STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0358

Discover Bank,
Respondent,

vs.

Marline Blake,
Appellant.

Filed August 14, 2017
Affirmed
Bjorkman, Judge

Hennepin County District Court
File No. 27-CV-16-1265

Amanda K. Linden, Jillian N. Walker, Derrick N. Weber, Messerli & Kramer P.A., Plymouth, Minnesota (for respondent)

Anthony P. Chester, Hyde & Swigart, Minneapolis, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Hooten, Judge; and Bratvold, Judge.

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

In this debt-collection action, appellant-debtor argues that the district court erred in declaring that the parties did not enter into a binding settlement agreement. Appellant asserts that the district court erred by concluding that she had a duty to inquire because

respondent-creditor's settlement offer was presumptively erroneous. Alternatively, appellant contends that respondent accepted her subsequent offer by cashing her two checks. We affirm.

FACTS

In November 2015, respondent Discover Bank initiated a debt-collection action against appellant Marline Blake. In February 2016, the district court entered a default judgment in favor of Discover. On February 5, Discover sent Blake a letter referencing the judgment and $10,699.37 balance due, and offering four options to settle the account: (1) a single payment of $10,164.40; (2) three payments of $3,423.80 to total $10,271.40; (3) six payments of $1,729.73 to total $10,378.38; or (4) a "reasonable and affordable arrangement" as determined by further negotiation. The first three options respectively forgave approximately 5%, 4%, and 3% of the account balance. Blake sent Discover a letter indicating that she is exempt from wage garnishment but that she looked forward to discussing a "reasonable settlement" of her account.

On May 9, Discover sent Blake another letter offering to settle the account for (1) a single payment of $9,366.24; (2) three payments of $206.61 to total $619.83; or (3) a "reasonable and affordable arrangement" as determined by further negotiation. The first two options respectively forgave approximately 15% and 94% of the account balance. On May 18, Blake's husband called Discover regarding the May 9 letter. A Discover representative told him the letter contained an error that would be reviewed, and that Blake would receive further communication from Discover regarding settlement. Later that same day, Blake sent a letter purporting to accept the second option—the offer that contemplated

a 94% discount—and enclosed a $206.61 check for the first installment payment. On May 26, Discover returned the check to Blake, stating, "[T]he attempt to accept an offer which was so clearly a mistake will not be accepted by our office." The May 26 letter gave Blake two new options for settling her account: a single payment of $9,366.24 or monthly payments of $229.95 to be made until the account balance was paid in full.

On June 21, Blake sent another letter to Discover enclosing the "second installment" and "re-attach[ing] the first installment, as it was improperly sent back." Discover deposited the two checks. But within a week, Discover sent Blake a letter again rejecting the attempted payments and refunding the amount of the two checks. On July 15, Blake sent "the third and final installment for settlement agreement" with a letter asking Discover to provide a formal satisfaction of judgment. On July 21, Discover returned the check to Blake.

Discover moved the district court for a declaration that its "actions do not give rise to a formation of a contract" or, in the alternative, that the contract was "voidable on a unilateral mistake of fact and material misrepresentation theory." Blake opposed the motion, and the district court conducted a hearing. The district court granted Discover's motion, declaring that "[n]o contract was formed between [Discover] and [Blake] resulting from the settlement offer made on May 9, 2016" and that Blake's "June 21, 2016 letter did not create an enforceable contract." Blake appeals.

D E C I S I O N

When considering a judicial declaration, we review a district court's factual findings for error and its legal determinations de novo. *Onvoy, Inc. v. ALLETE, Inc.*, 736 N.W.2d

611, 615 (Minn. 2007). Blake does not challenge the district court's findings of fact; the only dispute concerns the district court's legal conclusion that no settlement contract was formed.

An agreement to resolve a legal action is contractual in nature. *Jallen v. Agre*, 264 Minn. 369, 373, 119 N.W.2d 739, 743 (1963). "The formation of a contract requires communication of a specific and definite offer, acceptance, and consideration." *Commercial Assocs., Inc. v. Work Connection, Inc.*, 712 N.W.2d 772, 782 (Minn. App. 2006). But not all offers become enforceable upon acceptance. "A duty to inquire may be imposed on the person receiving [an] offer when there are factors that reasonably raise a presumption of error." *Speckel by Speckel v. Perkins*, 364 N.W.2d 890, 893 (Minn. App. 1985). In such cases, "[a]n offeree will not be permitted to snap up an offer that is too good to be true; no agreement based on such an offer can be enforced by the acceptor." *Id.* (quotation omitted).

I. Inconsistencies regarding Discover's May 9 offer letter raised a presumption of error, and Blake did not satisfy her duty to inquire.

Blake argues that a contract was formed on May 18 when she accepted Discover's second settlement option and made the first of three $206.61 installment payments. And she contends that Discover did not effectively revoke the offer in its communication with her husband. We disagree because the purported offer was too good to be true and Blake did not fulfill her duty to inquire.

