Circuit Court for Prince George's County
Case No.: CAL17-12455

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1636

September Term, 2017

DERRICK DONELL ANDERSON

v.

M&T BANK

Woodward, C.J.
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 21, 2018

Derrick Anderson, appellant, filed a civil complaint in the Circuit Court for Prince George's County alleging that M&T Bank, appellee, breached their contract by failing to discharge his debt after they accepted an instrument "in contravention of Accord and Satisfaction," pursuant to Md. Code, Commercial Law § 3-311. M&T Bank filed a motion to dismiss or, in the alternative, for summary judgment, stating that the complaint failed to state a claim as a matter of law. On October 6, 2017, after a hearing, the court granted M&T Bank's motion. On appeal, Anderson presents one issue for our review, which we quote:

> Circuit Court for Prince George's County, Maryland was in error and didn't follow the rule Maryland Code Commercial Law Title 3 – Negotiable Instruments Subtitle 3 – Enforcement of Instruments Section 3-311 Accord and satisfaction by use of instrument.

M&T Bank presents the issue as:

> Whether the circuit court properly concluded that the complaint and related material central to the allegations therein failed to state a claim for relief.

For the reasons discussed below, we affirm.

BACKGROUND

On November 7, 2016, Anderson entered into a sales contract to buy a pickup truck financed for $52,728.94, with monthly payments of $799.69 over the course of 84 months. The dealership immediately assigned the loan to M&T Bank. Eight days after signing the contract, Anderson called M&T bank to ask for an account balance, which he claims he "immediately disputed." Anderson requested a written payoff statement, which M&T

Bank sent detailing the amount owed.[1] On December 2, 2016, Anderson sent M&T Bank a money order for $800 on which he marked "tendered as full satisfaction of claim" in the memo line. Nonetheless, he continued to make monthly payments for the next four months. He then filed a civil complaint less than a month after his April 2017 payment, seeking compensatory damages for payments made after the December money order was accepted, release of the lien, title to the truck, and punitive damages. He based his claim on "accord and satisfaction." The court granted M&T Bank's motion for summary judgment, after concluding that Anderson did not have a valid claim for accord and satisfaction.

DISCUSSION

Under Md. Rule 2-501(e), a trial court may grant summary judgment when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Here, the trial court found that in reviewing the undisputed facts of the case, M&T Bank was entitled to judgment as a matter of law because Anderson did not have a valid claim for accord and satisfaction.

Appellant contends that granting the motion was incorrect. Relying on *Trinsey v. Pagliaro*, 229 F. Supp. 647 (E. D. Pa. 1964), he first asserts that the granting of the motion was error because the statements by counsel in M&T Bank's motion were "not facts before the court and are therefore insufficient for a motion to dismiss or for summary judgment."

[1] The payoff statement reflected that as of November 30, 2016, Anderson owed $52,965.86. The per diem interest was stated as $10.30087.

First, we note that appellant's reliance on *Trinsey* is misplaced.[2] In *Trinsey*, the court found that the statements by counsel were insufficient because the defendant's motion to dismiss was unsupported by affidavits or depositions and was incomplete because it requested the court to consider facts outside of the record. Here, M&T Bank's motion to dismiss/summary judgment included an affidavit from an M&T Bank employee in charge of administering their account with Anderson. The affidavit verified that the facts stated within the motion were true. Also included was a copy of the sales contract for the truck, executed by Anderson.

We hold that the circuit court did not err in granting M&T Bank's motion because (1) accord and satisfaction is an affirmative defense, not a cause of action, see Md. Rule 2-323(g)(1), and (2) there was no compromise, "accord," or "satisfaction" because a contractually-obligated payment cannot serve as consideration under the provision.

Md. Code, Commercial Law, § 3-311 provides:

> (a) If a person against whom a claim is asserted proves that (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.
>
> (b) Unless subsection (c) 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.

[2] We also note that this case was decided by the United States District Court for the Eastern District of Pennsylvania and is therefore not binding law on this Court.

In other words, accord and satisfaction provides "a method of discharging a contract or cause of action, whereby the parties agree to give and accept something in settlement of the claim or demand of one against the other, and perform such agreement, the 'accord' being the agreement, and the 'satisfaction' its execution or performance." *Jacobs v. Atlantco Ltd. Partnership No. 1*, 36 Md. App. 335, 340 (1977).

As noted, "accord and satisfaction is an affirmative defense." *Wickman v. Kane*, 136 Md. App. 554, 561 (2001). In *Wickman*, we explained that for the doctrine to apply, three elements must exist:

> 1) that a dispute arose between the parties about the existence or extent of liability; 2) that, after the dispute arose, the parties entered into an agreement to compromise and settle the dispute by the payment by one party of a sum greater than that which he admits he owes and the acceptance by the other party of a sum less than that which he claims is due; and 3) that the parties performed that agreement.

Id.

The dispute must be a bona fide dispute, that is a "dispute asserted in good faith and the subject matter is reasonably doubtful ... i.e., not so lacking in foundation as to make its assertion incompatible with honesty and a reasonable degree of intelligence" *Id*. at 561-62 (internal quotations omitted). A bona fide dispute must exist because accord and satisfaction, in effect, creates a new contract which must be supported by new consideration. *Id.* at 562-63. The new consideration being the compromise over the amount of the disputed debt. Here, Anderson never asserted what he believed was the correct balance but simply claimed that he "disputed" the payoff amount. However, the purchase price and amount due each month was clear in the contract he had executed, which

was also consistent with the payoff statement given at his request by M&T Bank. It is "incompatible with honesty and a reasonable degree of intelligence" for Anderson to believe that $800 would be the "correct" price of a pickup truck financed for over $50,000. Because there was no good faith dispute for the parties to compromise, M&T Bank received no consideration or benefit for accepting the December 2016 $800 money order for a payment already owed. M&T Bank was entitled to keep the $800, and the payments that followed, as partial payments towards the debt of the truck. Moreover, there was no agreement by M&T Bank to accept anything other than what Anderson was contractually obligated to pay.

In short, there was no compromise and, as such, no accord and satisfaction under Md. Code, Commercial Law, § 3-311. Therefore, M&T Bank was entitled to judgment as a matter of law.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.