitting the check in full satisfaction of the claim and the plumber received the proceeds of the check. Because subsection (c) of Va. Code § 8.3A-311 did not apply, the court held that the claim was discharged notwithstanding the fact that the plumber had marked out the words “paid in full” and had written “no” and “balance due \$1,686.51.”

The court noted that while some jurisdictions have held that a creditor could avoid an accord and satisfaction by altering the “paid in full” notation, the majority of the cases that have dealt with the question have held otherwise, and Virginia followed the majority rule. Therefore, the person receiving the check cannot alter the condition under which the check was tendered and avoid an accord and satisfaction.