IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-586

Filed: 17 December 2019

Pitt County, No. 16CVD1913

BARCLAYS BANK DELAWARE, Plaintiff

v.

JEFFREY ALLEN, Defendant.

Appeal by plaintiff from judgment entered 15 February 2019 by Judge Daniel Hines Entzminger in Pitt County District Court. Heard in the Court of Appeals 12 November 2019.

Sessoms & Rogers, P.A., by Andrew E. Hoke, for plaintiff-appellant.

DeLyle M. Evans for defendant-appellee.

BERGER, Judge.

Barclays Bank Delaware ("Barclays") appeals from judgment entered on February 15, 2019 pursuant to which the trial court dismissed its claim in favor of Jeffrey Allen ("Allen"). On appeal, Barclays argues the trial court erred when it determined the claim against Allen was barred on the grounds of accord and satisfaction. We agree.

Factual and Procedural Background

On or before June 11, 2014, Allen opened a credit account with Barclays. Allen subsequently incurred a total balance of $3,106.17 on the account. After April 7, 2015, Allen stopped making monthly payments towards the balance. On November 10, 2015, Barclays issued a final account statement and subsequently charged off the account.

On August 16, 2016, Barclays filed a complaint in Pitt County District Court seeking to recover the final balance owed on the account and the court costs incurred in bringing the action. On October 26, 2017, Allen filed an answer in which he admitted opening a credit account with Barclays and incurring a balance on that account. However, Allen denied defaulting on the account or owing a balance on the account for "lack of sufficient information."

At the trial level, Barclays was represented by Andrew E. Hoke ("Hoke") from the law firm Sessoms and Rogers, P.A. ("Sessoms & Rogers"). Allen was represented by DeLyle M. Evans ("Evans"). On January 8, 2018, Evans sent a letter to Hoke offering to settle Barclays' claim against Allen for $1,600.00. On January 16, 2018, in a letter properly addressed to Evans, Hoke declined Allen's settlement offer on behalf of Barclays and instead offered to settle the matter for $2,500.00. Evans denied ever receiving the January 16, 2018 counteroffer.

Hoke also represented another plaintiff, LVNV Funding, LLC ("LVNV"), in an unrelated case against Allen. In that case, Allen was again represented by Evans. In the LVNV matter, LVNV received a judgment against Allen in the amount of $3,320.38. On February 25, 2018, Hoke sent a letter to Evans, on behalf of LVNV, offering to settle its judgment against Allen for a lesser amount. At the top of the settlement offer, LVNV was listed as the current creditor. The settlement offer also listed $3,320.38 as the total balance owed on LVNV's judgment. Pursuant to that offer, Allen could settle LVNV's judgment against him by making either six monthly payments of $332.04 or by paying a lump sum of $1,660.19.

On March 13, 2018, Evans responded to the LVNV settlement offer on behalf of Allen and agreed to settle the claim by lump sum for $1,660.19. Evans included a copy of the LVNV settlement offer with the March 13, 2018 acceptance letter. However, the subject line of the acceptance letter read, "Re: Barclays Bank Delaware vs. Jeffrey Allen 16 CVD 1913." On March 26, 2018, Evans sent Hoke a letter which included a check from Allen for $1,660.19 with "SETTLEMENT" written in the memo line. The March 26, 2018 letter also included a copy of the LVNV settlement offer and the subject line again read, "Re: Barclays Bank Delaware vs. Jeffrey Allen 16 CVD 1913." Additionally, the letter requested that Hoke send Evans the "Voluntary Dismissal in this case."

After receiving the check from Allen on March 26, 2018, which made payment for the exact amount requested to settle the LVNV judgment, the Sessoms & Rogers accounting department deposited the check and remitted the funds to LVNV. Subsequently, on May 3, 2018, Hoke filed an authorization to cancel the LVNV judgment. On July 17, 2018, Evans sent a letter to Hoke indicating his belief that Barclays' claim against Allen had been settled. Hoke responded on July 20, 2018 indicating that the LVNV judgment had been settled and not Barclays' claim.

On August 21, 2018, Allen filed a motion to dismiss Barclays' claim on the grounds of accord and satisfaction. Barclays moved for summary judgment and the trial court denied the motion on August 24, 2018. Barclays subsequently filed a response in opposition to Allen's motion to dismiss on January 23, 2019.

