Ramos v. Knoxville Emergency Physicians Group, P.C.

Tenn.App.,1988.

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SEE COURT OF APPEALS RULES 11 AND 12

Court of Appeals of Tennessee, Eastern Section.

Andres A. RAMOS, Plaintiff-Appellant,

v.

KNOXVILLE EMERGENCY PHYSICIANS GROUP, P.C., Defendants-Appellees.

April 28, 1988.

C/A No. 1142, Knox Law., Harold Wimberly, Judge.

A. Thomas Monceret and WilliamC. Cremins, Knoxville, for plaintiff-appellant.

Thomas E. Ray and Harold L. North, Jr., Ray & North, P.C., Chattanooga, for defendant-appellee.

OPINION

FRANKS, Judge.

*1 In this action for moneys allegedly due plaintiff for his services with defendant, Knoxville Emergency Physicians Group, the trial judge directed a verdict for the defendant on the basis plaintiff's acceptance and cashing of two bonus checks constituted an accord and satisfaction between the parties as to all claims. Plaintiff has appealed.

Plaintiff was a member of defendant group, a professional corporation of physicians providing emergency room care to various Knoxville area hospitals. Plaintiff has served the group as a practicing physician, as a member of its board of directors and treasurer. In his claim plaintiff relies on the employment agreement between the parties, as well as a bonus provision which was implemented by the board on July 20, 1981. The minutes of that date provide:

Any excess capital in the future after all expenses are paid is to be distributed among the members of KEPG based on individual percent of production of that excess income. The excess is to be paid at the end of the corporate year December 1st. through November 30th. beginning for the fiscal year 1981. Payment for attendance to the BOD Meetings will be paid prior to the distribution of excess capital.

In December, 1981, defendant issued bonus checks to all of its doctors. Plaintiff's check was dated December 16, 1981 and bore the notation

bonus". A letter detailing the individual doctor's percentage of the bonus was also delivered; however, the record does not clearly establish whether the check and letter were delivered simultaneously. Plaintiff deposited his check on December 21, but protested the amount allocated to him and voiced his complaint to four of defendant's doctors. He also voiced his dissatisfaction at a subsequent meeting of the board of directors; however, because of his prior heated confrontation with the treasurer, he stated he would "just forget about it for the time being".

On November 22, 1982, plaintiff was terminated by the group and, in January, 1983, he received a check marked "bonus 1982". The check was accompanied by a letter outlining the distribution of the bonuses to the various doctors. Plaintiff claims additional moneys were due him for both years on his percentage of production of the excess capital.

At trial the defendant's accountant testified there is no precise meaning for the phrase "excess capital" and the phrase is subject to several interpretations. In 1981 the phrase was interpreted by defendant management as a percentage of the total billings for the various doctors. In 1982, defendant based the bonus on a percentage of the total hours worked. The accountant conceded it was possible to interpret the bonus as plaintiff contends, which is based on each doctor's contribution of revenue less expenses.

In reviewing a judgment based upon a directed verdict, we are required to take the strongest legitimate view of the evidence in favor of the party opposing the motion, indulging all reasonable inferences in his favor and disregarding all contrary evidence. Pusser v. Gordon, 684 S.W.2d 639 (Tenn.App.1984). Only when the evidence is uncontradicted and where reasonable minds could reach only one conclusion should the verdict be directed. Bowers v. Potts, 617 S.W.2d 149 (Tenn.App.1981).

We note at the outset the burden of proving accord and satisfaction was upon the defendant as it was raised as an affirmative defense. Inland Equip. Co. v. Tennessee F. & M. Co., 192 Tenn. 548, 241 S.W.2d 564 (1951). Moreover, an accord and satisfaction is a question of fact ordinarily for the jury, to be established by a preponderance of the evidence that a contractual obligation had been discharged. Fuqua v. Madewell, 25 Tenn.App. 140,152 S.W.2d 133 (1941).

*2 An accord and satisfaction is established by evidence of some dispute as to a claim or amount due, a proper and sufficient consideration, a mutual agreement or meetings of the minds of the parties to the accord and satisfaction as to the amount paid and that the amount was given and accepted in full satisfaction of the original claim or dispute. Bowaters North American Corp. v. Murray Machinery Inc., 773 F.2d 71 (6th Cir.Tenn.1985); Great American Music Machine, Inc. v. Mid-South Record Pressing Co., 393 F.Supp. 877 (M.D.Tenn.1975); Helms & Willis v. Unicoi County, 166 Tenn. 639, 64 S.W.2d 200 (1933); Lytle v. Clopton, 149 Tenn. 655, 261 S.W. 664 (1923); Cole v. Henderson, 61 Tenn.App. 390, 454 S.W.2d 374 (1969); Tullahoma Con. P. Co. v. Pyramid Con. P. Co., Inc., 46 Tenn.App. 559, 330 S.W.2d 578 (1959).

In the instant case, the judge found that when plaintiff received the checks and the letters he should have known defendant intended the bonuses to be full satisfaction of its obligations. The judge also referred to plaintiff's lack of protest over the 1982 check and his reluctance to protest further over the 1981 check as acceptance of the fact that he would not receive any further moneys. While this constitutes some evidence of the doctor's intent, we are unable to conclude, as a matter of law, that plaintiff's requisite intent is shown to accept the bonus checks in full satisfaction of any debts owed to him. Neither check indicated it was given in full payment or full satisfaction of all claims and in evaluating the conduct of the parties it is highly material that in each instance the dispute over the amount due for the given year only arose after delivery of each bonus check, which suggests the checks were given for what the defendant perceived was due plaintiff and not as consideration of some pre-existing disputed indebtedness. Accepting an amount of money under protest while claiming more is due will not bar an action to collect the balance allegedly owed. Groce v. Pickett County, 12 Tenn.App. 442 (1930). Also a mere acceptance and cashing of a check, even when marked "payment in full", is not necessarily conclusive to establish an accord and satisfaction. See Quality Care Nursing Serv. v. Coleman, 728 S.W.2d 1 (Tenn.1987).

When plaintiff accepted the 1981 bonus check, he made his dissatisfaction known to the defendant on several occasions. While the letters and checks are perhaps sufficient to demonstrate defendant's intent, they do not sufficiently establish that Dr. Ramos accepted the payments as satisfaction of a disputed indebtedness. Pinney v. Tarpley, 686 S.W.2d 574 (Tenn.App.1984). Accordingly, the issues should have been submitted to the jury. See Union Indemnity Co. v. U.S. for Use of Page Engineering Co., 74 F.2d 645 (6th Cir.Tenn.1935).

We reverse the judgment and remand the case to the trial court for a new trial on the grounds the evidence presented fails to establish, as a matter of law, an accord and satisfaction as outlined herein.

*3 The costs incident to the appeal are assessed to appellee.

SANDERS, P.J. (E.S.), and GODDARD, J., concur.

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Not Reported in S.W.2d, 1988 WL 39551 (Tenn.Ct.App.)

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