FILED
AUG 27 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

MARTIN AG SERVICE, INC.,	)	
Plaintiff-Appellant,	)	Filed August 27, 1986
vs.	)	6-143 85-670
ANAMOSA FEED MILL, INC.,	)	
Defendant-Appellee.	)	

202

Appeal from the Iowa District Court for Jones County (CL43-0383), Robert E. Ford, Judge.

Plaintiff appeals from summary judgment for defendant in an action seeking the unpaid balance due under a contract for construction of a grain storage system. **AFFIRMED.**

Thomas F. Breuch, Maquoketa, for plaintiff-appellant.

Jay A. Willems of Remly, Heiserman & Williams, Anamosa, for defendant-appellee.

Considered by Oxberger, C.J., Schlegel, and Sackett, JJ.

OXBERGER, C.J. 203

In this appeal, the plaintiff challenges the trial court's ruling granting the defendant's motion for summary judgment in the underlying action for the recovery of an unpaid balance due on a contract of construction. The defendant filed a motion for summary judgment asserting that no issues of material fact existed and that the defense of accord and satisfaction had been established. The trial court granted the defendant's motion and the plaintiff appeals. We affirm.

The undisputed facts reveal that the defendant tendered the plaintiff a check on a disputed account. In the lower left-hand corner of the check, the notation "Paid in Full" was written. The plaintiff deposited the check in a bank account, but claimed that it was never intended to be accepted as payment in full. The trial court held that the notation "Paid in Full" was a declaration that if the money was accepted, it was accepted in full satisfaction of the debt. Accordingly, the court entered summary judgment on the basis of accord and satisfaction for the defendant.

Our review of this action is on error. Iowa R. App. P. 4. Summary judgment is proper when there is no genuine issue of material fact and the moving party has demonstrated that he is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c); Matherly v. Hanson, 359 N.W.2d 450, 453 (Iowa 1984). In reviewing the grant of a motion for summary judgment, we examine the underlying facts and inferences found in the pleadings "in the light most favorable to the party opposing the motion, and give to such party the benefit of any doubt as to the propriety of granting summary judgment." Frohwein v. Haesemeyer, 264 N.W.2d 792, 795-96 (Iowa 1978). The movant for a motion for summary judgment bears the burden of proving the alleged defense of accord and satisfaction by a preponderance of the evidence. RMP Industries, Ltd. v. Linen Center, 386 N.W.2d 523, 524 (Iowa Ct. App. 1986).

An accord and satisfaction requires that valid consideration be offered, intended, and accepted as full satisfaction of an original claim. Electra Ad Sign, Inc., v. Cedar Rapids Truck Center, 316 N.W.2d 876, 880 (Iowa 1982). The following principles govern our determination of whether the doctrine of accord and satisfaction is applicable:

> To constitute an accord and satisfaction, where there is a bona fide dispute, it is necessary the money should be offered in satisfaction of the claim, and the offer accompanied with such acts and declarations as amount to the condition that, if the money is accepted, it is accepted *in satisfaction, and such that* the party to whom it is offered is bound to understand therefrom that, if he takes it, he does so subject to such condition. A party to whom an offer is thus made has no alternative but to refuse or accept it upon such conditions, and if he takes it his claim is canceled. In other words, if the offer is accepted by the offeree his claim is canceled and no protection, declaration or denial on his part, so long as the condition is insisted on, can vary the result.

Gibson v. Deuth, 220 N.W.2d 893, 895-96 (Iowa 1974).

The plaintiff contests the trial court's conclusions that the amount owed was genuinely disputed, that the debt was unliquidated, and that the plaintiff intended to accept the check as full payment. An examination of the facts discloses that each of these requisites of the doctrine of accord and satisfaction has been met.

First, we find that a genuine dispute existed as to the amount owing. Although the contract specified a projected cost of construction of $97,330, it also contained an open paragraph for additional work performed. The parties were in disagreement as to precisely what items were included in the contract price and whether certain payments made by the defendant should be offset therefrom. In addition, the parties disagreed as to where the responsibility for the payment of the sales tax would be borne. Upon the basis of this evidence, we conclude that a genuine dispute existed as to the amount remaining due on the contract.

Similarly, we find that the debt remaining was not a liquidated amount. In order for accord and satisfaction to occur, the debt in controversy must be "unliquidated." Olson v. Wilson & Co., 244 Iowa 859, 904, 58 N.W.2d 381, 385 (1953). "[I]f it is admitted that one of two sums is due, but there is a dispute as to which is the proper amount, the demand is unliquidated within the meaning of accord and satisfaction. Id. The liquidated debt concept is generally used in reference to a sum which the debtor does not in good faith dispute; Gibson v Deuth, 220 N.W.2d 893, 896-97 (Iowa 1974), See also 1 Am Jr. 2d Accord and Satisfaction 326. We believe the dispute as to the amount owing in the instant case was a good faith dispute and conclude that the amount of the debt was unliquidated.

The plaintiff asserts that in order for accord and satisfaction to apply, it must be shown that the party against whom it is asserted intended to accept the rendered payment in full satisfaction of the debt. This proposition is reiterated throughout caselaw. See, e.g., Kellogg v. Iowa State Traveling Men's Association, 239 Iowa 196, 211, 29 N.W.2d 559, 568-69 (Iowa 1947); Olson v. Wilson & Co., 244 Iowa 895, 904-05, 58 N.W.2d 381, 386 (Iowa 1953). These authorities also provide, however, that a determination of intent implicates more than mere words, and requires an examination of the surrounding facts and circumstances. Olson v. Wilson & Co., 244 Iowa at 904, 58 N.W.2d at 386. In Olson, the court held that the act of depositing a check which had been marked "paid in full" constituted the requisite showing of intent effecting the defense of accord and satisfaction. Id. The facts of the Olson case are strikingly similar to those of the case at bar, and we find these principles governing. Although the plaintiff wanted to cash the check received as partial payment only, the defendant clearly communicated its intent to remit the check as payment in full. Moreover, the plaintiff saw the defendant's notation and had knowledge of its meaning.

The plaintiff urges that the supreme court's holding in Brubaker v. Barlow, 326 N.W.2d 314 (Iowa 1982) mandates that the issue of intent is an improper consideration in a motion for summary judgment and must be given to a jury for resolution. We disagree. In Brubaker, the court stated that, "Unless [the] evidence is so clear that reasonable minds can reach only one conclusion, the question of intent is a fact question which cannot be disposed of on a motion for summary judgment." The record before us meets this standard of certainty.

We conclude that there are no facts alleged indicating a genuine issue of a material fact and hold that the trial court properly granted the motion for summary judgment. Accordingly, the ruling is affirmed.

AFFIRMED.