IN THE COURT OF APPEALS OF IOWA

No. 7-667 / 96-2061

FORT MADISON BANK & TRUST CO., as Administrator of the Estate of **BERTA BOYD,** Deceased,
Appellant/Cross-Appellee,

vs.

FARM BUREAU MUTUAL INSURANCE COMPANY,
Appellee/Cross-Appellant,

GEORGE L. NORMAN, as Administrator of the Estate of **DAVID BOYD,** Deceased,
Defendant.

Appeal from the Iowa District Court for Lee County, John G. Linn, Judge.

Fort Madison Bank & Trust Company appeals a district court ruling in favor of Farm Bureau Mutual Insurance Company on its post-judgment motion for order of satisfaction. **AFFIRMED IN PART; REVERSED IN PART AND REMANDED.**

Robert N. Johnson III of Saunders, Humphrey & Johnson, L.L.P., Fort Madison, for appellant.

James A. Pugh of Morain, Burlingame & Pugh, P.L.C., West Des Moines, for appellee.

Considered by Cady, C.J., and Vogel and Mahan, JJ.

VOGEL, J.

This case highlights some of the attendant problems with settlement negotiations, when payment is not contemporaneous with execution of settlement documents. The district court ruled that when Fort Madison Bank and Trust Company ("the Bank") cashed Farm Bureau Mutual Insurance Company's ("Farm Bureau") settlement check, there was an accord and satisfaction of a prior judgment. As we find substantial evidence to support the district court's finding of an accord and satisfaction, we affirm in part and reverse in part, remanding for further proceedings on the cross-appeal regarding attorney fees.

Background facts. On July 8, 1990, David and Berta Boyd, husband and wife, were killed in a one-car accident. Both died intestate. They were survived by one minor child, Jazzber, whose conservator was the Bank. The automobile was insured through Farm Bureau and both Berta and Jazzber were insured under the policy. Much litigation ensued between the Bank and Farm Bureau. After an appeal of some issues, the supreme court ordered the district court to enter judgment against Farm Bureau in favor of Berta's estate in the amount of $100,000, "plus interest as provided by law."

The supreme court ruling was filed on February 14, 1996, with procedendo issued on April 19th. The district court order on remand was not entered until May 14th. Meanwhile, the Bank wrote to Farm Bureau on April 12, offering to "dispose of the entire matter" with the settlement of four points. They were : 1) 10% interest rate on the judgment; 2) interest to accrue from the date of filing the action; 3) the amount of money available in David's estate on another aspect of the judgment; and 4) global releases. On April 19, Farm Bureau responded to the proposal with a check, a satisfaction of judgment form, and a request of an assignment of judgment against the estate of David. Farm Bureau considered the two letters as an offer and acceptance, as further evidenced with its accompanying settlement check.

On April 23, the Bank wrote to Farm Bureau indicating that the April 12th proposal was only partially accepted by Farm Bureau, and the Bank was waiting to hear from Farm Bureau on the acceptance of the remaining terms. The letter contained this language:

> If items 3 and 4 are not acceptable to Farm Bureau, we will return their check to you, or hold it to be applied against Farm Bureau's liability on the judgment to be entered by the District Court pursuant to the Procedendo.

Farm Bureau responded on April 24th by stating its understanding that the full sum had been tendered. The Bank replied in a letter dated April 30th, that its understanding was Farm Bureau had rejected the settlement proposal. Rather than return the settlement check to Farm Bureau, the Bank, on May 3, deposited the check in a trust account. On May 21, 1996, the Bank applied the funds to the judgment.

Farm Bureau subsequently moved for an Order of Satisfaction, pursuant to Iowa Code section 624.37. The district court ruled an accord and satisfaction had been effected by the Bank cashing the check tendered by Farm Bureau, and that judgment and interest directed by the supreme court were satisfied in full. The district court, however, denied Farm Bureau's claim for $100 and attorney fees for the Bank's failure to comply with Farm Bureau's demand to satisfy judgment.

