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2017 IL App (3d) 160764-U

Order filed November 8, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

PINEY RIDGE PROPERTIES, LLC,)	Appeal from the Circuit Court
)	of the 21st Judicial Circuit,
Plaintiff-Appellant,)	Kankakee County, Illinois.
)	
v.)	
)	
ROBERT S. ELLINGTON-SNIPES,)	Appeal No. 3-16-0764
)	Circuit No. 15-CH-297
Defendant-Appellee)	
)	
(Wife, City of Kankakee, Unknown Owners)	
And Nonrecord Claimants,)	
)	
Defendants).)	Honorable Kenneth A. Leshen,
)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Lytton and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in granting defendant's motion to dismiss because the mortgagee was not bound by accord and satisfaction.

¶ 2 After acquiring the underlying mortgage and note from National City Bank, plaintiff, Piney Ridge Properties, LLC, filed this foreclosure complaint on November 5, 2015, pursuant to section 15-1501 of the Code of Civil Procedure (Code) (735 ILCS 5/15-1501 (West 2014)).

Defendant, Robert S. Ellington-Snipes, moved to dismiss the complaint. He alleged that he issued a check to National City Bank on February 17, 2005, which satisfied the entire mortgage debt under the doctrine of accord and satisfaction (810 ILCS 5/3-311 (West 2014)). After reviewing a copy of the check, the trial court dismissed the case. We now reverse and remand this cause for further proceedings.

¶ 3

BACKGROUND

¶ 4

On June 16, 1993, defendant entered into a mortgage agreement with First of America Bank in Kankakee. First of America loaned defendant \$25,704 under the mortgage. Thereafter, First of America merged into National City Bank. By 2004, defendant's monthly mortgage payment was \$643.42. However, defendant began paying \$354 monthly in January 2004. He provided checks for \$354 each month from January 2004 until March 2005. In November 2004, defendant sent National City a check for \$13.66 in addition to his usual \$354 payment.

¶ 5

National City filed a foreclosure action on July 30, 2004. Defendant had not paid his monthly mortgage payments in full since January 2004. The complaint stated that defendant owed principal and interest on the mortgage totaling \$10,625.30. In October 2004, defendant sent National City's counsel a letter in which he admitted that he owed approximately \$10,000 on the mortgage; however, he claimed that his obligation to secure a \$132,000 insurance policy and pay "almost double [his] mortgage note" monthly was "unethical and maybe illegal."

¶ 6

National City applied defendant's first four \$354 checks (January through April 2004) toward his January and February monthly debts (\$643.42 each month). From May 2004 through August 2004, National City returned defendant's checks upon receipt. Thereafter, National City held defendant's payments in suspense. In 2005, National City offered defendant a check for \$2,491.66, the amount National City held in suspense from August 2004 until March 2005.

Defendant refused the check in open court. Accordingly, National City applied the amount to defendant's outstanding mortgage debt.

¶ 7 On his February 2005 check for \$354, defendant wrote under the endorsement line: "Acceptance of this check constitute [sic] payment in full of account #912281426." National City negotiated the check on February 18, 2005. The record indicates that defendant made a subsequent \$354 payment in March 2005. On March 14, 2005, defendant filed a motion to dismiss National City's foreclosure action. He argued that his February 2005 check constituted an accord and satisfaction on the mortgage debt. The trial court never ruled on defendant's motion.

¶ 8 National City voluntarily dismissed the action without prejudice on May 11, 2011. In 2015, National City assigned defendant's mortgage and note to Piney Ridge. Piney Ridge filed this foreclosure complaint on November 5, 2015. After defendant received service on April 22, 2016, he filed a motion to dismiss. At the subsequent hearing, defendant orally alleged the same accord and satisfaction defense that he alleged in National City's case—he satisfied the mortgage debt in February 2005. The trial court asked defendant to produce the February 2005 check. After reviewing the check, the trial court granted defendant's motion to dismiss. Piney Ridge now appeals.

