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THINK CAREFULLY BEFORE CASHING CHECKS ON DISPUTED ACCOUNTS

Someone who owes you money has just given you a check. On the check, is written "final payment." Should you cash it? What will happen if you do? Be careful.

When parties dispute the amount owed on a contract, they will often settle for an amount that is less than the original demand. From a legal standpoint, the parties have reached an "accord and satisfaction." The problem comes when one party says that the payment is final and the other party claims that it was only a partial payment. In such cases, courts might allow the matter to be presented to a jury, in order to determine the intent of the parties. Unfortunately, by the time a case reaches a jury, the court costs and attorneys fees can exceed the amount of the original dispute.

Checks are negotiable instruments, which are governed by Article 3 of the Michigan Uniform Commercial Code (the "UCC"). Very few, if any, disputes are settled with cash, so courts should look to the UCC in just about all settlement disputes. Unfortunately, judges unfamiliar with the UCC have been inconsistent in their rulings.

The Michigan Supreme Court has attempted to bring consistency to this area of law. ***Hoerstman Gen Contracting Inc. v Hahn*** involved an agreement between a general contractor and two homeowners for an extensive remodeling project. The project was not completed by the contract deadline and the homeowners made several modifications to the contract, none of which were in writing.

Not surprisingly, the parties disagreed on the amount owed once the remodeling project was completed. After accepting an initial $125,000.00 from the homeowners, the contractor claimed that an additional $32,750.00 was still owed. The contractor offered to settle the matter for $16,910.79. The homeowners responded with a letter stating, "If we send you a check for $5,144.79, we will consider this account closed and will not expect discussion of other items. We will then expect the lein (sic) waiver to be sent. If this is not acceptable, we will have to resort to arbitration per attorney." Included with the letter was a check in the amount of $5,144.79, which contained a handwritten notation from the homeowners that stated: "final payment."

The contractor then sought legal advice from an attorney. The attorney crossed out the words "final payment" on the check, and advised the contractor to go ahead and deposit it. Following his attorney's advice, the contractor deposited the check, credited the homeowners account, and then demanded that the homeowners pay the remaining balance. When the homeowners refused to pay, the contractor sued. For their defense, the homeowners asserted that their payment represented an "accord and satisfaction," and that no additional money was owed. After a bench trial, the court ruled against the homeowners and awarded the contractor approximately $26,000.00.

Both parties appealed, and the Court of Appeals found that the "final payment" notation on the check was insufficient for an accord and satisfaction. The Court of Appeals also stated that the notation on the check was simply not enough to inform the contractor that acceptance of it would discharge the balance of his claim. The homeowners then appealed to the Michigan Supreme Court.

The Michigan Supreme Court reversed, and ruled that the UCC preempts all case law for transactions involving negotiable instruments, such as checks. Citing the UCC, the Supreme Court held that an accord and satisfaction has been reached if the following three elements are present:

(1) A good faith tender was made for full satisfaction of the claim;

(2) A bona fide dispute exists as to the amount owed on the claim; and

(3) The contractor actually received payment.

The Supreme Court found all three elements to be present and ruled that the parties had reached an accord and satisfaction. The Supreme Court then held that once an accord and satisfaction is found to exist, the question becomes whether the balance of claim is discharged. To obtain a discharge under the UCC, one of two elements must exist:

(1) The instrument itself, or an accompanying written communication, must contain a conspicuous statement that the tender has been offered in the full satisfaction of the claim; or

(2) The payee knew that the payer had tendered the instrument in full satisfaction of the claim.

Rather than making a factual determination regarding the intent of the parties, the Supreme Court looked to the first element only, and stated that because a written statement on a check should be noticed, such written statements should therefore be viewed as "conspicuous." The Supreme Court then ruled that the balance of the claim was discharged when the contractor deposited the check.

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THINK CAREFULLY BEFORE CASHING CHECKS ON DISPUTED ACCOUNTS contd.

