Land & Water Law Review

Volume 15 | Issue 2 Article 13

1980

Contracts - Section 1-207 of the Uniform Commercial Code Not Intended to Apply to Doctrine of Accord and Satisfaction - Jahn v. Burns

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CONTRACTS—Section 1-207 of the Uniform Commercial Code Not Intended to Apply to Doctrine of Accord and Satisfaction. Jahn v. Burns, 593 P.2d 828 (Wyo. 1979).

Suppose buyer A and seller B enter into a transaction. After performance is complete, a dispute arises over the amount of money that A owes to B. B claims that the debt is $500, while A maintains that he only owes $400. A subsequently sends B a check for $450 with a notation stating: "Settlement in Full for My Account." Before cashing the check B crosses out A's notation and endorses the check: "With Reservation of All My Rights." This hypothetical describes the common situation of payment of a debt by conditional check.[1]

The common question arising out of the above situation pertains to the effect of B's attempt to reserve his rights while at the same time cashing A's check. Under the common law, if the debt is undisputed in existence and liquidated, B need not try to reserve his rights since A cannot relieve himself of full liability by sending a check for less than an amount he legally owes.[2] This is known as the preexisting duty rule which was first proposed in the English case of *Foakes v. Beer*.[3] That case determined that a party could not relinquish his obligation for full payment of a debt even if a partial payment was bargained for in satisfaction of the original obligation.[4] Or, in other words, a party cannot undo what he is already legally obligated to do. However, if the dispute between the parties is in fact an honest one and the debt is unliquidated, then B's attempt to reserve his rights will be to no avail because an accord and satisfaction will occur.[5] Under the majority rule of accord and satisfaction B's cashing of the check imputes his assent to the conditions upon which it was delivered. Any exercise of dominion over the proceeds by the creditor relinquishes any chances of recovering the full amount he claims to be due.[6] The important point is that the doctrine

1. CALAMARI AND PERILLO, CONTRACTS § 4-12 (2nd ed. 1977).
2. *Id.* at § 4-10.
3. Foakes v. Beer, 9 App. Cas. 605 (1884).
4. CALAMARI AND PERILLO, *supra* note 1, at § 4-10 n. 3.
5. 1 AM. JUR. 2d, *Accord and Satisfaction* § 22 (1962).
6. CALAMARI AND PERILLO, *supra* note 1, at § 4-12.

only applies to debts which are unliquidated and in dispute.[7] Thus, where a debt is liquidated, an undisputed fixed sum, an accord and satisfaction cannot occur.

With the adoption of section 1-207 of the Uniform Commercial Code[8] the law has become unsettled as to what the answer to the above question is in relation to unliquidated debts.[9] The section reads in full:

> 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.[10]

The main focus of debate is concerned with whether or not this section of the Code was even intended to be applied to the conditional check situation.[11] This note will discuss the various judicial interpretations given to the section, and will suggest to the reader that the interpretation made by the Wyoming Supreme Court in *Jahn v. Burns* is the correct one.[12]

FACTUAL SETTING OF JAHN V. BURNS

The case of *Jahn v. Burns* was the Wyoming Supreme Court's first opportunity to rule on the applicability of section 1-207 of the Uniform Commercial Code to the conditional check situation.[13] The dispute between the plaintiff (Jahn) and the defendant (Burns) arose out of an automobile accident in which the parties were involved on February 10, 1978. Some time after the mishap, the defendant mailed a letter with an accompanying cashier's check for $200 to the plaintiff. Part of the letter stated: "I intend

7. *Id.*
8. WYO. STAT. § 34-21-126 (1977) is the Wyoming version of U.C.C. § 1-207. For purposes of clarity this note will refer to the Wyoming section as U.C.C. § 1-207.
9. Hawkland, *The Effect of the U.C.C. § 1-207 on the Doctrine of Accord and Satisfaction by Conditional Check*, 74 COMM. L.J. 329 (1969).
10. U.C.C. § 1-207 (1972 Text).
11. Hawkland, *supra* note 9.
12. Jahn v. Burns, 593 P.2d 828 (Wyo. 1979).
13. *See* note 8, *supra*, for Wyoming Statutes citation.

