**COURT OF APPEALS**
**DECISION**
**DATED AND RELEASED**

October 24, 1995



**No. 95-0902**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT I**

**PAUL EVERS,**

**Plaintiff-Appellant,**

**v.**

**EVERETT FRYER,**

**Defendant-Respondent.**

APPEAL from a judgment of the circuit court for Milwaukee County: JACQUELINE D. SCHELLINGER, Judge. *Affirmed.*

SCHUDSON, J.[1] Paul Evers appeals from a judgment[2] dismissing his small claims complaint against his former landlord, Everett Fryer, for the alleged wrongful withholding of Evers's security deposit. The trial court held that an accord and satisfaction existed after Evers cashed Fryers's check, which

[1] This appeal is decided by one judge pursuant to § 752.31(2), STATS.

[2] No written judgment appears of record. This court construes the February 13, 1995 docket entry that notes the action was dismissed as a judgment.

was only for a portion of Evers's security deposit. This court concludes that the trial court correctly concluded an accord and satisfaction existed and, therefore, the judgment is affirmed.

The relevant facts are undisputed. On March 28, 1994, Evers gave Fryer thirty days written notice that he would be vacating the leased premises. On April 12, Evers wrote to Fryer claiming that he was entitled to 100% of his security deposit. In his letter, Evers stated, "You have no basis for withholding any part of my security deposit. I have discussed your assertion [regarding a dispute over a fence erected on the property] with an attorney and have been advised that it has no basis in court."

On May 9, Fryer wrote to Evers, indicating that $442 of the $545 security deposit was being retained because of illegal tenants in the apartment, failure to clean "dog dirt," the need to repair a gate, and the need to replace a missing doorknob and a fence. Fryer enclosed a check for $103, specifically stating, "I feel this is a very fair settlement" in light of the fact that he (Fryer) was not "at this point" charging Evers for additional costs related to other problems during Evers's tenancy.

On May 28, Evers served Fryer with a small claims summons and complaint for wrongful withholding of his security deposit. Three days later, Evers cashed Fryer's check. A small claims hearing was held on February 13, 1995, where the trial court stated:

> My understanding is that when the security deposit return was made, that Mr. Evers held on to the check for about four weeks and that then there were some discussions between himself and Mr. Fryer where Mr. Fryer was claiming additional damages for a carpet he claimed had been destroyed by pets owned by Mr. Evers, and so Mr. Evers then decided to cash the check upon advice of counsel.
>
> [Evers] claimed he talked to [a legal aid attorney] who told him it was probably best to cash the check so you at least have some reimbursement for your security deposit.

The trial court concluded that an accord and satisfaction existed between the parties and dismissed Evers's complaint. Evers appeals.

Whether the facts fulfill a particular legal standard presents a legal question. *See* ***City of Brookfield v. Milwaukee Metro. Sewerage Dist.***, 141 Wis.2d 10, 14, 414 N.W.2d 308, 309 (Ct. App. 1987). This court independently reviews the trial court's determination. *See* ***In re Estate of Karrels***, 148 Wis.2d 448, 450, 435 N.W.2d 739, 740 (Ct. App. 1988). Evers argues that an accord and satisfaction was not reached and, alternatively, if one did exist, that it would be contrary to public policy.

"An 'accord and satisfaction' is an agreement to discharge an existing disputed claim; it constitutes a defense to an action to enforce the claim." ***Flambeau Prods. Corp. v. Honeywell Info. Sys., Inc.***, 116 Wis.2d 95, 112, 341 N.W.2d 655, 664 (1984). "[A]n accord and satisfaction requires an offer, an acceptance, and consideration." ***Id.*** In order for an accord and satisfaction to exist, the offer must be assented to. "Assent does not ... require mental assent or a 'meeting of the minds.'" ***Hoffman v. Ralston Purina Co.***, 86 Wis.2d 445, 454, 273 N.W.2d 214, 217 (1979). The question is not the actual intent of the offeree, but the offeree's manifested intent. ***Id.*** Assent or acceptance of an accord and satisfaction can be manifested by word or action. ***Id.*** "[I]f a check offered by the debtor as full payment for a disputed claim is cashed by the creditor, the creditor is deemed to have accepted the debtor's conditional offer of full payment notwithstanding any reservations by the creditor." ***Flambeau***, 116 Wis.2d at 101, 341 N.W.2d at 658.

Additionally, the supreme court in ***Flambeau*** explained:

> First, the law in Wisconsin has long been that payment in full settlement of a claim which is disputed as to amount discharges the entire claim. Resolution of an actual controversy involving some subject of pecuniary value and interest to the parties is sufficient consideration of an accord and satisfaction.

> A second rule, also of long-standing, is that payment of part of a debt which is not disputed as to amount does not discharge the debt altogether, even when it is expressly agreed that the partial payment is received in full satisfaction. The debtor's mere refusal to pay the full claim does not make it a disputed claim. Where the refusal is arbitrary and the debtor knows it has no just basis, the payment of less than the full amount claimed does not operate as an accord and satisfaction even though it is tendered and received as such. This rule is based on the principle that a part payment furnishes no consideration for relinquishing the balance of the debt.

***Id.*** at 113-114, 341 N.W.2d at 664 (citations omitted). Most significantly, for purposes of the instant case, the supreme court reiterated:

> The doctrine of accord and satisfaction includes safeguards designed to protect a creditor from an overreaching debtor: there must be a good faith dispute about the debt; the creditor must have reasonable notice that the check is intended to be in full satisfaction of the debt.

***Id.*** at 111, 341 N.W.2d at 663.

Here, there was a "good faith dispute about the debt." Additionally, Evers had "reasonable notice that the check is intended to be in full satisfaction of the debt" because it was accompanied by Fryer's letter, which was more than a "mere refusal to pay the full claim." It detailed the reasons for withholding exact amounts and specified that "this is a very fair settlement." Thus, Evers received reasonable notice that the $103 check was intended to be in full satisfaction so, when he cashed the check, there was an accord and satisfaction.

Evers also contends that "the doctrine of accord and satisfaction [should not be applied] to defeat a residential tenant's security deposit claim" given the public policy surrounding landlord-tenant law in Wisconsin. His arguments are powerful. They are, however, arguments more properly addressed to our state legislature or supreme court, given Evers's effort to fashion an exception to the general doctrine of accord and satisfaction.

*By the Court.* – Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.