The Supreme Court further stated that while questions of fact must generally be presented to a jury for determination, the existence of an accord and satisfaction is a question of law for the judge to decide. In other words, it is now possible for a party asserting an accord and satisfaction to have a judge dismiss a case long before it ever reaches a jury.

Equally important, the Supreme Court found no exception in the UCC for "erroneous legal advice." The contractor's reliance on his attorney's advice was found to be irrelevant, meaning that the existence of an accord and satisfaction cannot be denied based upon a simple misunderstanding of the law. The advice of the ill-informed attorney may have cost the contractor as much as $26,000.00.

The attorneys of Cummings, McClorey, Davis & Acho are well-versed in all of the provisions of the UCC and are available to assist in resolving contract disputes and other business matters.

Linda Davis Friedland

COURTS GO PAPERLESS

If it hasn't already arrived, **e-filing** is coming soon to a court near you. **E-filing** means that, instead of hand delivering or mailing, filings are sent to the courts via the Internet. **E-filing** systems may also include the ability to electronically serve other parties with documents, the ability to view and retrieve court filings online, the ability for the court to electronically transmit court orders, and the ability for courts to process and store all documents created in a case in electronic format.

The Benefits of e-Filing

Electronic documents offer many advantages:

- Court filings are submitted online with only a few mouse clicks via the court's web site at any time, including after court hours. Time-stamped "receipts" of e-filed documents are returned instantly, and court dockets are immediately updated and available.
- The parties to a case can receive service of documents via e-mail, eliminating the expense of multiple photocopies, messenger services, postage, etc.
- Attorneys are provided with access to important case documents from anywhere at any time. Registered users have 24-hour access to case files, and have the ability to review, download and print documents directly from the court system.
- Case activity is easily monitored. In some cases, e-mail alerts can be sent whenever new documents are filed in a particular case, by a particular party, or against a particular party.

e-Filing requirements

The general requirements for **e-filing** include:

- An electronic document format acceptable by the court;
- An Internet connection; and
- An e-filing user account.

Courts have gone to great lengths to make the process as simple as possible. However, understanding the **e-filing** procedures in the various jurisdictions and courts can sometimes be tricky. As with many court rules, each jurisdiction and, in some situations, each judge, can have their own special local rules.

e-Filing in Federal Court

Currently, **e-filing** systems are being used in 88 of the 94 federal district courts and 91 bankruptcy courts, including those in Michigan, California and Arizona. According to the federal judiciary, more than 20 million cases are on e-filing systems. This number will certainly increase, since it is anticipated that the federal system will be operating fully in all federal courts, including the U.S. Court of Appeals, by late 2006. In addition, *mandatory* **e-filing** is in place in Federal Bankruptcy Court and is accelerating through the rest of the federal system.

e-Filing in State Court

State courts throughout the country are on track to follow the **e-filing** trend. Nearly all states in the country have some form of electronic docket system, and over half of the states have introduced **e-filing** capability in some form. Michigan's **e-filing** system provides a way to initiate a case and file other legal documents with a court through the Internet. Through the e-filing system, filings can be submitted to a participating court 24 hours a day, seven days a week. The system also provides electronic court forms that can be filled in on-line, printed and processed manually or, for those courts that participate, filed electronically.

For now, **e-filing** in state court is not mandatory and there are no additional fees to file electronically. State courts in Michigan are just beginning to explore and develop the possibilities of electronic filing and Internet access to court documents. Several Michigan courts have already joined the **e-filing** initiative by participating in prototype programs or limited pilot projects, including the Court of Appeals, the Circuit Courts of Oakland, Eaton, Ottawa and Wayne Counties, and the 38th District Court in Eastpointe. However, these programs are limited to specific case types or judges, so not all court filings are being accepted electronically at this time. Before attempting to file a document via the Internet, it is important to first verify that the court is participating in an **e-filing** program.

It is clear that the use of electronic filing can dramatically improve court operations and give law firms a better way to manage litigation and service their clients. For these reasons, continued and steady growth is expected in the number of courts implementing electronic filing procedures throughout the state and country. CMDA has always effectively used state-of-the-art technology to enhance its practice and its ability to serve its clients. As a result, the attorneys and staff of CMDA are familiar with the new **e-filing** procedures and have already begun filing electronic documents with participating courts, saving our clients money.