this check as payment in full for all personal and property damages resulting from our accident of Feb. 10, 1978."[14] The defendant included a similar notation on the front of the check which read: "Payment in full for all personal and property damages resulting from our accident of Feb. 10, 1978."[15] After receiving the check, plaintiff crossed out the notation and wrote on the back, "Deposited under protest and with full reservation of all my rights."[16] The check was then endorsed and cashed by the plaintiff. He then brought an action in Fremont County District Court for damages arising out of the accident. Defendant answered the plaintiff's claim asserting the defense of accord and satisfaction, and entered a motion for summary judgment. The district court granted the defendant's motion for summary judgment, finding as a matter of law that the plaintiff's acceptance and cashing of the check amounted to an accord and satisfaction. The Wyoming Supreme Court affirmed the decision.[17]

THE REASONING OF THE COURT

In affirming the district court's holding the Wyoming Supreme Court relied on the majority rule of accord and satisfaction discussed above. Furthermore, the court dismissed the plaintiff's claim that the doctrine of accord and satisfaction was changed when the State adopted the Uniform Commercial Code in 1961.[18] The court held in part that U.C.C. section 1-207 was not intended to apply to the situation at hand, and also that the tort claim was not a "commercial transaction" within the meaning of the code.[19]

The plaintiff, appellant, presented two arguments in relation to the code: first, that U.C.C. section 1-207 was designed to apply to the conditional, full payment check situation; and second, that since a check was used, article 3 of the code brought the entire transaction within its scope.[20]

14. Jahn v. Burns, *supra* note 12, at 829.
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.* The Uniform Commercial Code in Wyoming is contained in WYO. STAT. § 34-21-101 through § 34-21-966 inclusive.
19. Jahn v. Burns, *supra* note 12, at 830, 831.
20. *Id.* at 829.

Under the "plain and ordinary" meaning rule[21] the court determined that section 1-207 of the Uniform Commercial Code was not applicable to the facts of the case.[22] According to the court, the plaintiff's actions in cashing the check while attempting at the same time to reserve his rights amounted to a failure on his part to "assent to performance in a manner . . . offered by the other party."[23] The defendant had only offered the check conditioned on the request that the plaintiff accept it in full settlement, which he did not. Furthermore, it was determined that the framers of the code had no intention to apply section 1-207 to the situation existing in this case.[24] Citing the official comments to the section, the court concluded that the statute was designed to protect the interests of a party to a contract who fears a breach, while performance is still ongoing.[25] As the comment states: "This section provides machinery for the continuation of performance along the lines contemplated by the contract despite a pending dispute."[26] In the court's view it was not proper to apply the section to the case since an accord and satisfaction amounts to a new agreement between the parties, and the section focuses on continuation of performance in an already existing contract.[27] Thus, not only did the plaintiff's actions take him out of the protections afforded by section 1-207, but it was never intended to apply to the situation to begin with.

Finally, the court dismissed the five cases cited by plaintiff which had determined that section 1-207 of the code was applicable to an accord and satisfaction claim.[28] The important point was that in only one of the cases was

21. The Wyoming Supreme Court noted several of its prior decisions which discuss this rule of statutory construction: Mountain Fuel Supply Co. v. Emerson, 578 P.2d 1351 (Wyo. 1978); Johnson v. Safeway Stores, Inc., 568 P.2d 908 (Wyo. 1977); Geraud v. Schrader, 531 P.2d 872 (Wyo. 1976) *cert. den. sub. nom.*
22. The text of WYO. STAT. § 34-21-126 (*see* note 8, *supra*) is identical to text of U.C.C. § 1-207.
23. Jahn v. Burns, *supra* note 12, at 830.
24. *Id.*
25. *Id.* at 831.
26. Official Comment No. 1 of U.C.C. § 1-207 (1972 Text) cited by the court in Jahn v. Burns, *supra* note 8, at 830.
27. Jahn v. Burns, *supra* note 12, at 831. The court also relied heavily upon Hawkland's article cited *supra* note 9.
28. *Id.* at 831 n. 2. Some of these decisions are discussed *infra.*

the section determinative, and in that case the South Dakota Supreme Court noted that the minority rule with respect to accord and satisfaction was controlling.[29] The minority rule allows a party to protect his rights when cashing a "full payment" check by obliterating or crossing out any notations or by informing the debtor in some way of his lack of assent.[30]

