

STATE OF MICHIGAN
COURT OF APPEALS

SCOT LAD FOODS, INC,

Plaintiff–Appellant,

v

GREENFIELD SUPERMARKET, INC, and HAMID
FARIDA,

Defendants–Appellees.

UNPUBLISHED

July 5, 1996

No. 175592

LC No. 93-315084 PD

Before: Corrigan, P.J., and MacKenzie and P.J. Clulo,* JJ.

PER CURIAM.

Plaintiff appeals of right the trial court’s order dismissing this claim and delivery case under MCR 2.116(C)(7) (accord and satisfaction). The trial court initially granted defendants’ motion for summary disposition on the ground that defendants’ payments constituted an accord and satisfaction of their debt to plaintiff. The order stated that the case could be reinstated upon plaintiff’s tender back of the amounts received from defendants. After plaintiff returned tender, the court reinstated the case; defendants moved for reconsideration of the order. The trial court granted this motion and again dismissed the case. We reverse and remand this case for proceedings consistent with this opinion.

Plaintiff first argues that the trial court erred in granting defendants’ motion for reconsideration of the order reinstating the case because the motion was untimely. We disagree. A motion for reconsideration of a decision on a motion must be filed within fourteen days after entry of an order disposing of the motion. MCR 2.119(F)(1). Although defendants’ motion was filed only seven days after the court’s November 2, 1993, order reinstating plaintiff’s case, plaintiff argues that the motion was, in actuality, a motion for reconsideration of the court’s September 24, 1993, order allowing for reinstatement upon the return of the amount claimed as accord and satisfaction.

MCR 2.119(F)(1) affords relief for correction of errors. The November 2, 1993, order disposed of plaintiff’s motion for reinstatement of the case. By contrast, the lower court’s September 24, 1993, order, while suggesting the possibility of reinstatement, did not dispose of the issue. Under

* Circuit judge, sitting on the Court of Appeals by assignment.

the order, two contingencies had to occur before reinstatement was possible: first, plaintiff had to return the amount tendered, and second, plaintiff had to move for reinstatement within thirty days. Further, from defendants' perspective, the "tender back" may have seemed factually impossible because defendants fully expected not to accept the tender back. The action that defendants claimed as error in their motion for reconsideration did not occur until the contingencies set forth in the September 24, 1993, order occurred, and the November 2, 1993, order was entered. Plaintiff's approach could force parties prematurely to move for reconsideration before any injury has occurred, or when some contingency prevents the adverse action's occurrence. This would not serve the interest of judicial economy. Defendants' motion for reconsideration was timely filed.

Next, plaintiff argues that the trial court erred in granting summary disposition under MCR 2.116(C)(7) on the ground that a valid accord and satisfaction occurred. We agree. A motion for summary disposition under MCR 2.116(C)(7) is proper where no factual dispute exists. *Fuller v Integrated Metal Technology, Inc.*, 154 Mich App 601, 606-607; 397 NW2d 846 (1986). To prove the existence of an accord and satisfaction, a defendant must show (1) its good faith dispute of (2) an unliquidated claim of plaintiff, (3) its conditional tender of money in satisfaction of the claim, and (4) plaintiff's acceptance of the tender (5) while fully informed of the condition. *Nationwide Mutual Ins Co v Quality Builders, Inc.*, 192 Mich App 643, 647; 482 NW2d 474 (1992).

In this case, defendants did not show a good faith dispute of plaintiff's claims. While defendants assert that the disputed amounts had been discussed with plaintiff's representative, who stated that the matter "would be taken care of," plaintiff's affidavits deny that any such discussions took place. Defendants failed to produce any documentary or other evidence to substantiate a good faith dispute, much less to explain the basis of the dispute. Accordingly, defendants failed to establish a good faith dispute of plaintiff's claim.

