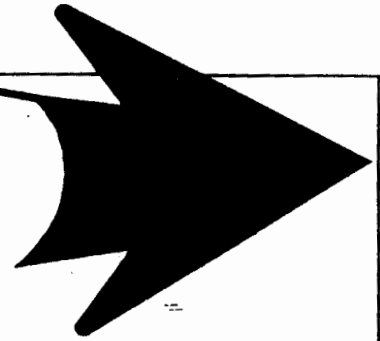


# THE ARROW

A Publication of:

GREENE & COOPER, ATTORNEYS



## ACCORD AND SATISFACTION: UCC SUPERSEDES COMMON LAW

**F**or the first time, the Kentucky Court of Appeals has had to address section 1-207 of Kentucky's version of the Uniform Commercial Code. The case in question came out of Hardin County Circuit Court and is titled Ditch Witch Trenching Company of Kentucky, Inc. v. C & S Carpentry Services, Inc. It addresses the question of whether K.R.S. 355.1-207 applies to a "full payment" check situation.

The appellant, Ditch Witch, had leased a tractor and plow attachment to C & S for a construction job in Richmond, Kentucky. Ditch Witch billed C & S \$7,560.00 for the rental, but there was a dispute between the parties as to how many days the equipment was actually leased.

C & S issued a check to Ditch Witch in the sum of \$2,835.00, the amount of the rental which it acknowledged

owing. C & S included the following words upon the face of the check: "CASHING CONSTITUTES PAYMENT IN FULL."

Upon receipt of this check, the president of Ditch Witch crossed out the quoted "payment in full" language, cashed the check, and notified C & S by letter that its check had been accepted only as partial payment of the total rental bill Ditch Witch was claiming.

Eventually, Ditch Witch filed suit to collect the \$4,725.00 difference in the balance it claimed was owed. C & S moved for a summary dismissal of the case based upon the common law doctrine of accord and satisfaction. Ditch Witch responded that there was no accord and satisfaction, and even if there had been, UCC 1-207 (KRS 355.1-207) superseded the common

law. The trial court accepted C & S's argument and dismissed the Complaint on the basis of the accord and satisfaction argument made by C & S.

Our reader should know that KRS 355.1-207 bears the following title: "Performance or Acceptance Under Reservation of Rights," and reads as follows:

"A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as 'without prejudice,' 'under protest' or the like are sufficient."

There has been much litigation over this statute in other states, and Kentucky's Court of Appeals, in issuing its decision, acknowledged that a clear majority of other juris-

dictions that have addressed the issue have refused to apply this Code section to the conditional check situation. Justice Mike McDonald, in his Opinion, stated as follows: "It is more important to us, however, to reach a correct result than mechanically adopt the majority position."

Most other jurisdictions would apply UCC 1-207 only to situations where one party desires to continue performance under a contract without waiving any right in a pending dispute. Based upon the UCC's general provisions that it is to be "liberally construed and applied to promote its underlying purposes and policies," including its purpose of simplifying the law governing commercial transactions, and what it considered a literal interpretation of the plain language contained in 1-207, Kentucky's Court of Appeals concluded that the common law doctrine of accord and satisfaction had been superseded by the passage of this statute.

Because payment of obligations by check or other negotiable instruments is clearly covered under Article 3 of the Code, and because the section in question is found in the introductory Article to the Code, the Court reasoned it must have been intended to apply to all transactions falling within any Article.

The Court acknowledged that there is other authority

for the proposition that the mere crossing out of conditional language does not in itself constitute a reservation of rights, but went on to express its belief that this act, coupled with the written notice by Ditch Witch to its debtor that the check was only being applied as a partial payment, was sufficiently explicit to satisfy the Code requirements of 1-207.

The decision is important not only because it is one of first impression, but also because it gives clear guidelines to creditors caught in the situation in which Ditch Witch found itself, an all too common occurrence. If you receive a "payment in full" check on a clearly disputed account for less than your full balance, it appears that in Kentucky you may now safely follow the example of Ditch Witch. This means that you must not only strike out the offending language on the face of the check, but also give the debtor immediate written notice that you are only depositing the check as partial payment, and not as total satisfaction of the indebtedness. □

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