In *Speckel*, this court determined that a settlement letter was not an offer enforceable upon acceptance because it was internally inconsistent. *Id.* at 893-94. In the two-paragraph

letter, defense counsel first stated that the plaintiff's injury claim was not worth the defendant's $50,000 insurance policy limits, but then proceeded to offer $50,000. *Id.* at 891. The letter also indicated defense counsel "would be pleased to carry any offer you may wish to make" back to the insurance company. *Id.* Plaintiff's counsel promptly accepted, and the district court granted plaintiff's motion to compel performance of the "unequivocal" offer. *Id*. at 892. This court reversed, concluding that the settlement letter "raise[d] a presumption of error and imposed upon [the offeree] a consequent duty to inquire." *Id*. at 893.

Discover's May 9 letter raised a presumption of error in two ways. First, the letter, by its terms, inexplicably proposed a single payment discounting 15% of Blake's debt to be made in three weeks or three installment payments discounting 94% of her debt. Second, the six-cents-on-the-dollar debt-forgiveness option is markedly at odds with Discover's February 5 letter, which offered settlement alternatives that would forgive 5%, 4%, or 3% of Blake's account balance.

We are not persuaded by Blake's contention that Discover's expressed willingness to consider other "reasonable and affordable arrangement[s]" and its awareness that it may not be able to garnish Blake's wages overcome any presumed error in the May 9 letter. Logically, an offer to discuss other settlement options does not suggest that Discover would willingly accept a 94% discount just three months after obtaining its judgment. And it is unlikely that Discover would contemporaneously offer an alternative providing a 15% discount.

Because Discover's purported settlement offer was too good to be true, Blake had a duty to inquire before she could accept the offer. *See id.* She took no actions to do so, instead sending an acceptance letter.[1] The district court properly determined that no contract was formed as a result of the presumptively erroneous May 9 offer letter. Accordingly, we need not reach Blake's remaining arguments with respect to that offer letter.

II. Blake's June 21 letter and payment did not create a contract.

Blake argues that even if her response to Discover's May 9 letter did not accept an enforceable offer to form a contract, her June 21 letter offered a "valid and enforceable Second Contract" that Discover accepted by cashing Blake's checks. She asserts that, regardless of Discover's claimed internal policy of applying all payments it receives to outstanding accounts, the deposit constitutes acceptance by Discover that prevents revocation of Blake's offer. We are not persuaded.

The June 21 letter reads in its entirety: "Please find the second installment of the payment toward the settlement agreement [Blake] accepted in the above-captioned case. I have also re-attached the first installment, as it was improperly sent back. If you have any questions, please do not hesitate to let me know." As the district court noted, this letter does not set forth specific or definite offer terms or invite acceptance. *See Commercial Assocs., Inc.*, 712 N.W.2d at 782 (requiring that an offer be "specific and definite"); *see*

[1] As noted above, Blake's husband called Discover and was told that the offer for 94% forgiveness was erroneous. The call might satisfy Blake's duty to inquire and result in withdrawal of the offer from Discover if Blake's husband was acting as her agent. But the record contains no information as to whether Blake's husband acted in that capacity.

also Hunt v. IBM Mid Am. Emps. Fed. Credit Union, 384 N.W.2d 853, 857 (Minn. 1986) (noting that "a fact-finder needs reasonably definite terms to interpret"). Rather, the letter refers to Discover's May 9 letter, which, as noted above, was not an enforceable contract offer.[2]

Nor are we persuaded by Blake's contention that Discover's deposit of her checks constituted acceptance of her new settlement offer that Discover could not revoke. Whether a contract is formed turns on the parties' objective conduct. *Commercial Assocs., Inc.*, 712 N.W.2d at 782. Prior to June 21, Discover told Blake's husband that the May 9 letter contained an error, advised Blake in writing that there was no offer to settle her account for $619.83, and returned Blake's first check. Discover's May 26 letter not only returned Blake's check but extended two new settlement offers, neither of which was anywhere close to $619.83. Blake's June 21 purported new offer is completely at odds with all of Discover's objective conduct. Discover's almost immediate refund of Blake's checks with a letter again indicating rejection of Blake's terms likewise demonstrate rejection, not acceptance. And Blake provides no authority to support her argument that Discover's cashing of her two checks constitutes acceptance where the full amount was refunded within days. *Cf.* Minn. Stat. § 336.3-311(c)(2) (2016) (providing a claim is not discharged when claimant who received payment tenders repayment in full within 90 days,

[2] Discover's May 26 letter offered to settle Blake's account in exchange for a single payment of $9,366.24 or monthly payments of $229.95 until the balance was paid. Blake's June 21 letter does not specify whether it is Discover's May 9 or May 26 letter that forms the basis of the "settlement agreement," which further underscores the letter's lack of specificity.

thereby preventing inadvertent accord and satisfaction). In sum, Blake's June 21 letter and payment were insufficiently specific to constitute a new offer.

Affirmed.