

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

JOEL COLLINS,	:	APPEAL NO. C-0600916
Plaintiff-Appellant,	:	TRIAL NO. 05CV-25304
vs.	:	
DÉCOR LIGHTING,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Plaintiff-appellant Joel Collins appeals pro se from the judgment of the trial court in favor of defendant-appellant Décor Lighting. Collins had filed a complaint against Décor Lighting for breach of an employment agreement. Collins alleged that he was entitled to recover monies due under the agreement, including past-due wages, unreimbursed expenses, and severance pay. Décor Lighting filed an answer denying that it had breached the agreement and asserting the affirmative defense of accord and satisfaction.

On September 26, 2006, the case was tried to the bench. Collins's case-in-chief consisted solely of his testimony and exhibits. Collins testified that he had entered into an oral agreement with Décor Lighting's president, Robert Carter, to

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

manage and evaluate the company, as an independent consultant, during Carter's absence in April and May 2004. Following Carter's return, he had drafted and Carter had signed an employment agreement, which addressed his position as general manager at Décor Lighting, as well as his salary, benefits, expenses, and severance pay. He served as manager of Décor Lighting until October 25, 2004, when Carter removed him as general manager and later offered him a lesser position within the company. He testified that he had declined the position because he did not want to be an employee of Décor Lighting. When Collins told Carter that he still owed him monies under the contract, including past-due wages for April and May 2004, unreimbursed expenses, and severance pay, Carter refused to pay him the monies.

During cross-examination, Collins admitted that Décor Lighting had paid him \$22,132.97 for wages and unreimbursed expenses. Collins further admitted that on December 3, 2004, Décor Lighting had given him a check that was within 97 cents of the \$2845 that he claimed Décor Lighting had owed him for past wages and expenses following his departure from the company; that the check had been accompanied by a letter from Décor Lighting's office manager, Amy Shulwalter, that provided as follows: "Joel Collins, your acceptance of this check number 43828071 constitutes a full release of all obligations from Décor Lighting"; and that he had deposited this check into his bank account.

With respect to the severance pay he sought, Collins admitted that he had drafted the employment agreement between himself and Décor Lighting; that the agreement had provided that he would only be entitled to severance pay if Décor Lighting "unilaterally disassociated" with him; and that he had declined Décor Lighting's offer of an alternate position following his removal as general manager.

At the close of Collins's case, Décor Lighting moved for directed verdict on the basis that Collins was not entitled to any money for past-due wages, reimbursement of expenses, or severance pay under the agreement because he had entered into an enforceable accord and satisfaction. Décor Lighting alternately argued that Collins was also not due any severance monies under the agreement because his decision to reject the company's alternate offer of employment had not resulted in the "unilateral disassociation" by Décor Lighting necessary to trigger the severance terms in the parties' agreement. Collins argued, on the other hand, that he was not bound by an accord and satisfaction because he had noted on the letter accompanying the check that the check was taken with a reservation of his rights.

The trial court granted Décor Lighting's motion. In a written judgment entry journalized the same day, the trial court granted judgment to Décor Lighting on all of Collins's claims. Collins now appeals, raising a sole assignment of error in which he argues that the trial court misapplied the law when it entered judgment for Décor Lighting under the doctrine of accord and satisfaction.

Before addressing the merits of Collins's assignment of error, we must first address the fact that the court and the parties proceeded as though Civ.R.50(A) was applicable to a bench trial when it was not. As this court has previously explained, "It is established law that in a trial without a jury, a motion for judgment at the conclusion of the plaintiff's case is one for dismissal under Civ.R. 41(B)(2), not a motion for directed verdict under Civ.R. 50. This distinction is important because two different tests are applied. The test for a motion to dismiss in a bench trial under Civ.R.41(B)(2) is whether plaintiff has made his case by a preponderance of the evidence. The court as trier of the facts is entitled to weigh the plaintiff's evidence,

and the court's dismissal will not be set aside unless it is erroneous as a matter of law or against the manifest weight of the evidence. The fact that a prima facie case may have been presented is beside the point. On the other hand, the test for a motion for a directed verdict under Civ.R.50(A) is whether after construing the evidence most strongly in favor of the party against whom the motion is made, the court finds that upon any determinative issue, reasonable minds could come to but one conclusion upon the evidence submitted and that conclusion is adverse to such party. In such event, the court is not the trier of the facts and does not weigh the evidence when it rules upon the motion."²