Karen Daley

Liars Beware

Much has been said about the tall tales that have been told in America's courtrooms. In fact, one of the reasons we have an adversarial legal system is the hope that through intensive questioning, a judge or jury will be able to tell whether a witness is being truthful.

One who lies under oath in court may be prosecuted for the crime of perjury. Perjury is a felony in most states including Michigan. However, few perjurers are ever tried and convicted, because busy prosecutors view such cases as too time consuming. As a result, many witnesses have lied under oath with no consequences whatsoever.

One judge has begun a campaign to change that. Rather than waiting to see whether the prosecutor's office will pursue an individual who has blatantly lied on the witness stand, Judge Michael Warren of the Oakland County Circuit Court uses his contempt powers to effect quicker and more efficient punishment.

Judge Warren has summoned approximately 24 witnesses to his courtroom since taking the bench in 2003 in order to cite them for "misdemeanor contempt." He has also appointed independent prosecutors to handle these cases. Once convicted of misdemeanor contempt, witnesses face varying degrees of punishment ranging from $250.00 in fines and community service to 30 days in jail.

Judge Warren was quoted in *The Detroit Free Press* on March 28, 2006 as saying, "What we forget here is that perjury is not just an affront to the court, it has severe consequences for the party playing by the rules." Judge Warren talked about a mother of a defendant in an armed robbery case who took the stand and produced a handwritten letter saying that she had received it from her son's co-defendant. She asserted that the handwritten letter was a confession clearing her son of robbery. After a handwriting expert determined that the letter was a forgery, the mother admitted to Judge Warren that she had manufactured the whole story. Judge Warren sent her to jail for seven days!

Judge Warren also recalled a divorce case, where an ex-husband denied making derogatory and racial slurs against his ex-wife. After the ex-wife produced a tape of the telephone conversation in question, Judge Warren sent the ex-husband to jail for three days for lying to the Court.

According to Judge Warren, "there has been an erosion of respect for the rule of law and the judicial process ... this is a step we can take to begin to redeem that." Attorneys and prosecutors have praised Judge Warren's efforts. We should expect more judges to follow this trend. Everyone who enters a courtroom needs to know that there can be, and should be, severe consequences for not telling the truth.

Linda Davis Friedland

In the Law

Compiled by Patrick R. Sturdy

The cases featured in this section do not necessarily involve CMDA. They are interesting cases we thought you would enjoy reading. To read additional cases, visit our website at www.cmda-law.com. Each Monday new articles are posted on our homepage.

Avoid Getting Stuck Paying Your Employees' Debts

Businesses should take care to avoid getting stuck with their employees' debts by properly handling garnishments that are served upon them. Upon receipt of a **writ of garnishment** for an employee, a business has limited time to act and failure to do so could result in the business being obligated to pay the employees' entire debt. In a recent case ***(Lyons v Moceri)*** the courts ordered a business to pay the entire amount of its employee's debt because the business failed to act in a timely manner and provide the requested information to the person trying to collect money owed to him by the employee. If your business is served with a writ of garnishment for one of your employees, you need to timely file the appropriate disclosure statement. Call us if we can help you ensure that you will not get stuck paying off your employees' debts.

Use the Right Formula When Taxing New Construction

Municipal taxing authorities need to make sure that they apply the proper formula for establishing the taxable value of new construction. In the case of ***Desanto v Township of Northville***, the court explained that the Michigan Tax Tribunal did not err in refusing to apply a "cost-plus profit" formula to determine the value of new construction because that formula grossly understated the value of the property. Instead, the proper formula for calculating the value for new construction was the "fair market comparison" approach. That approach requires the taxing authorities to make comparisons with other existing properties to determine the appropriate taxable value.

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Our Vision

To meld our legal expertise, professional support staff, technical resources and variety of locations to deliver first rate legal services at a fair value to a full range of business, municipal, insurance and individual clients.

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