

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

W. DENNIS DORAN & BEVERLY	:	
DORAN,	:	C.A. NO.: 06C-08-021 RBY
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
SCOTTSDALE INSURANCE	:	
COMPANY,	:	
	:	
Defendant.	:	

Submitted: December 7, 2007

Decided: December 19, 2007

H. Cabbage Brown, Jr., Esq., Brown, Shiels & O'Brien, LLC, Dover, Delaware for Plaintiffs.

Neil R. Lapinski, Esq., and Nicholas E. Skiles, Esq., Swartz Campbell, LLC, Wilmington, Delaware for Defendant.

*Upon Consideration of Defendant's
Motion for Summary Judgment*

DENIED

OPINION AND ORDER

Young, J.

This is a Motion for Summary Judgment stemming from an insurance agreement. The Plaintiffs, W. Dennis Doran and Beverly Doran (“Plaintiffs”) were insured by the Defendant. After a previous motion, the only remaining issue is payment for personalty damaged in a fire. Because material facts are in dispute, Defendant’s Motion for Summary Judgment is DENIED.

Procedural History

The Facts in this case are less than clear. On July 20, 2007, this Court heard Motions for Summary Judgment. At that point, one defendant, Michael Hazard, was released from the case entirely. The current Defendant, Scottsdale Insurance Co., (“Defendant”) remained; although the claims related to mold, unfair trade practices and punitive damages were dismissed. At that time, Plaintiffs requested 60 days to obtain arbitration, with the only surviving issue being whether further litigation was necessary relating to the personalty damaged. The Plaintiffs never sought arbitration. On October 12, 2007, Defendant Scottsdale renewed their Motion for Summary Judgment. Even though arguments were originally scheduled for November 2, 2007, the Plaintiffs did not file a response to this Motion until December 6, 2007, the day before the Motion was actually heard. Thus, Plaintiffs have demonstrated minimal effort to press their cause.

Discussion

Summary Judgment is, nevertheless, appropriate only when the moving party

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is entitled to judgment as a matter of law.¹ There can be no material facts in dispute. All reasonable inferences must be drawn in favor of the non-moving party.²

The Defendant argues an accord and satisfaction has occurred, relieving any further obligation. An accord and satisfaction replaces the original agreement. An accord is an offer to do something different from what was called for in the original agreement. Satisfaction is the acceptance of the accord. Without satisfaction, the accord remains executory.³ A completed accord and satisfaction requires the following three elements: (1) a good faith, bona fide dispute over the amounts owed; (2) the debtor's tender of an amount to the creditor with the intent the payment be in full satisfaction of the debt and (3) the creditor's agreement to accept the payment in full satisfaction.⁴ The dispute over amounts due must be based on honesty, and advanced in good faith, relying on reasonable, tenable or plausible grounds.⁵ A debtor cannot unilaterally choose to pay less than the amount due on a sum certain. An accord and satisfaction is a bilateral contract. It is controlled by the overt manifestations of the parties. The Court should not consider the parties' subjective beliefs.⁶ The burden to prove the existence of an accord and satisfaction by a

¹ Super. Ct. Civil R. 56.

² *Moore v. Sizemore*, 405 A.2d 679 (Del. Super. Ct. 1979).

³ *Brasby v. Morris*, 2007 WL 949485.

⁴ *Acierno v. Worthy Bros. Pipeline Corp.*, 693 A.2d 1066, 1068 (Del. 1997).

⁵ *Id.*

⁶ *Id.*

preponderance of the evidence is on the party alleging it.⁷

The Defendant argues that the Plaintiffs' action of cashing a check for the asserted "actual cash value" of the damaged personalty was satisfaction of the offered accord. While the Defendant is correct in stating that cashing a check can equate to the acceptance of an offer⁸, that is not sufficient standing alone. Cashing a check, clearly given with intent to satisfy a debt fully, is a definitive acceptance of the accord.⁹ This is not the case if the check, and/or the accompanying letter, is not clearly marked.¹⁰

Here, the check accompanied a letter sent directly to the Plaintiffs, not their attorney. The letter said, "in a spirit of compromise with you regarding this claim we are enclosing a check for the contents damage . . ." ¹¹ The letter did not explicitly state the check represented a complete payment, fulfilling the Defendant's obligations under the insurance contract. The Plaintiffs do not dispute that they cashed the check. However, they do dispute that they accepted the check as full payment. The Plaintiffs contend that the Defendant continued to negotiate with them regarding the damaged personalty after the sending and cashing of the check.

As noted, the face of the check indicates nothing regarding finality. The

⁷ *Wilmington Stevedores, Inc. v. Steel Suppliers, Inc.*, 511 A.2d 2 (Del. 1986).

⁸ *Albertson v. Bank of Delaware*, 1978 WL 4635 (Del. Ch. 1978).

⁹ *Rigby's Pump & Well Service, Inc. v. Wallace*, 1980 WL 336621 (Del. Com. Pl. 1980).

¹⁰ *Id.*

¹¹ Def. Mot. at 2.

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reverse, or endorsement, side does not refer to any finalization of any kind. The letter accompanying the check fails to mention that execution of the check constitutes a release to or end of the matter, except to the extent that the phrase “in the spirit of compromise” is intended to be understood that such was the import of the transaction.

Given, further, that this is a “first party” matter, between an insurer and its insured, with whom a fiduciary relationship of some limited description exists, the Court cannot say that, in its present posture, the matter is ripe for Summary Judgment.

Now, “sharp practice” may be an element of objective manifestations of the parties, which can define and determine the existence of an accord and satisfaction. “Sharp practice” can be committed by an attorney. It can be committed by an insurance carrier. No reason exists to suggest that it cannot, also, be committed by an individual insured. Discovery may ferret this out.

Accordingly, Defendant’s Motion for Summary Judgment is **DENIED**. However, if appropriate facts develop to demonstrate objective intents, Defendant is not precluded from re-filing this Motion.

SO ORDERED.

/s/ Robert B. Young

J.

RBV/sal

oc: Prothonotary

cc: Opinion Distribution