In the second part of its opinion, the Wyoming Supreme Court also rejected the plaintiff's claim under article 3 of the Uniform Commercial Code.[31] Plaintiff was arguing that since a negotiable instrument was used in the transaction, her claim arising out of the accident fell within the coverage of the code. The court concluded that simply because a check is used in a transaction, it does not necessarily follow that article 3 of the code automatically applies. It was first necessary to determine whether a tort claim arising out of an automobile accident fell within the scope of the code itself.[32] Since the code only pertains to "commercial transactions," the tort claim had to constitute just that. The conclusion reached was that the tort action in the case did not amount to a "commercial transaction," and the fact that a check was involved did not make it one.[33] Hence, article 3 of the code was only designed to cover commercial transactions involving negotiable instruments, thus the plaintiff's claim in the court's opinion fell outside the purview of the entire code.[34]

The court noted lastly that it had no duty under the code to necessarily align its decisions with those of other jurisdictions. The disposition of the case and the statutory interpretations were deemed correct "whether or not there be other determinations elsewhere on the issues considered."[35]

29. *Id.*, citing Scholl v. Tallman, 247 N.W.2d 490 (S.D. 1976).
30. Scholl v. Tallman, *supra* note 29, at 492 (citing Siegele v. Des Moines Mut. Hail Ins. Ass'n, 28 S.D. 142, 132 N.W. 697 (1911)).
31. Article 3 of the U.C.C. is embodied in WYO. STAT. § 34-21-301 through § 34-21-379 inclusive.
32. Jahn v. Burns, *supra* note 12, at 831.
33. *Id.*
34. *Id.* at 832.
35. *Id.*

CRITICAL ANALYSIS OF THE DECISION IN JAHN V. BURNS

Of the few jurisdictions which have been faced with the question of section 1-207's applicability to the doctrine of accord and satisfaction, the *Jahn* decision is the first to determine that it should not apply.[36] Although the Wyoming Supreme Court is in no way compelled to follow the decisions of other jurisdictions, the *Jahn* opinion lacks sufficient discussion as to why the prior interpretations of other courts were considered wrong.[37] This absence of reasoning suggests that the interpretation of section 1-207 given in *Jahn* may be limited to its particular set of facts, and that when faced with a different situation the Wyoming Supreme Court may yet apply section 1-207 to an accord and satisfaction defense. The court not only failed to adequately discuss prior interpretations, but relied too heavily upon one commentator's suggestions on the subject.[38]

The first case relied upon by the plaintiff in *Jahn* was a county court decision in New York which was never appealed. In *Hanna v. Perkins*, the defendant had sent a check to the plaintiff for services the plaintiff had rendered.[39] However, due to a belief on his part that the plaintiff's negligence had caused damage to his proprety, the defendant deducted $575 from the contract price. Plaintiff brought an action to recover this amount, and the defendant raised a defense of accord and satisfaction. Even though the court did not rely on section 1-207 to decide the case, it included in dictum a statement that the plaintiff's notation on the check, "Deposited Under Protest," would have brought him within the coverage of the section.[40] The court was in essence saying that had it found the debt to be unliquidated rather than liquidated, the terms of section 1-207 would have still protected the plaintiff from the effects of an accord and satisfaction.

