IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
CIVIL TRIAL DIVISION

WENDELL GLOVER d/b/a G&G BINNING	:	
v.	:	AUGUST TERM, 1998
SUNNYBOY PRODUCE COMPANY, INC. and EDWARD KERZNER	:	NO. 0097

Myrna Field, J. October 30, 2001

OPINION OF THE COURT

Defendants, Sunnyboy Produce Co., Inc. and Edward Kerzner, appeal this court's order of July 12, 2001, denying their motion for post-trial relief. For the reasons which follow, defendants' motion was correctly denied. Judgment as entered on July 16, 2001 in favor of the plaintiff was proper and should be affirmed.

A bench trial was held in this matter on January 16, 2001. The following facts were established. Plaintiff, Wendell Glover, doing business as G&G Binning Company, was hired by the defendants, Sunnyboy Produce and its principal, Edward Kerzner, to bin, haul and rework shipments of watermelons, eventually transporting them to merchants on Sunnyboy's behalf. These jobs were performed and then invoiced. Payments were periodically made, not necessarily on the invoiced amounts. Between May and September of 1996, defendants hired plaintiff to handle several truckloads of watermelons. The invoices were presented at trial and summarized

on the sheet identified as Plaintiff's Exhibit 1. The total amount billed in those invoices was $16,748.00.

Mr. Glover testified that it had been the practice between the parties for invoices to be submitted for each job, and payment thereon made periodically, but not necessarily in any amount corresponding exactly to each invoice. Prior to this dispute, the defendants had made several partial payments which totaled approximately $6,000.00.

The present dispute arose in September, 1996, when Mr. Glover was called by a representative of Sunnyboy and told to come in to pick up a check. When he arrived he was given a check in the amount of $3,000.00. At that time the outstanding amount due was reflected in P-1, namely $16,748.00. The check contained the notation, "Accepted in Full Accord & Satisfaction 1996." Mr. Glover objected to the notation, and took the check to his attorney, Daniel Meachum, who crossed out the objectionable language. Mr. Glover then deposited the check. He testified that he expected further payment, as he had always been paid in installments.

After hearing all the evidence, the court found that there had not been an accord and satisfaction and that Sunnyboy still owed Mr. Glover the balance due on the invoices summarized in P-1. On January 22, 2001 a finding was entered on behalf of plaintiff in the amount of $13, 798.00.[1]

In their post-trial motion, defendants raised two issues. First, that the defendants were entitled to judgment notwithstanding the verdict because the $3,000.00 amount was an accord and satisfaction of a disputed debt. Second, that the defendants were entitled to a new trial

[1] The amount as recorded should have been $13,748.00, which is the amount from P-1, $16,748.00, less the $3,000.00 paid. While the conclusions reached by the court were correct and should be affirmed, a correction of the judgment amount from $13, 798.00 to $13,748.00 is needed.

because the court improperly precluded the testimony of Sunnyboy's witness Joseph Williams. Both these arguments are without merit.

When deciding a motion for judgment notwithstanding the verdict, the court must consider the evidence in the light most favorable to the verdict winner, who must receive the benefit of every reasonable inference of fact therefrom, and any conflicts in the evidence must be resolved in his favor. Rohm and Haas Co. v. Continental Casualty Co., 2001 WL 1245822 (Pa., October 18, 2001).

Turning to defendants' first argument, we note that accord and satisfaction is an affirmative defense, therefore burden is on defendant to establish each element thereof. These elements are: 1) a disputed debt; 2) a clear and unequivocal offer of payment in full satisfaction; and 3) acceptance and retention of payment by the offeree. PNC Bank, Nat. Ass'n v. Balsamo, 430 Pa. Super. 360, 380, 634 A.2d 645, 655 (1993).

After hearing the evidence, the court found that the defendants had failed to establish the existence of a legitimate dispute. It was clear that the defendants did not wish to pay the amount billed by the plaintiff, but there was no dispute that the work billed for was not performed. Hence, the invoiced sum did not amount to a "disputed" claim. Without a legitimate dispute, there is no legal consideration to support an accord. PNC Bank, 430 Pa. Super., at 381, 634 A.2d, at 655. The mere use of the words "full satisfaction" on a check is insufficient to establish the existence of a dispute or its resolution. In the absence of a bona fide dispute, plaintiff's acceptance of the check could not discharge defendants' debt. Brunswick Corp. v. Levin, et al, 442 Pa. 488, 491, 276 A.2d 532, 534 (1971). Since defendants' failed to meet their

burden to prove the existence of an actual accord and satisfaction, judgment notwithstanding the verdict was not warranted.

Defendants' second argument, too, must fail. The court properly excluded the testimony of Joe Williams, another individual in the business of binning and hauling. Plaintiff requested an offer of proof prior to Mr. Williams taking the stand. Defense counsel stated that Mr. Williams, if permitted to, would testify as to how much he would charge for doing similar work and how much "reworking" of the goods was ordinarily required. (Notes of Testimony at 109-110). When asked why this information was relevant if defendants' theory was that an offer had been made and accepted in compromise of the amount billed, defense counsel conceded that it wasn't relevant. (N.T. at 112-113). Even without the concession of counsel, the court finds that Mr. Williams testimony was irrelevant because the issue before the court was not whether the proper amount had been billed, but whether the amount had been compromised by the parties. Hence, the testimony was properly excluded.

For all of the foregoing reasons, judgement in favor of the plaintiff was proper and should be affirmed.

By the Court:

_____

Myrna Field, J.