"On review of bench trials in which the court and the parties have mistakenly treated the defendant's motion as being under Civ.R. 50(A), appellate courts have applied the correct test to the evidence; that is, they have determined whether the trial court's judgment was against the manifest weight of the evidence or otherwise contrary to law. This has been done whether the claimed error was the granting of the motion or the denial of it, and whether the appellate court affirmed or reversed the judgment below."³

In this case, the trial court, sitting as the trier of fact, had before it credible evidence that would have permitted it to decide that there was an accord and satisfaction between Collins and Décor Lighting that barred Collins's claims for any additional monies due under their agreement. "A valid accord and satisfaction may

² *Johnson v. McQueen* (Aug. 27, 1986), 1st Dist. No. C-850742; see, also, *In re Hughes* (June 23, 2000), 1st Dist. No. C-990346; *The Commons, Inc. v. Cioffi* (July 19, 1995), 1st Dist. Nos. C-940137 and C-940339.

³ *Johnson*, supra; see, also, *Jarupan v. Hanna*, 10th Dist. No. 06AP-1069, 2007-Ohio-5081, at ¶6-¶9.

be asserted as an affirmative defense to a claim for monetary damages.”⁴ When a defendant attempts to rely on the affirmative defense of an accord and satisfaction, three elements must be met: (1) the defendant must show the presence of an accord; (2) the defendant must show that the accord was actually executed; and (3) the defendant must demonstrate that the accord and satisfaction was supported by some form of consideration.⁵

“The Ohio Supreme Court has further recognized two safeguards that must be present for there to be a valid accord and satisfaction: ‘[1] there must be a good-faith dispute about the debt and [2] the creditor must have reasonable notice that the check is intended to be in full satisfaction of the debt.’ ”⁶

In this case, Collins testified that he had met with Carter, the president of Décor Lighting, shortly after his termination and discussed, among other things, the amounts he believed were due to him under their agreement for past-due wages, reimbursement of his expenses, and severance pay. Approximately one month after orally rejecting Collins’s claims for these additional monies, Décor Lighting offered Collins a check that was within 97 cents of the amount Collins claimed was due to him under their agreement for past wages and unreimbursed expenses. Collins cashed the check, even though the letter accompanying the check had stated that the check was made in full payment of any monies due the under agreement.⁷ While Collins testified that he had written words of protest on the letter accompanying the

⁴ *Osborne v. McCalla*, 5th Dist. No. 2006CA00253, 2007-Ohio-3887, at ¶20, citing *Allen v. R.G. Indus. Supply*, 66 Ohio St.3d 229, 231, 1993-Ohio-43, 611 N.E.2d 794.

⁵ *Id.*; see, also, *Mooney v. Finnerty*, 1st Dist. No. C-060098, 2006-Ohio-6981, at ¶7.

⁶ *Mooney*, *supra*, at ¶8.

⁷ See *Dawson v. Anderson* (1997), 121 Ohio App.3d 9, 698 N.E.2d 1014 (holding that a letter accompanying a check marked “payment in full” established that there was a bona fide dispute over the debt).

check, R.C. 1301.13 specifically prevented him from cashing Décor Lighting's check, which had been offered in accord and satisfaction of the previously existing obligation, and then seeking to collect the balance of the debt that would have been owed had it not been for the accord and satisfaction.⁸

Because Collins's testimony revealed, contrary to his arguments, that there was a good-faith dispute about the debt, and that he had reasonable notice that the check was intended to be in full satisfaction of the debt, we overrule his sole assignment of error and affirm the judgment of the court below.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

PAINTER, P.J., SUNDERMANN and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on November 21, 2007
per order of the Court _____.
Presiding Judge

⁸ See *Horen v. Summit Homes*, 6th Dist. No. WD-04-001, 2004-Ohio-2218, at ¶47-57.