

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001177-MR

ROK MIREMAMI

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE JEFFREY T. BURDETTE, JUDGE
ACTION NO. 04-CI-00130

JEFFREY ALLEN GREGORY AND
MELANIE RHEA GREGORY

APPELLEES

OPINION
AFFIRMING IN PART,
REVERSING IN PART,
AND REMANDING

** ** * * *

BEFORE: DYCHE, SCHRODER AND VANMETER, JUDGES.

DYCHE, JUDGE: The question herein is whether Rok Miremami's actions in negotiating a check sent to him by appellees entitle them to the benefit of the doctrine of accord and satisfaction. Finding that there was partial, but not total, accord and satisfaction, we affirm in part, reverse in part, and remand for further proceedings.

Miremami was the Gregorys' landlord. They vacated the leased premises prior to the expiration of the lease period, but

attempted to find replacement tenants. Miremami sent them a demand letter for repairs (\$1706.00) and unpaid rent (past due rent of \$3231.00 and future rent of \$6462.00), alleging breach of the lease.

In response to that letter, they sent Miremami a check for \$1,000.00, with the notation on the memo line of "Satisfaction for full payment of necessary repairs for 202 Pogue." Miremami struck out the conditional language on the front of the check, and added the language "ALL RIGHTS RESERVED; WITHOUT PREJUDICE; KRS 355.1-207" to his endorsement. He retained the proceeds of the check, and commenced this action to recover what he alleged to be the remainder of his damages.

The Gregorys defended the action by claiming that there was accord and satisfaction, and that they were entitled to a summary judgment. The trial court agreed, finding that the conditions of KRS 355.3-311 were met, and that Miremami's striking of the language concerning full payment, and his attempted reservation of rights under KRS 355.1-207 did not apply. This appeal followed.

KRS 355.3-311, entitled Accord and Satisfaction by Use of Instrument, provides, in relevant part, as follows:

(1) If a person against whom a claim is asserted proves that:

(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,

the following subsections apply.

(2) Unless subsection (3) of this section applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(3)(a) [Pertains to situation where claimant is an organization]

(3)(b) The claimant, whether or not an organization, proves that within ninety (90) days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted....

(4) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant ... knew that the instrument was tendered in full satisfaction of the claim.

Morgan v. Crawford, 106 S.W.3d 480, 481-482 (Ky.App. 2003).

The undisputed facts of this case establish all factors needed for application of the statutory doctrine, at least as far as repairs go. The Gregorys tendered the check as

full satisfaction of the claim. The amount due Miremami was in dispute. Miremami obtained payment of the check. The check contained a conspicuous statement that it was tendered as full satisfaction of the claim. Miremami did not tender repayment of the amount of the check. He knew the check was tendered in full satisfaction of the claim.

The notation on the check applied, however, by its own terms, to repairs, and not to rent, either back or future. As indicated in Morgan, the General Assembly amended the statute to prevent persons in Miremami's position from "having his cake, and eating it, too." In other words, he was not entitled to retain the proceeds tendered by the Gregorlys as full satisfaction of the claim and also seek further compensation for alleged damages. There was no accord and satisfaction for rent.

The judgment of the Pulaski Circuit Court is affirmed insofar as the accord and satisfaction for repairs to the leased premises is concerned, but reversed as to recovery of rent, and this matter is remanded for further proceedings on that issue.

ALL CONCUR.

BRIEF FOR *PRO SE* APPELLANT:

Rok Miremami
Somerset, Kentucky

BRIEF FOR APPELLEES:

Mike Duncan
Somerset, Kentucky