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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-000261-MR

ALEXANDER DIGENIS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE OLU A. STEVENS, JUDGE
ACTION NO. 11-CI-006260

CHRISTODULOS STAVENS; ELI
HALLAL; AND CARDIOVASCULAR
SPECIALISTS, PSC

APPELLEES

OPINION
REVERSING AND REMANDING

** ** * * * **

BEFORE: DIXON, KRAMER, AND LAMBERT, JUDGES.

LAMBERT, JUDGE: Alexander Digenis appeals from the Jefferson Circuit Court's order dismissing his action under the theory of accord and satisfaction. We reverse and remand for further findings.

The parties and this Court are aware of the complicated factual and procedural history of this case, and we need not repeat it here. On January 11, 2013, a summary judgment was granted in favor of Dr. Digenis,¹ and the matter was affirmed by this Court in *Stavens v. Digenis*, No. 2015-CA-000359-MR, 2017 WL 1203395 (Ky. App. Mar. 31, 2017). To collect the monies due him, Dr. Digenis sought to garnish the wages of Dr. Stavens, but garnishment efforts were thwarted by the artificially low figure Dr. Stavens claimed as his annual salary. In two years' time, Dr. Digenis collected a mere \$18,126.48 from Dr. Stavens. On July 27, 2017, Dr. Digenis filed a motion to hold Dr. Stavens in contempt. Dr. Stavens made a \$27,000.00 payment shortly thereafter.

A hearing on the contempt motion was scheduled for October 19, 2017. One month prior, Dr. Stavens, by counsel, hand-delivered to Dr. Digenis a cashier's check in the amount of \$105,000.00. The letter accompanying the check stated, in part: "**Dr. Stavens offers this check in full satisfaction of this judgment.** By tendering this check, and by accepting, this should fully satisfy Dr. Digenis' claims[.]" (Emphasis original). Dr. Digenis cashed the check but clearly indicated that he intended to continue to seek payment, especially since by that

¹ "The trial court held Dr. Stavens liable to Dr. Digenis for a total of \$147,342.18, plus pre-judgment interest according to the terms of the purchase agreements for the unit, and post-judgment interest on all amounts at the legal rate from the date of the order." *Stavens*, 2017 WL 1203395, at *2 (footnote 1).

time post-judgment interest had exceeded \$64,000.00. Counsel for Dr. Digenis sent a letter to opposing counsel on September 27, 2017, which included the following language:

This amount falls short of satisfying Dr. Digenis' judgment with accrued interest from the date of judgment. To the extent that Dr. Stavens is offering to settle the matter for \$105,000.00, that offer is rejected due to the inadequacy of the payment. The partial payment is also not an accord and satisfaction because, among other reasons, the amount of the judgment debt is liquidated and not subject to a bona fide dispute. The check will be deposited and applied to the judgment. Dr. Digenis thereafter intends to continue collecting the balance of the judgment amount and to seek recovery of his attorney's fees incurred during the collections process.

On October 10, 2017, Dr. Stavens filed a motion to deem the case settled. The circuit court combined the hearing on that motion with the contempt hearing. At the hearing's conclusion, the court indicated that it would grant the motion for contempt (and award costs and attorney fees incurred by Dr. Digenis in that regard), but that it would also grant the motion by Dr. Stavens that the case be deemed settled. On January 24, 2018, the court entered its order granting the latter motion, simply stating, "It is ordered that the motion is granted. Dr. Digenis' judgment against Dr. Stavens is hereby deemed satisfied."

On appeal, Dr. Digenis argues that it was error for the circuit court to find that the judgment had been satisfied under a theory of accord and satisfaction.

Dr. Digenis maintains that Dr. Stavens' tender of the \$105,000.00 check did not meet two of the three mandatory requirements set forth in Kentucky Revised Statute (KRS) 355.3-311(1), namely:

- (a) That person **in good faith** tendered an instrument to the claimant as full satisfaction of the claim;
- (b) The amount of the claim was **unliquidated or subject to a bona fide dispute**; and
- (c) The claimant obtained payment of the instrument[.]