¶ 9 ANALYSIS

¶ 10 Piney Ridge asserts that the trial court erred in granting defendant's motion because the pending foreclosure case did not constitute a *bona fide* dispute as to the amount owed *before* defendant tendered the February 2005 check. In ruling on a motion to dismiss pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2014)), the trial court must interpret all pleadings and evidence in the light most favorable to the nonmoving party. *Richter v. Prairie*

Farms Dairy, Inc., 2016 IL 119518, ¶ 18. The trial court’s ruling on a section 2-619 motion presents a question of law that we review *de novo*. *Id.*

¶ 11 “An accord and satisfaction is a contractual method of discharging a debt: the ‘accord’ is the agreement between the parties, while the ‘satisfaction’ is the execution of the agreement.” *McMahon Food Corp. v. Burger Dairy Co.*, 103 F.3d 1307, 1312 (7th Cir. 1996). As with all contracts, the parties’ intent advises courts of whether or not the transaction constitutes an accord and satisfaction. *Fremarek v. John Hancock Mutual Life Insurance Co.*, 272 Ill. App. 3d 1067, 1071 (1995). The parties’ intent is often reflected in the good faith negotiation of a contract or instrument. *Id.*

¶ 12 By statute, a debtor asserting accord and satisfaction must prove that (1) he or she, in good faith, tendered an instrument to the creditor as full satisfaction of the claim, (2) the amount of the claim was unliquidated or subject to a *bona fide* dispute, and (3) the claimant obtained payment of the instrument. 810 ILCS 5/3-311(a) (West 2014). The term “good faith” means “not only honesty in fact, but the observance of reasonable commercial standards of fair dealing.” 810 ILCS 5/3-311(a), comment 4 (West 2014). Additionally, the debtor must provide the claimant with a written communication, on or with the instrument, containing a conspicuous statement that the instrument was tendered as full satisfaction of the claim. 810 ILCS 5/3-311(b) (West 2014).

¶ 13 A debtor who does not act in good faith does not bind the claimant to an accord and satisfaction. In *Fremarek*, the claimant sought \$10,425.75 to adjudicate the debtor’s workers’ compensation lien. *Fremarek*, the debtor, tendered a check for \$1000 to fully satisfy the lien, which the claimant negotiated. Although the check clearly stated that the tendered amount was intended to fully satisfy the lien, the court held that *Fremarek* did not tender his offer in good

faith. *Fremarek*, 272 Ill. App. 3d at 1073. Notably, the claimant never bargained for the tendered amount, which was less than 10% of Fremarek's debt. Under these circumstances, the *Fremarek* court was unwilling to bind the claimant to a contract of accord and satisfaction without evidence of good faith bargaining and fair dealing. *Id.*

¶ 14 The Seventh Circuit, applying Illinois law, also held that dishonest rouses do not amount to an accord and satisfaction. *McMahon Food Corp.*, 103 F.3d at 1313-14. In that case, McMahon habitually neglected Burger's invoices for dairy products and plastic milk cases. The parties met several times to discuss settling McMahon's account balance. During one of the meetings, McMahon's agent lied to Burger's agent by telling him that some of the debt had already been paid to Burger's previous manager. Taking this statement as true, Burger's agent agreed to settle McMahon's debt for less than half of the amount owed. McMahon's check clearly stated that the tendered sum was payment in full for the outstanding debt. Although McMahon and Burger were clearly engaged in a "dispute," the Seventh Circuit found that there was no "honest dispute" because of McMahon's misrepresentation. *Id.* at 1313. Without an honest dispute, there can be no accord and satisfaction. *Id.*

¶ 15 Here, there is no question that defendant's February 2005 check contained a conspicuous statement that defendant tendered the instrument to fully satisfy the mortgage debt. The parties also agree that National City negotiated the instrument. The question is whether defendant acted in good faith to resolve an honest debt dispute.

¶ 16 Defendant tendered a check for \$354, the same amount that he tendered as his "monthly payment" each of the prior 13 months. In October 2004, defendant also admitted that he owed approximately \$10,000 on the mortgage principal. Offering \$354 on an undisputed \$10,000 debt is not a good faith offer. More likely, defendant tendered the check under the guise it was a

monthly payment in hopes of deceitfully escaping his larger mortgage debt. The record also indicates that defendant made another \$354 payment in March 2005, after the supposed accord and satisfaction.

¶ 17 Piney Ridge recognizes that “[w]hether a pending foreclosure case constitutes a *bona fide* dispute of a debt owed to the Plaintiff by the Defendant in an accord and satisfaction analysis” is a matter of first impression in Illinois. However, we need not address whether a pending foreclosure action constitutes a *bona fide* dispute in every case. In this case, any dispute that may have existed was not an honest one because defendant did not act in good faith. Defendant admitted that he owed approximately \$10,000 on the mortgage; the record does not indicate any good faith negotiations or that National City was willing to accept \$354 to fully satisfy the \$10,000 debt. Under these circumstances, defendant’s February 2005 check cannot bind the mortgagee to a contract of accord and satisfaction.

¶ 18 CONCLUSION

¶ 19 For the foregoing reasons, we reverse the judgment of the circuit court of Kankakee County and remand this cause for further proceedings.

¶ 20 Reversed and remanded.