On February 15, 2019, the trial court granted dismissal in favor of Allen. Barclays timely appeals, arguing that the trial court erred when it determined the claim against Allen was barred on the grounds of accord and satisfaction. We agree.

Standard of Review

"[W]hen the trial court sits without a jury, the standard of review on appeal is whether there was competent evidence to support the trial court's findings of fact and whether its conclusions of law were proper in light of such findings." *Shear v. Stevens Building Co.*, 107 N.C. App. 154, 160, 418 S.E.2d 841, 845 (1992). Generally, the existence of an accord and satisfaction presents a question of fact. *Construction Co.*

v. Coan, 30 N.C. App. 731, 737, 228 S.E.2d 497, 501 (1976). However, accord and satisfaction provide a question of law where the only reasonable inference is the existence or non-existence of such an agreement and the satisfaction thereof. *Zanone v. RJR Nabisco, Inc.*, 120 N.C. App. 768, 771, 463 S.E.2d 584, 587 (1995).

In North Carolina, "[t]he well-established rule is that findings of fact by the trial court supported by competent evidence are binding on the appellate courts even if the evidence would support a contrary finding." *Scott v. Scott*, 336 N.C. 284, 291, 442 S.E.2d 493, 497 (1994). Questions of law are reviewed *de novo*. *Lunsford v. Mills*, 367 N.C. 618, 623, 766 S.E.2d 297, 301 (2014).

Analysis

There are two distinct components, or phases, to an accord and satisfaction. The accord is "an agreement whereby one of the parties undertakes to give or perform and the other to accept in satisfaction of a claim, liquidated or in dispute, something other than or different from what he is or considers himself entitled to." *Lumber Co. v. Kincaid Carolina Corp.*, 4 N.C. App. 342, 349, 167 S.E.2d 85, 90 (1969). Satisfaction describes the performance of the accord agreement. *Id.* at 349, 167 S.E.2d at 90.

An accord is as much a contract as any other legally enforceable agreement. *Dobias v. White*, 239 N.C. 409, 414, 80 S.E.2d 23, 27 (1954). Thus, like all contracts, an accord requires offer, acceptance, and consideration. *Copy Products, Inc. v.*

Randolph, 62 N.C. App. 553, 555, 303 S.E.2d 87, 88 (1983). During the formation stage, offer and acceptance make up the essential elements of an accord because they constitute the agreement of the parties. *Yeager v. Dobbins*, 252 N.C. 824, 828, 114 S.E.2d 820, 823-24 (1960). "The offer must be one which is intended of itself to create legal relations on acceptance." *Id.* at 828, 114 S.E.2d at 823. Additionally, "[t]he offer must be communicated, must be complete, and must be accepted in its exact terms." *Id.* at 828, 114 S.E.2d at 824. Where an accord lacks an offer, acceptance, or consideration, it is unenforceable as a matter of law. *Lewis v. Lester*, 235 N.C. App. 84, 86, 760 S.E.2d 91, 93 (2014).

On February 25, 2018, Hoke, Barclays' attorney, sent a settlement offer to Evans, Allen's attorney, concerning the LVNV judgment. Evans accepted the settlement offer for $1,660.19 on Allen's behalf on March 13, 2018. The March 13, 2018 letter from Evans to Hoke referenced "Barclays Bank Delaware vs. Jeffrey Allen 16 CVD 1913," but included a copy of the February 25, 2018 LVNV settlement offer for $1,660.19. That letter read, in pertinent part:

> [Allen] telephoned me yesterday and said that this Monday, March 19th he will be bringing me a good check for you in the amount of $1,660.19. Enclosed is a copy of your February 25th letter to me setting out your settlement offer.

On March 26, 2018, Evans sent Hoke another letter on behalf of Allen. The March 26, 2018 letter also referenced "Barclays Bank Delaware vs. Jeffrey Allen 16

CVD 1913" and included a copy of the February 25, 2018 LVNV settlement offer. Included with the letter was a check from Allen for $1,660.19 with "SETTLEMENT" written in the memo line. The March 26, 2018 letter read, in pertinent part:

> Enclosed is a copy of your lump sum settlement offer and my client's certified check to Sessoms & Rogers in the amount of $1,660.19.
>
> Please send me your Voluntary Dismissal in this case.