Scope of review. Our review of this matter is for corrections of errors of law. Iowa R. App. P. 4. We view the evidence in a light most favorable to the trial court's findings, which have the effect and force of a jury verdict; we are bound by these findings if supported by substantial evidence in the record. *Hawkeye Motors, Inc. v. McDowell*, 541 N.W.2d 914, 916 (Iowa App. 1995).

I. Accord and satisfaction. The Bank argues the district court erred in concluding an accord and satisfaction had occurred based on the mere act of depositing the check in the trust account and applying it to the judgment.

Accord and satisfaction is "a means of discharging a contractual obligation by agreement of the parties to render and accept a different and substituted performance as full satisfaction of the preexisting claim." *Davenport Bank & Trust v. State Central Bank*, 485 N.W.2d 476, 479 (Iowa 1992); *see* 1 Am. Jur. 2d § 1 (1994). Acceptance of a check is tantamount to an accord and satisfaction:

> It is well settled in this jurisdiction that the authorized acceptance of money offered in satisfaction of a genuinely disputed claim, if accompanied by acts and declarations which amount to a condition that, if accepted, it is in satisfaction of the claim, amounts to an accord and satisfaction. A party whom such an offer is made has no

> alternative but to refuse and return the money, or to accept, and if he accepts on those conditions, his claim is canceled.

Mayrath Co. v. Helgeson, 258 Iowa 543, 547, 139 N.W.2d 303, 305 (1966).

One requirement that establishes an accord and satisfaction is that the claim or demand must be unliquidated. An unliquidated claim results when parties cannot agree upon a certain amount; it "cannot be exactly determined by the application of rules of arithmetic or of law." *Kellogg v. Iowa State Trav. Men's Ass'n*, 239 Iowa 196, 215, 29 N.W.2d 559, 569 (Iowa 1947)

The Bank argues there can be no accord and satisfaction as the check from Farm Bureau is merely applied to the amount already owed, which had been fixed by judgment. In other words, the judgment was liquidated. However, if any term of the judgment was disputed, it would remain at least partially as an unliquidated claim. The district court found the claim to be unliquidated. We are bound by this determination if it is supported by substantial evidence in this record. Iowa R. App. P. 14(f)(1).

Following the supreme court's ruling, two items remained in dispute: 1) the interest rate on the judgment and 2) the date from which the interest was to accrue. The Bank's position was that the interest started to accrue from the date of death (July 8, 1990); Farm Bureau's position was that interest should be calculated from the date of commencement of the action (September 5, 1991).[1] Thus, negotiations ensued to resolve these issues prior to procedendo issuing. The amount of the Bank's claim therefore remained unliquidated until either an agreement was reached or the district court entered its judgment on remand. The Bank, however, cashed the settlement check before an agreement was reached and eleven days before the district court judgment was entered.

We look to the intention of the parties as a controlling factor in establishing an accord and satisfaction. An intention must be:

> clearly manifested, and is to be determined from all the circumstances attending the transaction. There can, therefore, be no accord and satisfaction unless the creditor, or party receiving the thing or promise offered, understands, or from the circumstances of the offer, or the acts or declarations with which it is accompanied, is bound to understand, that he takes it in full satisfaction of his claim.

1 C.J.S. *Accord and Satisfaction* §6 (1995).

"Both parties must be aware the release or check is an accord and satisfaction for the claim. The intent of the parties may be shown by the documents themselves, the parties' words, and the surrounding circumstances. If it is shown that the creditor knew or *should have known* the document or release was intended as an accord and satisfaction, he may not later complain he did not intend to release his claim." *Seidler v. Vaughn Oil Co.*, 468 N.W.2d 474, 477 (Iowa App. 1991) (emphasis added).

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[1] We need not make a determination as to the date of interest accrual as we find a complete settlement was effected by accord and satisfaction, in the sum tendered to the Bank by Farm Bureau.

In this case, Farm Bureau tendered a check to the Bank, enclosing a satisfaction of judgment for the Bank to sign before it cashed the check. Farm Bureau's April 19th letter to the Bank stated, "Needless to say, we expect these documents to be executed and returned to prior to the cashing of our check."

