[Cite as *Santmyer Oil Co., Inc. v. One Stop Gas, Inc.*, 2009-Ohio-3142.]

STATE OF OHIO))ss: COUNTY OF WAYNE)	IN THE COURT OF APPEALS NINTH JUDICIAL DISTRICT
SANTMYER OIL COMPANY, INC. Appellee v. ONE STOP GAS, INC., et al. Appellants	C. A. No. 08CA0053 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF WAYNE, OHIO CASE No. 07-CV-0018

DECISION AND JOURNAL ENTRY

Dated: June 29, 2009

WHITMORE, Judge.

{¶1} Defendants-Appellants, One Stop Gas, Inc., Ibrahim Abdallah, Wally Abdallah, and Haythem Abdallah (collectively "One Stop"), appeal from the judgment of the Wayne County Court of Common Pleas. This Court affirms.

I

{¶2} In 2006, One Stop contracted with a wholesale gas distributor, Santmyer Oil Company, Inc. ("Santmyer"), for Santmyer to sell fuel to One Stop. Ibrahim, Wally, and Haythem Abdallah all personally guaranteed the contract. Several months after they signed their contract, One Stop and Santmyer's relationship deteriorated due to a disagreement over Santmyer's prices. One Stop stopped making payments and, according to Santmyer, owed $51,540.80 on its contract as of October 20, 2006.

{¶3} On January 9, 2007, Santmyer filed suit against One Stop for breach of contract. Subsequently, the parties agreed to settle. On June 12, 2007, the trial court issued a stipulated

judgment entry. The judgment entry awarded judgment to Santmyer in the amount of $51,540.80 plus interest accruing at a rate of 24% per annum from October 20, 2006. The entry provided, however, that if One Stop paid Santmyer "a single balloon payment in the amount of $25,000, payable to 'Santmyer Oil Company, Inc.,' in care of David J. Wigham, *** no later than 5:00 p.m. on June 18, 2007" the judgment would be deemed fully satisfied. If One Stop defaulted on the balloon payment, Santmyer was entitled to the full judgment amount and could immediately initiate proceedings to aid in the execution of its judgment. The entry instructed Santmyer to file a notice of satisfaction of judgment upon receipt of One Stop's balloon payment.

{¶4} On the day of June 18, 2007 and for several days afterwards, Ibrahim Abdallah presented Santmyer with various checks. Ibrahim initially tried to give Santmyer two third-party checks that were made payable to him personally and to "One Stop Gas," respectively. Terry Scheibe, an employee of Santmyer, informed Ibrahim that Santmyer could only accept company or certified checks. Two days later, Ibrahim deposited the third-party checks into his bank account and gave Santmyer a deposit slip. Ibrahim informed Santmyer, however, that the funds would not be available for transfer for several days. On June 27, 2007, One Stop finally provided Santmyer with a certified check for $25,000. Santmyer accepted the check, but never filed a notice of satisfaction of judgment.

{¶5} On March 21, 2008, One Stop filed a motion to enforce the stipulated judgment entry, asking the court to serve a notice of satisfaction of judgment upon the parties. Santmyer opposed the motion, arguing that One Stop had failed to tender payment by the June 18, 2007 deadline. The trial court held a hearing on the motion on April 29, 2008. On September 19, 2008, the trial court denied One Stop's motion to enforce and held that, because One Stop had

failed to timely remit its balloon payment, One Stop was in default for the full amount of judgment less any amounts tendered after June 18, 2007.

{¶6} One Stop now appeals from the trial court's order and raises three assignments of error for our review.

II

Assignment of Error Number One

"THE COURT BELOW ERRED WHEN IT CONCLUDED THAT THE TERMS OF THE STIPULATED JUDGMENT ENTRY MADE TIME OF PAYMENT A MATTER OF 'THE ESSENCE' AND COULD NOT BE ALTERED BY THE PARTIES UNDER ANY CIRCUMSTANCES."