36. These other jurisdictions are: New York, North Carolina, Oregon, South Dakota, and Florida.
37. Jahn v. Burns, *supra* note 12, at 831.
38. *Id.* at 830, 831. See Hawkland, *supra* note 9.
39. Hanna v. Perkins, Westchester County Court, N.Y., 2 U.C.C. Rep. 1044 (1965).
40. *Id.* at 1045.

Another case containing similar dictum and also cited by the plaintiff in *Jahn* was *Ballie Lumber v. Kincaid.*[41] In this case the defendant had bought some lumber from the plaintiff, but had run into financial trouble before the bill could be paid. With a balance of $2,447.67 remaining on the contract, defendant sent a letter to the plaintiff offering to pay him 35% of the total as full settlement. Plaintiff accepted the offer conditioned on payment being made by September 20, 1967. The defendant never met the condition but did eventually pay the 35% by mid-1968. With each of the two checks received the plaintiff reserved his rights and deposited under protest. He then instituted an action for recovery of the 65% of the bill yet unpaid.[42] Here also, the North Carolina court did not rely on section 1-207 to decide the case because as a matter of law they held that no accord and satisfaction had occurred. However, like the New York court's interpretation in *Hanna*, the North Carolina court noted that the plaintiff's actions were enough to satisfy the requirements of section 1-207.[43]

Although the Wyoming Supreme Court in *Jahn* was correct in stating that section 1-207 was not determinative of the holdings in both *Hanna* and *Ballie Lumber*, it failed to mention the opposite interpretations given to section 1-207 by the respective courts.[44] Possibly the lack of attention given to the interpretations of the section centers on the fact that both *Hanna* and *Ballie Lumber* arose out of commercial transactions, whereas the court concluded in *Jahn* that a commercial transaction was not involved. Since the court failed to explicitly dismiss these prior interpretations as incorrect, the possibility still exists that if faced with a case involving a commercial transaction rather than a tort, a creditor may be able to resort to section 1-207 and avoid an accord and satisfaction defense. It must be noted however, that neither the supreme court of North Carolina nor New York has been faced with the issue. Thus the cases of

41. Ballie Lumber Co. v. Kincaid Carolina Corp., 4 N.C. App. 342, 167 S.E.2d 85 (1969).
42. *Id.* at 87-88.
43. *Id.* at 93.
44. Jahn v. Burns, *supra* note 12, at 831.

Hanna and *Ballie Lumber* may not reflect the law of their respective states.

The plaintiff in *Jahn* also relied on the South Dakota Supreme Court case of *Scholl v. Tallman.*[45] The dispute in this case arose between plaintiff, construction company, and defendants, homeowners. Defendants claimed that all of their payments made to plaintiff had not been properly recorded, and that in fact they owed much less than their account showed. In a move to settle, the defendants sent plaintiff a check for $500, which included a notation: "Settlement in Full for all Labor and Materials to Date."[46] Plaintiff cashed the check under protest, and brought an action to recover the balance. Even though it was noted that the minority rule with respect to accord and satisfaction was still in effect in South Dakota, the case was not decided under it.[47] Rather, the South Dakota Supreme Court interpreted its own version of section 1-207 as allowing the plaintiff to cash the check and to thwart the defendant's defense of accord and satisfaction.[48] The interesting point is that whether or not the South Dakota version of the section embodies the minority rule of accord and satisfaction, the court's interpretation of section 1-207 is entirely consistent with those in *Hanna* and *Ballie Lumber.* And both New York and North Carolina are controlled by the same majority rule with respect to accord and satisfaction that Wyoming law reflects.[49]

Thus, the Supreme Court of Wyoming in the *Jahn* case probably should have focused more on these prior interpretations of section 1-207 than on the actual holdings, unless of course it intended *Jahn* to be given a narrow reading. This is not to suggest that the Wyoming court's

45. Scholl v. Tallman, *supra* note 29.

46. *Id.* at 492.

47. *Id.* at 493.