The Bank's response on April 24th to Farm Bureau was that in the event the terms of the four-part proposal were not agreeable, it would return the check or *hold it against Farm Bureau's liability on the judgment to be entered by the district court.* The latter provision was a new term, not extended, nor contemplated in the original offer to Farm Bureau to settle or accept.

We find, as did the district court, the Bank was not accorded a choice under our law to insert a new term into the settlement proposal, cash the check, and then argue a settlement has not been effected. *See Sparks v. Spaulding Mfg. Co.*, 158 Iowa 491, 497-98, 139 N.W. 1083, 1085 (1913) ("Where an offer of accord is made on condition that it is to be taken in full of demands, the creditor doubtless has no alternative but to refuse it or accept it upon such conditions"); *accord Olson v. Wilson & Co.*, 244 Iowa 895, 904, 58 N.W.2d 381, 385 (1953). The Bank could have returned the check to Farm Bureau but it had no authority from Farm Bureau, within the framework of their settlement negotiations, to cash the check and apply the funds. According to the Bank's own correspondence, the terms of the judgment remained in dispute. If a good faith dispute exists, as it did in this case, the acceptance of a statement and check amounts to a complete accord and satisfaction. *Sparks,* 158 Iowa at 498, 139 N.W. at 1085.

Furthermore, we find an accord an satisfaction in this case resulted from the Bank's cashing of Farm Bureau's check pursuant to Iowa's Uniform Commercial Code (Iowa Code section 554.3311 (1997)):

> 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 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 as full satisfaction of the claim.

Id. We have already established in the foregoing discussion there was a good faith dispute and that Farm Bureau tendered an instrument to the claimant (Bank) in full satisfaction of the claim, and that the claim was unliquidated. We have additionally established the Bank knew or should have known when it cashed the check that Farm Bureau intended the check as a complete accord and satisfaction as Farm Bureau also enclosed a satisfaction of judgment for the Bank to execute as a condition precedent to cashing the check. Farm Bureau's letter conspicuously stated the check was tendered in full satisfaction of the claim.

We accordingly find there is substantial evidence in the record to support the district court's finding that there was an accord and satisfaction.

II. Fees. On cross-appeal, Farm Bureau contends that pursuant to Iowa Code section 624.37 (1995), it is entitled to $100 and reasonable attorney fees because of the Bank's failure to comply with its demand to satisfy judgment.

Iowa Code section 624.37 (1997) states:

> When the amount due upon judgment is paid off, or satisfied in full, the party entitled to the proceeds thereof, or those acting for that party, must acknowledge *satisfaction thereof* upon the record of such judgment, or by the execution of an instrument referring to it, duly acknowledged and filed in the office of the clerk in every county wherein the judgment is a lien. A failure to do so within thirty days after having been requested in writing shall subject the delinquent party to a penalty of one hundred dollars plus reasonable attorney fees incurred by the party aggrieved, to be recovered in an action for the satisfaction or acknowledgment by the party aggrieved.

Id. (Emphasis added.) This section mandates that the party entitled to the proceeds of the judgment (here, the Bank) to file an acknowledgment of the satisfaction of judgment with the clerk of court upon the receipt of such proceeds within thirty days. The district court incorrectly construed this code section when it held that the Bank acknowledging receipt of payment sufficed, as it did not intend the payment to satisfy the judgment. We find, as the district court found, that there was an accord and satisfaction in this case. Therefore, we determine that the Bank was required to do more than *acknowledge receipt*, it was required to *acknowledge satisfaction*.

Having carefully considered all arguments before us on appeal, we find substantial evidence in the record to affirm the district court's finding that an accord and satisfaction had been effected between the parties. We reverse the district court's denial of the $100 fee and reasonable attorney fees for Farm Bureau; we remand for determination of judgment in favor of Farm Bureau and of reasonable attorney fees incurred by Farm Bureau.

AFFIRMED IN PART; REVERSED IN PART AND REMANDED.