

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

David C. Meechan,	:	C.A. No. 06-06-0020
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
Newark Kubota, Inc.	:	
Registered Agents and Incorporators	:	
Of Delaware, Inc., Registered Agent,	:	
	:	
Defendant.	:	

**Upon application for attorney's fees**

**Submitted: March 29, 2007**

**Decided: March 30, 2007**

**Plaintiff's application is denied.**

Maggie Clausell, Esquire, 9 East Loockerman Street, Suite 205, Dover, Delaware 19901,  
Attorney for Plaintiff.

Patrick Scanlon, Esquire, 200 N.E. Front Street, Suite 101, Milford, Delaware 19963,  
Attorney for Defendant.

Trader J.

In this civil case, I hold that the plaintiff's acceptance and cashing of defendant's check offered in full satisfaction of the amount due constitutes an accord and satisfaction. Accordingly, the plaintiff's application for attorney's fees is denied.

The relevant facts are as follows: In an opinion dated February 15, 2007, I held that the plaintiff, David C. Meechan, is entitled to reasonable attorney's fees in connection with his claim for unpaid wages pursuant to 19 Del. C. §1103(c). On March 3, 2007, the defendant sent plaintiff's counsel a check for \$11,386.90 in full settlement of the claim. The check was \$1,500.00 in excess of the amount awarded by the Court. The transmittal letter (Defendant's Exhibit A) states, "Please find enclosed herewith my client's check made payable to David C. Meechan in the amount of \$11,386.90 for full settlement of the above matter." On March 6, 2007, the check was cashed by the plaintiff and on March 21, 2007, the plaintiff filed an application and affidavit for attorney's fees.

The issue in this case is whether the plaintiff's application for reasonable attorney's fees has been extinguished by an accord and satisfaction. A valid accord and satisfaction completely discharges the obligator's existing duty. *Levykin v. Henry*, 1998 WL 283403, \*2 (Del. Super. Mar. 23, 1998). It constitutes a defense to any attempt to enforce the claim. An overt manifestation of assent, not a subjective intent, controls the formation of a contract. The unexpressed subjective intention of a party is therefore not relevant. *Acierno v. Worthy Bros. Pipeline Corp.*, 693 A.2d 1066, 1070 (Del. 1997) (A Court should consider only a creditor's objective manifestation, not his subjective intent, when a check is negotiated that was offered as payment in full). The settlement of an unliquidated or disputed claim is sufficient consideration to support an accord and

satisfaction. *State, For Use of Warner Co. v. Massachusetts Bonding & Ins. Co.*, 9A.2d 77, 80 (Del. Super. 1939).

In the case before me, the Court held an evidentiary hearing on the application for attorney's fees. Although the Court has made an award for damages, the application for attorney's fees was contested. The time and labor required for this case, and the skill and ability of the attorney performing the legal services were disputed. Hence, the claim was unliquidated. Therefore, the acceptance and cashing of the check by the plaintiff constitutes an accord and satisfaction and a complete defense to plaintiff's application for attorney's fees. The application for attorney's fees is denied.

IT IS SO ORDERED.

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Merrill C. Trader  
Judge