The Check's in the Mail – But, Are We Done Now?

Eric Zalud | BENESCH LAW

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THE SHIPMENT OF goods through various complicated shipment schematics, in conjunction with commercial situations by which transportation and logistics contracting parties have ongoing relationships, often involves a series of similar shipments. Occasionally, unfortunately, those relationships break down and litigation, or threats of litigation, result. In many of these situations, one of the parties attempts to resolve all claims vis-a-vis the other party, and negotiates what it believes to be a complete settlement, or, in legal terms – an accord and satisfaction.

These agreements are frequently memorialized by formal settlement and release agreements. However, in the press of everyday business dealings, they may be memorialized by a notation on a check, to the effect that "this payment resolves all claims between the parties" or words to the effect. Over the years, many of our clients have wondered what to do upon receipt of a check like that. A recent case provides an answer to that very real day-to-day question.

In 5556 Furnishings, LLC v. Schneider National Carriers, Inc., 2022 WL 3401426 (N.D. Miss. Aug. 16, 2022), 5556 Furnishings ("5556" or "Plaintiff") operated an online retail furniture sales business. Its business model was that, after an end user customer placed an order, 5556 would order the product from the actual supplier. Then, through a business arrangement with a third-party logistics provider, that entity would deliver the product to the end user.

5556 had contracted with Schneider National Carriers, Inc. ("Schneider" or "Defendant") for a series of those types of transactions and deliveries, over a period of years. However, in mid-2019, Schneider notified 5556 that it would no longer be providing these services to 5556. Since there were various shipments still in progress, and also various outstanding claims related to prior deliveries, and amounts still owed, the parties attempted to conclude their relationship informally, by a series of email exchanges.

The culmination of those negotiations was an email from Schneider to 5556 (without counsel): "With this information, I would like to make an offer to settle all pending and future known claims . . . I would like to make an offer of 50% of the current outstanding...." [5556 Furnishings, LLC, at *4]

5556 responded: "We will accept the offer of 50% of the current outstanding." [Id]

Schneider answered: "Thank you! There is nothing else needed." [Id. at *5]

5556 then responded: "I received the check today. It stated on the invoice that it was full and final payment of all [] claims . . . [h]owever, we only stated that this was just for the outstanding ones noted. Not any future ones." [Id. at *6]

Schneider closed with: "Please do not cash the check if you do not agree to the terms of full and final settlement as highlighted below." [Id] One of the owners of AFC Wholesale (one of the customers), nonetheless cashed the check the following day. That witness acknowledged in his deposition that he was aware of Defendant's instructions regarding cashing the check. [See id. at *6.]

Plaintiff contended that cashing the check did not serve as an "accord and satisfaction" of all its claims against Defendant, because of the prior emails that said it was reserving its rights on potential claims. However, the court noted that Defendant's representative clearly understood the purpose of issuing the check, and what Plaintiff had said about the check. The court then found that the law, at least in Mississippi, was clear that "despite whatever contentions a party may make to the contrary, cashing a check marked "final payment" constitutes an accord and satisfaction agreement, which precludes that party from bringing future claims for "additional payment." [5556 Furnishings, LLC, at *6]

This body of law is governed by state law, so it varies from state to state. Also, this analysis is impacted by the Uniform Commercial Code § 3-311 – Accord and Satisfaction by Use of Instrument, which states have adapted in various forms. [See, e.g., Del. Code Ann. tit. 6, § 3-311 (West); Fox Consulting v. Spartan Warehouse & Distrib., Inc., 73 N.E.3d 1055, 1058 (Ohio Ct. App. 2016) (citing R.C. 1303.40 as Ohio's version of U.C.C. § 3-311); Progressive N. Ins. Co. v. Ayala, 198 N.E.3d 612, 618 (IL App. (1st) 2021) (noting Illinois has adopted 810 ILCS 5/3-311 as Illinois' version of U.C.C. § 3-311).]

However, the foregoing does provide a cautionary reminder to be very careful, and probably consult counsel, when such a check is received—or before sending a check with that type of notation.

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