SINET AND ASHER ROBI, Plaintiffs

v.

GOVERNMENT OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS, Defendant

Civil Action No. 31-74

Trial Division of the High Court

Ponape District

May 24, 1976

Action against government for damage to property, in which accord and satisfaction was made basis of motion to dismiss. The Trial Division of the High Court, Brown, Associate Justice, held that there was an accord and satisfaction where plaintiff and government official agreed that government would repair damage caused to plaintiff's truck in collision with vehicle operated by government employee and that in return plaintiff would make no other claim, the vehicle was repaired and plaintiff did not complain of faulty repair.

1. Accord and Satisfaction—Generally

An accord and satisfaction is a method of settling a cause of action arising from either contract or tort by substituting for such cause of action an agreement for the satisfaction thereof and of the execution of the substituted agreement, and it is essentially the same as a compromise and settlement, any distinction between the two being unimportant.

2. Accord and Satisfaction-Affirmative Defense-Pleading

Being an affirmative defense, accord and satisfaction must be pleaded specially in the absence of circumstances indicating a waiver of such requirement.

3. Accord and Satisfaction-Question of Fact

Whether an agreement amounts to an accord and satisfaction is a question of the parties' intent and hence a fact question.

4. Accord and Satisfaction-Elements

The elements of an accord and satisfaction are proper subject matter, competent parties, consent or meeting of the minds of the parties, and consideration consisting of a new promise, which is the accord, and the performance of the new promise, which is the satisfaction.

5. Accord and Satisfaction-Offer and Acceptance

When an accord and satisfaction is in effect, the old obligation remains in force until the new contract is performed by satisfaction, that is, when the new consideration is accepted.

6. Accord and Satisfaction—Particular Cases

An accord and satisfaction was agreed upon and executed, barring plaintiffs' suit against the government, where government employee was involved in collision with plaintiffs' truck, plaintiffs and government

agreed that the government would repair the damage to the truck in return for a promise not to make any claim against the government, the damage was repaired, and plaintiffs did not complain of insufficient or faulty repair.

BROWN, Associate Justice

By their Amended Complaint, Plaintiffs seek to recover damages for property damage to their motor vehicle and for loss of its use as a taxi for a period of twenty-seven (27) days. Plaintiffs allege that Defendant's employee, acting within the course and scope of his employment, negligently drove a vehicle so as to proximately cause a collision with and damage to Plaintiffs' vehicle.

In its Answer, Defendant denies the allegations of the Amended Complaint and pleads the affirmative defenses of contributory negligence, unavoidable accident, and accord and satisfaction, and now moves that upon that latter ground the action be dismissed.

When the case came on for trial on May 21, 1976, the parties, through their counsel, stipulated that the motion to dismiss, based upon an alleged accord and satisfaction, be heard and ruled upon first. This Court accepted the stipulation, received oral evidence, and heard argument.

As is almost invariably the case, the evidence was in conflict, but the preponderance of that evidence was that on or about April 12, 1974, Plaintiffs' pickup truck was involved in a two vehicle collision with a vehicle operated by one of Defendant's employees who was acting within the course and scope of his employment. As a proximate result of the collision, the left front fender, left headlight, and left door of Plaintiffs' vehicle were damaged. Upon learning of the accident and of the damages, Plaintiff, Asher Robi, met with the District Director of Public Works, and an oral agreement was made whereby the latter agreed to have Plaintiffs' vehicle repaired to the best of the ability of Public Works personnel, and Mr. Robi agreed that in exchange therefor he would make no other claim against

the Defendant. Thereupon, a Work Request was prepared, Plaintiffs' vehicle was repaired at the Public Works garage, the vehicle was then returned to Plaintiff, Asher Robi, or to his agent or representative; and it was neither returned for further repair, nor was any complaint made to the District Director of Public Works or to the garage superintendent concerning the work that was performed. Instead, Plaintiffs consulted with counsel and caused the initiation of this action.

This Court now considers the Motion to Dismiss before it, and only that motion. It specifically does not consider the questions of negligence, proximate cause, damages, unavoidable accident, or contributory negligence.