Assignment of Error Number Three

"THE COURT BELOW ABUSED ITS DISCRETION WHEN IT FOUND THAT APPELLANTS HAD NOT COMPLIED WITH THE TERMS OF THE STIPULATED JUDGMENT ENTRY."

{¶7} In its first and third assignments of error, One Stop argues that the trial court erred in denying its motion to enforce on the basis that it had not satisfied the terms of its settlement with Santmyer. Specifically, One Stop argues that: (1) Santmyer waived the time requirement in the stipulated journal entry by requesting certified checks, which it knew would delay payment; and (2) One Stop's tender of payment on June 18, 2007 "was the equivalent of actual payment insofar as the parties are concerned" because the delay in actual payment was due to Santmyer's demand for certified checks. We disagree.

{¶8} "When parties have agreed to the terms of a settlement, a trial court may sign a journal entry reflecting the terms and may enforce the agreement." *Duncan v. Hopkins*, 9th Dist. No. 24065, 2008-Ohio-3772, at ¶15. One Stop does not argue that the trial court lacked authority enforce the journalized settlement agreement and does not challenge the trial court's factual findings. One Stop only challenges the trial court's legal conclusions with regard to its

factual findings. Accordingly, this Court must review the trial court's denial of One Stop's motion to enforce to determine "whether the trial court's order is based on an erroneous standard or a misconstruction of the law." *Hite v. Leonard Ins. Services Agency, Inc.* (Aug. 23, 2000), 9th Dist. No. 19838, at *3, quoting *Continental W. Condominium Unit Owners Assn. v. Howard E. Ferguson, Inc.* (1996), 74 Ohio St.3d 501, 502. "[T]he standard of review is one of pure legal error and is limited to the trial court's construction of the [settlement agreement] as a matter of law." *Hite*, at *3.

{¶9} The trial court's journal entry, as stipulated to by the parties, provided that Santmyer was entitled to $51,540.80 plus interest, but that if One Stop submitted "a single balloon payment in the amount of $25,000, payable to 'Santmyer Oil Company, Inc.,' in care of David J. Wigham, *** no later than 5:00 p.m. on June 18, 2007" the judgment would be deemed fully satisfied. The journal entry specified that One Stop "shall be deemed to be in default if the balloon payment is not received by 5:00 p.m. on June 18, 2007." The trial court concluded that because One Stop failed to tender its $25,000 payment by the foregoing deadline, Santmyer was entitled to its default judgment in the full amount.

{¶10} One Stop argues that its offer to sign over third-party checks to Santmyer on June 18, 2007 should be considered substantial compliance with the terms of the settlement. One Stop argues that the journalized settlement agreement did not require payment to be in the form of a certified check and that, by adding such a requirement, Santmyer should be responsible for any delay in the payment. The record reflects that One Stop offered to sign over two separate checks to Santmyer on June 18, 2007. The first check indicates that it was issued by "Integrated Payments Systems Inc., Englewood, CO to Citibank, N.A., Buffalo, NY." The check is dated June 4, 2007, is made payable to Ibrahim Abdallah, and is for the amount of $9,000.00. The

second check indicates that it was issued by "Washington Mutual Bank[,] Henderson, NV." The check is dated June 5, 2007, is made payable to "One Stop Gas," and is for the amount of $10,000.00. Apart from the fact that neither check was made "payable to 'Santmyer Oil Company, Inc.,'" the checks only totaled $19,000. Even if Santmyer had accepted the checks, One Stop still would have been $6,000 short of the $25,000 settlement.

