

A tenant rented a commercial building from a landlord and operated a business in it. The building's large front window was smashed by vandals. The tenant, who was obligated thereunder to effect and pay for repairs in such cases, promptly contracted with a window store to replace the window for \$2,000.

After the store's satisfactory completion of the window replacement, the tenant ceased doing business and vacated the building. Upon vacating the building, the tenant mailed a \$1,000 check to the window store bearing on its face the following conspicuous notation: "This check is in full and final satisfaction of your \$2,000 window replacement bill." Without noticing this notation, the window store cashed the check and then sued the tenant for the \$1,000 difference.

If the tenant's only defense is accord and satisfaction, is the tenant likely to prevail?

- A. No, because the amount owed by the tenant to the window store was liquidated and undisputed.
- B. No, because the window store failed to notice the tenant's notation on the check.
- C. Yes, because by cashing the check the window store impliedly agreed to accept the \$1,000 as full payment of its claim.
- D. Yes, because the window store failed to write a reservation-of-rights notation on the check before cashing it.

Explanation:

When a **good-faith dispute** exists as to the amount of a debt, the debtor can offer to **settle that debt** by giving the creditor a **check with a conspicuous notation** stating that it constitutes **payment in full**. The creditor can then:

cash the check – in which case the **debt is satisfied** or
reject the check – in which case the **debt is not satisfied**.

But if the debt is **liquidated** (ie, certain and undisputed in amount), it **cannot be satisfied** by a check for a **lesser amount**. This is true even if the creditor cashes that check.

Here, the tenant offered to satisfy his debt to the window store by mailing a \$1,000 check with a conspicuous notation stating that "[t]his check is in full and final satisfaction of the \$2,000 bill." But since this notation acknowledged that the tenant owed the store \$2,000 (liquidated amount), his check for the lesser amount of \$1,000 could not satisfy that debt. Therefore, the tenant is unlikely to prevail.

(Choice B) A check with a conspicuous notation is sufficient to satisfy a disputed debt—even if the creditor fails to notice that notation.

(Choice C) Had there been a good faith dispute as to the amount of the debt, then the window store, by cashing the check, would have impliedly agreed to accept the \$1,000 as full payment of its claim. But there is no implied agreement to settle when the debt is liquidated.

(Choice D) A creditor *cannot* reserve its right to collect the full amount of a debt by writing a reservation-of-rights notation (eg, "under protest") on a check before cashing it. Therefore, the window store's failure to do so is irrelevant.

Educational objective:

If a debt is disputed in good faith, then the debtor can offer to satisfy the debt by giving the creditor a check with a conspicuous "payment-in-full" notation. But if the debt is liquidated (ie, certain and undisputed in amount), then it cannot be satisfied by a check for a lesser amount—even if the creditor cashes 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