An "accord" is an agreement between parties to give and accept, in settlement of a claim or previous agreement, something other than that which is claimed to be due, and "satisfaction" is the performance or execution of the new agreement. *Nationwide, supra* at 646. An accord and satisfaction does not take place absent a "meeting of the minds." *Newport West Condominium Ass'n v Veniar*, 134 Mich App 1, 14; 350 NW2d 818 (1984), quoting *Fritz v Marantette*, 404 Mich 329, 334; 273 NW2d 425 (1978). Defendants have not established a "meeting of the minds" sufficient to support an accord and satisfaction. Further, unless the evidence is insufficient or undisputed by the parties, accord and satisfaction is a question of fact for the jury or the court.

[U]nless the evidence is insufficient to submit to the jury, or is undisputed and not open to opposing inferences—accord and satisfaction, including the various elements thereof, is a question of fact to be determined by the jury or by the court where it is the trier of facts. [*Fritz, supra* at 333, quoting *Urban v Public Bank*, 365 Mich 279, 286; 112 NW2d 444 (1961).]

The rule was clarified in *Anderson v Sanders*, 14 Mich App 58, 61; 165 NW2d 290 (1968):

Whether the defense[] of accord and satisfaction . . . [is] properly assertable as [a] legal defense[] is a question for the trial judge. Whether such defenses are shown to exist in the particular case is a question of law where the facts are not in dispute or are beyond dispute. *The defense[] raise[s] factual questions where a dispute exists on which reasonable minds might disagree as to the existence of the legal defense[] in the particular factual setting.* [emphasis supplied.]

Where one party tenders an item in full satisfaction of a claim and the other party accepts the thing tendered, an accord and satisfaction may arise regardless of the lack of an agreement between the parties. *Fuller, supra* at 607. See also *DMI Design & Mfg, Inc v Adac Plastics, Inc*, 165 Mich App 205, 210; 418 NW2d 386 (1987). Under such circumstances, however, the tender must be accompanied by an explicit and clear condition: if the money is accepted, it discharges the whole claim. *Fuller, supra* at 607-608. See also *Nationwide, supra*, at 647, quoting *Durkin v Everhot Heater Co*, 266 Mich 508, 513; 254 NW 187 (1934). The party asserting an accord and satisfaction must show that the person accepting the payments actually knew or understood the condition that accompanied those payments. *Fuller, supra* at 613. The defendant's statements must be "so clear, unequivocal, and unambiguous that they fully inform[] [the] plaintiff that its claim would be satisfied upon negotiating the check." *Nationwide, supra* at 649. The relevant inquiry is not whether the creditor accepted a new agreement, but whether the creditor accepted the condition that accompanied the tender. *Id.* at 646.

An accord and satisfaction, being a contract, must be supported by consideration. *Puett v Walker*, 332 Mich 117, 122; 50 NW2d 740 (1952), quoting 1 Am Jur, Accord and Satisfaction, §37, p 235. See also, *Green v Millman Bros, Inc*, 7 Mich App 450, 459; 151 NW2d 860 (1967). The performance of a preexisting duty or legal obligation is not sufficient consideration for a return promise. *Id.* at 455, citing 17 Am Jur 2d, Contracts, § 119, p 465.

Defendants failed to establish plaintiff's acceptance of the tender while fully informed of the condition of acceptance. Where a tender of money in full payment of a disputed claim is made in unequivocal terms, a creditor is held to be fully informed. *Nationwide, supra* at 647. Neither defendants' letter purporting to tender the "total amount" owed nor the check itself unequivocally stated that acceptance of payment constituted full and final settlement of all claims. A statement that payment was being tendered in an amount defendants were willing to admit they owed does not bind plaintiff, absent an explicit statement that "keeping the check or its proceeds would be on condition of its being accepted as a final settlement between the parties" *Puett v Walker, supra* at 125. Because defendants failed to establish a binding accord and satisfaction, summary disposition under MCR 2.116(C)(7) was improper.

In light of our result, it is unnecessary to address plaintiff's remaining issue.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Maura D. Corrigan

/s/ Barbara B. MacKenzie

/s/ Paul J. Clulo