

A manufacturer of flat screen televisions and a big box retailer had a written contract in which the manufacturer agreed to sell and the retailer agreed to buy all of its requirements of a certain type of television for three years.

A dispute arose near the end of the third year, when the retailer returned 25 undefective televisions to the manufacturer for full credit along with a check payable to the manufacturer for the balance admittedly due on all other merchandise sold and delivered to the retailer. The check was conspicuously marked, "Payment in full for all goods sold to the retailer to date." The manufacturer's credit manager, reading this check notation and knowing that the retailer had also returned the 25 televisions for full credit, deposited the check without protest in the manufacturer's local bank account. The canceled check was returned to the retailer a week later.

Which of the following defenses would best serve the retailer in an action by the television manufacturer against the retailer for damages due to return of the 25 televisions?

- A. By depositing the check without protest and with knowledge of its wording, the television manufacturer discharged any remaining duty to pay on the part of the retailer.
- B. By depositing the check without protest and with knowledge of its wording, the television manufacturer entered into a novation discharging any remaining duty to pay on the part of the retailer.
- C. The parties' good-faith dispute over return of the televisions suspended the duty of the retailer, if any, to pay any balance due.
- D. The television manufacturer's deposit of the check and its return to the retailer after payment estopped the manufacturer thereafter to assert that the retailer owed any additional amount.

Explanation:

When a debt is **disputed in good faith**, the debtor can attempt to **settle the debt** by giving the creditor a **check conspicuously marked, "Payment in full."** The creditor can then:

deposit the check – in which case the debtor's **duty to pay is discharged** *or*

reject the check – in which case the debtor's **duty to pay is *not* discharged.**

Here, the retailer disputed the amount owed to the television manufacturer since the retailer returned 25 undefective televisions *for credit*. The retailer included a check—conspicuously marked, "Payment in full"—in the amount of the balance due on all merchandise sold and delivered to the retailer other than the 25 undefective televisions. Therefore, the retailer's best defense is that, by depositing that check instead of rejecting it, the manufacturer discharged any remaining duty to pay on the part of the retailer.

(Choice B) A novation is a subsequent contract that substitutes a new party for one of the original parties. But here, the retailer attempted to settle a debt by tendering a check—not by substituting a new party.

(Choice C) When a debt is disputed in good faith, the debtor can attempt to settle the debt for less than the claimed amount. But the debtor is still required to pay the undisputed portion of the debt, if any.

(Choice D) The television manufacturer is estopped (ie, prohibited) from asserting a claim for any additional amount because the manufacturer deposited the check—not because the check was returned to the retailer after payment.

Educational objective:

When the amount of a debt is disputed in good faith, the debtor can attempt to settle by giving the creditor a check conspicuously marked, "Payment in full." The debtor's duty to pay will be discharged only if the creditor deposits the check.

References

Restatement (Second) of Contracts § 281 cmt. d (Am. Law Inst. 1981) (explaining that a creditor who cashes a check marked "payment in full" may have formed an enforceable accord).

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Offer to satisfy debt with check