- [1] An accord and satisfaction is a method of settling a cause of action arising from either contract or tort by substituting for such cause of action an agreement for the satisfaction thereof and of the execution of such substituted agreement. 1 Am.Jur.2d, Accord and Satisfaction, p. 301, § 1. It is essentially the same as a compromise and settlement, and any distinction between an accord and satisfaction and a compromise and settlement is unimportant. San Juan v. St. John's Gas Co., 195 U.S. 510, 25 S.Ct. 108; Grandview, etc. Co. v. Hartford F. Ins. Co., 66 P.2d 827 (Wash.), 109 A.L.R. 1472.
- [2] Being an affirmative defense, accord and satisfaction must be pleaded specially in the absence of circumstances indicating a waiver of that requirement. 1 Am.Jur.2d, Accord and Satisfaction, P. 350, § 53 (citing Ensley v. Associated Terminals, 8 N.W.2d 161 (Mich.); Stone v. Webster, 144 P.2d 466 (Ida.); St. Louis, etc. Co. v. United States, 267 U.S. 346, 45 S.Ct. 245; Owens v. Noble, 175 P.2d 241 (Cal. App.).
- [3, 4] Whether an agreement amounts to an accord and satisfaction is a question of the parties' intent and hence a

fact question. The elements of an "accord" are: proper subject matter, competent parties, consent or the meeting of the minds of the parties, and consideration. $Goad\ v$. Rogers, 229 P.2d 791 (Cal. App.).

[5] In considering the matter of an accord and satisfaction it must be kept in mind that the old obligation remains in force until the new contract is performed by satisfaction, i.e. when the creditor accepts the new consideration. (See: Rest., Contracts, § 417.) Thus, for the establishment of an accord and satisfaction, two elements are required, namely the new promise (which is the accord) and the performance of that new promise (which is the satisfaction). This is set forth with clarity in the case of *Gardiner v. Gaither*, 329 P.2d 22, 31 (Cal. App.) where the court said:

In 1 Cal.Jur.2d., P. 276, § 34, the applicable principles supported by many authorities are stated as follows:

"Acceptance by the creditor of the consideration of an accord extinguishes the obligation, and constitutes the satisfaction. However, the obligation is not extinguished until the accord is fully executed, even though the parties to the accord are bound to execute it. In other words, an accord may be binding on the parties, but it does not discharge the obligation it is made to satisfy until it is executed....

"It is an elementary principle that an accord without satisfaction is not a bar, nor does it constitute a defense. In other words, if a second contract is but an accord, then the original obligation remains in force until the new one is performed."

[6] The preponderance of the evidence is that Plaintiff, Asher Robi, and Defendant, through the District Director of Public Works, agreed that the damage caused to Plaintiffs' vehicle as a result of the collision would be repaired as well as possible and that in consideration, Plaintiffs would make no further claim against Defendant for damages arising out of the accident. The Court finds as a fact that such agreement was made, and therefore an accord was reached. Plaintiffs' argument that there was no

agreement cannot seriously be considered. Surely it would strain the imagination and violate common sense were any court to conclude that a governmental agency would undertake to repair a privately owned vehicle without cost to its owner in the absence of consideration. Under the circumstances, it must be found that there was an accord.

After the vehicle was repaired, delivery was taken by Plaintiff, Asher Robi. He now argues that-the repairs were done improperly, but it is significant to note that never did he report his dissatisfaction either to the District Director of Public Works or to the superintendent of the Public Works garage.

The preponderance of the evidence is that the repairs were done to the best of the ability of Defendants' agents, and that constituted the consideration required of Defendant. Thus, there was the required satisfaction. As already noted, Asher Robi never complained to the District Director of Public Works garage after taking delivery of his vehicle. Surely there was no duty on any agent of Defendant to leave their places of work and seek out Plaintiffs to determine whether or not the repairs met with latters' approval.

Under the evidence, the Court finds as a fact that there was, indeed, an accord and satisfaction. Therefore, the Motion to Dismiss must be, and it is granted; and this action is hereby ordered to be, and it is dismissed with prejudice, the parties herein to bear their own costs.