{¶11} One Stop did not deposit the checks into its own account until June 20, 2007 and did not have sufficient funds in its account to remit the $25,000 payment to Santmyer until June 27, 2007. "Where a settlement agreement requires the payment of a certain amount of money within a certain time, a default in such payment will restore the parties to their original rights." *Lakelynd Const. Co. v. Lucky Sand and Gravel Co.* (Aug. 4, 1993), 9th Dist. No. 15946, at *3, citing 15 Ohio Jurisprudence 3d (1979) Compromise, Accord, and Release, Section 16. The journal entry here clearly indicated that if One Stop defaulted on its payment of a certain amount of money ($25,000) within a certain time (by 5:00 p.m. on June 18, 2007), Santmyer's default judgment in the full amount of $51,540.80 plus interest would be restored. One Stop did not present Santmyer with a $25,000 payment until June 27, 2007, nine days past the settlement deadline. "If the language of [a settlement agreement] is clear and unambiguous, this Court must enforce the instrument as written." *Hite*, at *3. Pursuant to the plain language of the parties' settlement agreement, as journalized by the trial court, One Stop's failure to pay Santmyer in a timely manner entitles Santmyer to a default judgment. *Quality Mold, Inc. v. Committee to Elect Williams*, 9th Dist. No. 23749, 2008-Ohio-2821, at ¶4-9. See, also, *Haley v. Thompson*, 9th Dist. No. 22318, 2005-Ohio-1272, at ¶10-11 (recognizing appellant's entitlement to a default judgment where settlement agreement provided that default judgment would be reinstated if Appellee failed to pay in accordance with the settlement). The trial court did not err in denying

One Stop's motion, requesting a notice of satisfaction of judgment. Accordingly, One Stop's first and third assignments of error are overruled.

Assignment of Error Number Two

> "THE COURT BELOW ABUSED ITS DISCRETION IN FINDING THAT THE APPELLEE COULD RETAIN THE PAYMENTS TENDERED BY APPELLANTS AND INTENDED BY APPELLANTS TO BE PAYMENT IN FULL OF THE NEGOTIATED SETTLEMENT FIGURE, AND YET NOT BE BOUND BY THE NEGOTIATED SETTLEMENT TERM OF A $25,000 FIGURE."

{¶12} In its second assignment of error, One Stop argues that the trial court erred by not concluding that Santmyer's acceptance of One Stop's $25,000 payment on June 27, 2007 constituted a satisfaction of the judgment. Specifically, One Stop argues that when a creditor accepts money without complaint and with full knowledge that the debtor intends for the money to constitute settlement in full, the creditor cannot then pursue the debtor for additional funds.

{¶13} We incorporate the standard of review set forth in One Stop's first and third assignments of error. For a payment to constitute a satisfaction under the doctrine of accord and satisfaction there must be a good faith dispute over the debt and reasonable notice to the creditor that the payment is intended as full satisfaction of the debt. *Jeffery v. Lesure*, 9th Dist. No. 02CA0026-M, 2002-Ohio-7324, at ¶14. Here, One Stop submitted its $25,000 payment past the settlement deadline. The journalized settlement agreement specified that One Stop's payment had to be submitted by the settlement deadline to constitute a satisfaction of the judgment. The journal entry did not provide that Santmyer's acceptance of any payment past the deadline would constitute a release. Compare *Mon-Rite Co., Inc. v. Northeast Ohio Regional Sewer Dist.* (1984), 20 Ohio App.3d 255, 258 (concluding that debtor was released from judgment where contract specified that creditor's mere acceptance of final payment constituted a release). Moreover, the parties did not have a good faith dispute over their debt at the time that One Stop

submitted its payment. *Jeffery* at ¶14. The journal entry provided that One Stop owed Santmyer $51,540.80 plus interest, but would only owe $25,000 if One Stop paid by June 17, 2008. When One Stop failed to pay in a timely manner, Santmyer's default judgment went into effect. *Lakelynd Const. Co.*, at *3. One Stop's $25,000 payment on June 27, 2007 constituted a payment towards Santmyer's default judgment in the amount of $51,540.80 plus interest, not a full satisfaction of One Stop's debt. As such, One Stop's second assignment of error is overruled.

III

{¶14} One Stop's assignments of error are overruled. The judgment of the Wayne County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Wayne, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellants.

BETH WHITMORE
FOR THE COURT

MOORE, P. J.
DICKINSON, J.
CONCUR

APPEARANCES:

THOMAS PARIS, Attorney at Law, for Appellants.

DAVID J. WIGHAM, and LUCAS K. PALMER, Attorneys at Law, for Appellee.