After receiving the check from Allen on March 26, 2018, which made payment for the exact amount requested to settle the LVNV judgment, the Sessoms & Rogers accounting department deposited the check and remitted the funds to LVNV. Subsequently, on May 3, 2018, Hoke filed an authorization to cancel the LVNV judgment.

The trial court determined that the March 13, 2018 and March 26, 2018 letters put Barclays on notice of Allen's intent to settle the Barclays claim, rather than the LVNV judgment. Based on this determination, the trial court ultimately found that Allen was entitled to dismissal on the grounds of accord and satisfaction. However, even assuming, *arguendo*, that the reference line of both letters, which read "Re: Barclays Bank Delaware vs. Jeffrey Allen 16 CVD 1913," was sufficient to put Barclays on notice that Allen did not intend to settle the LVNV matter, the letters were insufficient, as a matter of law, to establish an offer of accord as to Barclays' claim.

As previously noted, if an alleged accord agreement lacks an offer, then the accord is unenforceable as a matter of law. *Lewis*, 235 N.C. App. at 86, 760 S.E.2d at 93. To constitute a valid offer, the alleged accord agreement "must be one which is intended of itself to create legal relations on acceptance." *Yeager*, 252 N.C. at 828, 114 S.E.2d at 823. From the plain language of the March 13, 2018 and March 26, 2018 letters, neither intended settlement of Barclays' claim. Rather, both letters explicitly refer to the LVNV settlement offer and express an intent to accept that settlement offer. Neither letter communicated the terms of an accord offer for Barclays to accept. Indeed, neither letter expressed any terms additional to those laid out by Hoke in the LVNV settlement offer—terms which, notably, failed to make any reference to Barclays.

In finding that Allen made a valid accord offer to Barclays, the trial court relied heavily on *Rosen v. Club at Longview, LLC*, No. COA18-364, 2018 N.C. App. LEXIS 1208 (December 18, 2018), an unpublished opinion from this Court. In that case, the plaintiffs were members at the defendant golf club. *Id.* at *2. To become members, the plaintiffs paid a $75,000.00 refundable membership deposit. *Id.* The plaintiffs left the golf club and sought a refund of their $75,000.000 deposit. *Id.* at *5. The golf club provided plaintiffs a check for $40,000.00 and a letter explaining that plaintiffs were only entitled to that amount. *Id.* at *6. The plaintiffs then cashed the check and, two years later, brought suit against the golf club claiming entitlement to the

full membership deposit. *Id.* at *7. This Court ultimately concluded that by cashing the $40,000.00 check, the plaintiffs accepted the golf club's accord offer; thus, the defendant golf club had established the defense of accord and satisfaction. *Id.* at **14-15.

However, the case at hand is readily distinguishable from *Rosen*. First, unlike the defendant in *Rosen*, Allen never provided Barclays with an offer of accord, rather, he expressed an intent to accept a settlement offer made by Hoke on the unrelated LVNV judgment. Second, unlike *Rosen*, where there was a single disputed claim, the confusion from this case arises from the fact that the attorneys for both parties were involved in settlement negotiations in two unrelated claims. Accordingly, in the circumstances presented by this case, Hoke did not accept an offer of accord on behalf of Barclays by cashing a check, which simply read "SETTLEMENT" in the memo line, when (1) the check was sent in response to a settlement offer for the LVNV judgment; (2) the check was for the amount requested by Hoke to settle the LVNV judgment; (3) the document with which the check was received referenced both the LVNV judgment and Barclays' claim; and (4) the check was cashed and the funds were remitted to LVNV.

We conclude, as a matter of law, that neither the March 13, 2018 letter, the March 26, 2018 letter, nor the check for $1,660.19, considered alone or in tandem, constitute an offer of accord from Allen to Barclays. Because there was no accord

agreement, there can be no enforceable accord and satisfaction. Therefore, Barclays' claim cannot be barred by accord and satisfaction, and the trial court erred by dismissing Barclays' claim on those grounds.

Conclusion

For the reasons stated herein, the trial court erred by concluding that Barclays' claim was barred on the grounds of accord and satisfaction. Accordingly, we reverse and remand for further proceedings.

REVERSED AND REMANDED.

Chief Judge McGEE and Judge BRYANT concur.

Report per Rule 30(e).