(Emphasis ours). Dr. Digenis insists that Dr. Stavens was simply attempting to avoid the contempt charge, that the latter's tender was not in good faith, and that it was not an unliquidated claim or subject to a bona fide dispute. Therefore, Dr. Digenis contends, the circuit court erred in deeming the matter satisfied.

We begin by citing the standard of review as enunciated in *Estes v. McKinney*, 354 S.W.3d 144, 147 (Ky. App. 2011):

When reviewing a trial court's ruling on a motion for summary judgment, appellate courts must ask "whether the trial court correctly found there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." *Hallahan v. The Courier-Journal*, 138 S.W.3d 699, 704 (Ky. App. 2004). In its decision, the trial court must have viewed all evidence in the light most favorable to the non-moving party and resolved all doubts in his favor. *Id.* at 705. Appellate courts need not defer to the trial court's decision. *Id.* As legal conclusions are involved and findings of fact are not at issue, appellate review shall be conducted under a *de novo* standard. *Id.*

Estes went on to address the issue of accord and satisfaction: “Whether a debt or a claim is discharged based upon accord and satisfaction is normally a question of fact and, therefore, an inappropriate basis for summary judgment. *Liggons v. House & Associates Ins.*, 3 S.W.3d 363, 365 (Ky. App. 1999). However, accord and satisfaction may become an issue of law ‘if the requisite controlling facts are undisputed and clear.’ *Id.*” *Estes*, 354 S.W.3d at 148.

Regarding, generally, the concept of accord and satisfaction, our courts have long held that “if the liability contended for is doubtful . . . a compromise or settlement of it for a less sum than what would be due if no such doubt existed . . . will be upheld as having been made upon a valid and sufficient consideration.” *Mutual Ben. Health & Acc. Ass’n of Omaha, Neb. v. Kidd*, 259 Ky. 261, 82 S.W.2d 312, 314 (1935). . . .

Estate of Adams by & through Mitchell v. Trover, 547 S.W.3d 545, 553 (Ky. App. 2018), *review denied* (June 6, 2018).

Such is not the case here: The “requisite controlling facts” are neither “undisputed” nor “clear.” We first address the issue of whether the offer by Dr. Stavens was made in good faith. The circuit court made no findings of fact in its order, but at the hearing it used language such as “suspicious” (in reference to Dr. Stavens’ lump sum payments of approximately \$30,000.00 per month to himself for “legal fees” during a time which he also claimed that his annual salary was a mere \$50,000.00) and “something has gone wrong here” (because Dr. Stavens had frustrated the garnishment process). The court found that Dr. Stavens was in

contempt for these acts of bad faith, which should have then been applied to its determination regarding the issue of accord and satisfaction.

Secondly, the question of whether the amount of the claim was “unliquidated or subject to a bona fide dispute” was not adequately addressed. KRS 355.3-311(1)(b). We agree with Dr. Digenis that the amount of the award was liquidated (*see* footnote 1, *supra*). If the circuit court considered the interest and attorney fees concomitant thereto to be an unliquidated sum, it should have stated so in its order.

Furthermore, the hearing was held before the expiration of the 90-day period within which Dr. Digenis could have returned the tendered check (or placed it in escrow with the court). “Under KRS 355.3–311(3)(b), a claimant may reject an instrument tendered in full satisfaction of the claim. However, the claimant must repay ‘the amount of the instrument to the person against whom the claim is asserted’ within 90 days. KRS 355.3–311(3)(b); *Morgan v. Crawford*, 106 S.W.3d 480, 482 (Ky. App. 2003).” *Estes*, 354 S.W.3d at 148. Dr. Digenis sent the letter rejecting the payment as full satisfaction of his claim. He did not return the check, but he had not been granted the full 90 days in which to do so prior to the hearing being held. Although the circuit court stated at the hearing that it was inclined to agree with Dr. Stavens because the letter accompanying his tendered check included bold print and clear language, it did not give equal attention to Dr.

Digenis' rejection of that offer which also included clear language. Further findings are necessary in order to give this Court sufficient basis on which to conduct meaningful review. *Liggons*, 3 S.W.3d at 365.

The judgment of the Jefferson Circuit Court is reversed, and this matter is remanded for further proceedings consistent with this opinion.

KRAMER, JUDGE, CONCURS.

DIXON, JUDGE, CONCURS IN RESULT ONLY.

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