

## ARKANSAS COURT OF APPEALS

DIVISION II

No. CA12-864

SHIRLEY ROUSE

APPELLANT

V.

DANNY MYERS d/b/a ACTION  
MOBILE HOMES, MYERS  
CONSTRUCTION, and DANNY'S  
CARS AND TRUCK

APPELLEE

**Opinion Delivered** May 8, 2013APPEAL FROM THE GRANT  
COUNTY CIRCUIT COURT  
[NO. CV-2009-163]HONORABLE CHRIS E WILLIAMS,  
JUDGE

REVERSED

**RHONDA K. WOOD, Judge**

Shirley Rouse sued Danny Myers for breach of contract. Rouse prevailed at a jury trial, and Rouse's attorney filed a motion for attorney's fees. Myers sent Rouse a check for the full judgment and she cashed it before the court actually entered its order granting Rouse's attorney's fees. Myers asked the court to set aside the award of attorney's fees because the check was an accord and satisfaction of the entire claim, including any attorney's fees. The circuit court agreed and set aside its order. Rouse appeals. We reverse because the check was not an accord and satisfaction.<sup>1</sup>

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<sup>1</sup>Myers has also filed a motion to strike a portion of appellant's brief. Our opinion does not address those portions Myers argues should be struck, so the motion is moot. See *State Farm Fire & Cas. Co. v. Ledbetter*, 355 Ark. 28, 129 S.W.3d 815 (2003).

*I. Facts and Procedural History*

A judgment of jury verdict was entered on March 15, 2012, awarding Shirley Rouse \$12,130.48.<sup>2</sup> Rouse's counsel filed a motion for attorney's fees, and the circuit court held a hearing on April 9. The circuit court reserved its ruling on the fee issue. Meanwhile, Rouse's counsel sent a letter to Myers on April 11, two days after the hearing on attorney's fees. The letter informed Myers that he owed Rouse \$12,220.21 and that postjudgment interest was accruing at \$3.32 per day. Two days later, Myers sent Rouse a check for \$12,226.85;<sup>3</sup> the memo line read "Full Judgment Settlement Case # cv-2009-163-1." The check cleared on April 18. The circuit court sent a letter to the parties notifying them that it was granting Rouse's motion for attorney's fees. The order was entered on May 5.

So by the time the court entered the order awarding Rouse attorney's fees, Rouse had already cashed a check from Myers that was purportedly for the "full settlement" of the case. Myers argued that his check was an accord and that the whole case was satisfied, including attorney's fees, when Rouse cashed the check. The circuit court agreed and set aside its order awarding Rouse her attorney's fees on June 14. Rouse appeals and argues that no accord and satisfaction took place. We agree with Rouse and reverse the circuit court's order.

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<sup>2</sup> This number includes \$9500.53 in actual damages, \$1410.75 in prejudgment interest, \$778.12 in costs, and \$441.08 in double repayment of usurious interest.

<sup>3</sup>  $\$12,220.21 + 2(3.32) = \$12,226.85$

## II. *Standard of Review*

The circuit court's order granting the motion to set aside its previous award of attorney's fees was issued under Arkansas Rule of Civil Procedure 59, which governs motions for a new trial. We review decisions made under this rule for an abuse of discretion. *Payne v. Donaldson*, 2010 Ark. App. 255, 379 S.W.3d 22. However, this case requires us to interpret our Uniform Commercial Code, and we review issues of statutory interpretation de novo. *Clark v. Johnson Reg'l Med. Ctr.*, 2010 Ark. 115, 362 S.W.3d 311. We adhere to the basic rule of statutory construction, which is to give effect to the intent of the legislature. *Ford Motor Credit Co. v. Ellison*, 334 Ark. 357, 974 S.W.2d 464 (1998). In determining the meaning of a statute, the first rule is to construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language; if the language is plain and unambiguous, our analysis ends there. *Id.*

## III. *Accord and Satisfaction*

An accord and satisfaction generally involves a settlement where a creditor agrees to accept a different consideration or less money than he is owed. *Grayson & Grayson, P.A. v. Couch*, 2012 Ark. App. 20, 388 S.W.3d 96. There must be a disputed amount involved and consent to accept less than the amount in settlement of the whole before acceptance of the lesser amount can be an accord and satisfaction. *Inge v. Walker*, 70 Ark. App. 114, 15 S.W.3d 348 (2000). The elements of accord and satisfaction are the same as the elements of a contract: offer, acceptance, and consideration. *Holland v. Farmers & Merchs. Bank*, 18 Ark. App. 119, 711 S.W.2d 481 (1986). A party asserting accord and satisfaction as an affirmative defense has the burden to prove these elements. *Inge*, supra.

These common-law principles of accord and satisfaction have been codified in the negotiable instruments article of our commercial code. Ark. Code Ann. § 4-3-311 (Repl. 2011); *Hardison v. Jackson*, 45 Ark. App. 49, 871 S.W.2d 410 (1994). That provision applies when a debtor tenders a check to the creditor with a conspicuous statement that the check fully satisfies the claim. Ark. Code Ann. § 4-3-311(b). The statute requires a debtor to prove the following: (1) that he tendered the check in good faith, (2) that the amount was unliquidated or subject to bona fide dispute, and (3) that the creditor obtained payment. Ark. Code Ann. § 4-3-311(a). An unliquidated debt is “a debt that has not been reduced to a specific amount, and about which there may be a dispute.” *Black’s Law Dictionary* 413 (8th ed. 2004).

In this case, an accord and satisfaction did not take place because the note on the check did not say anything about attorney’s fees; it simply stated that it was payment in full of the judgment. Attorney’s fees are collateral to the underlying judgment. *Harold Ives Trucking Co. v. Pro Transp., Inc.*, 341 Ark. 735, 19 S.W.3d 600 (2000).<sup>4</sup> Nothing on the check indicated that it fully satisfied both the judgment and the attorney’s fees: it simply read “Full Judgment Settlement Case # cv-2009-163-1.” In statutory terms, the check did not contain a conspicuous statement that it satisfied the underlying judgment and the separate, collateral claim for attorney’s fees.

Further, the debt satisfied by the check was not disputed or unliquidated. Instead, the debt had been reduced to a specific amount by the judgment of jury verdict entered

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<sup>4</sup>Other jurisdictions have held that a check exactly satisfying a liquidated amount cannot extinguish a pending claim for attorney’s fees as an accord and satisfaction. See *Patel v. Orma*, 190 A.D.2d 782 (N.Y. App. Div. 1993).

on March 15. That document ordered Myers to pay Rouse money, and on April 13, after adding the statutory postjudgment interest, the balance due was \$12,226.85. Myers sent Rouse a check for that very amount on that very day. So this was not a compromise, or settlement, where Rouse agreed to accept less than she was entitled. Rather, Myers paid exactly what he owed.

To conclude, we find that the circuit court abused its discretion when it set aside its previous order granting Rouse attorney's fees. Myers's check satisfied only the liquidated judgment and did not affect the collateral attorney's fee issue. We therefore reverse the circuit court's order setting aside attorney's fees.

Reversed.

WYNNE and HIXSON, JJ., agree.

*Brett D. Watson, Attorney at Law, PLLC*, by: *Brett D. Watson*; and  
*Morris W. Thompson Law Firm, P.A.*, by: *Morris W. Thompson*, for appellant.

*Raymond Harrill, Attorney at Law, P.A.*, by: *Raymond Harrill*, for appellee.