48. *Id.*

49. For other state court determinations of section 1-207 that reflect those in Scholl, Ballie Lumber, and Hanna, while working under the majority rule of accord and satisfaction, *see* Lange Finn Construction Co., Inc., v. Albany Steel & Iron Supply Co., Inc., 403 N.Y.S.2d 1012 (Sup. Ct. Albany County, 1978); Miller v. Jung, 361 So.2d 788 (Fla. 1978).

interpretation is wrong, but merely to criticize the lack of reasoning.

Finally, since the court in part I of its decision found that Jahn's claim under section 1-207 was not valid, its discussion of the article 3 argument seems unnecessary and a limiting factor on the decision in its own right.[50] The inconsistency occurs because on the one hand the court determined that section 1-207 did not allow the plaintiff to preserve her rights, and subsequently it determined that since the case did not involve a commercial transaction it fell outside the realm of the entire code.[51] The more logical analysis would have been to first decide whether the code applied at all, and if it did, the next step would have been to rule on the section 1-207 claim. In actuality, if the case fell outside of the code's scope, the plaintiff's argument under section 1-207 had no basis, unless the court was suggesting that article 1 of the code applies to non-commercial transactions as well. Thus the *Jahn* decision may be limited to its particular facts. Arguably, all the court decided was that since the code in general did not apply to a tort claim where a check was used in settlement, then a plaintiff's claim of reservation under section 1-207 could not be valid. The possibility exists that on a different set of facts the court will opt for an alternate interpretation of section 1-207, which will apply it to the doctrine of accord and satisfaction.

JAHN V. BURNS: THE CORRECT INTERPRETATION OF SECTION 1-207

No matter what the scope of the Wyoming Supreme Court's decision in *Jahn v. Burns*, the most noteworthy

50. Jahn v. Burns, *supra* note 12, at 831-832.

51. *Id.* at 831 where the court states:

> Before applying the provisions of the Code, the question must always be asked as to whether or not the transaction falls within the scope of the Code. In this instance: Is the tort claim resulting from the automobile accident a commercial transaction? Obviously, it is not.
>
> One court has applied the rule of Section 1-207 even though there was a question in the case whether the transaction involved was covered by the Code at all, in Ayer v. Sky Club, Inc., 27 U.C.C. Rep. 8811 (N.Y.Sup.Ct., App.Div. 1979). There it was stated that although the billing dispute between the parties was

aspect of the case is the interpretation of section 1-207 as it relates to the doctrine of accord and satisfaction. Since the enactment of the code, a substantial debate has raged concerning the very issue dealt with in *Jahn*.

The official comments to section 1-207 provide the best evidence that the section was never intended to apply to the doctrine of accord and satisfaction. The overriding conclusion which can be drawn from them is that section 1-207 was only intended to apply to situations where problems arise during the performance of an ongoing contract.[52] In the language of the comment:

> This section does not add any new requirement of language of reservation where not already required by law, but merely provides a specific measure on which a party can rely as he makes or concurs in any interim adjustment in the course of performance[53]

This portion of the comment unquestionably seems concerned with aiding a party to a contract who incurs or makes some change in its performance. In addition, no language in the comment or the text itself even makes reference to the doctrine of accord and satisfaction.[54] Since an accord and satisfaction amounts to a new contract, permitting a creditor to apply section 1-207 does not amount to "a continuation of performance along the lines contemplated by the contract."[55] Rather, this would allow a creditor to accept tender under a new contract, and utilize it for his own benefit while totally disregarding the contractual conditions upon which it was delivered.[56] Also, a general practice of the code's framers was to include in the comments to particular sections any substantial changes made in common

one which "occured in an area to which the statute (Uniform Commercial Code) might not expressly apply, nevertheless, the rule of the statute should be applied. . . ."

52. Official comment 2 to U.C.C. § 1-207 (1972 text).
53. Official comment 2 to U.C.C. § 1-207 (1972 text).
54. Rosenthal, *Discord and Dissatisfaction: Section 1-207 of the Uniform Commercial Code*, 78 COLUM. L. REV. 48 (1978).
55. Official comment 1 to U.C.C. § 1-207 (1972 text).
56. Reben, *Accord and Satisfaction: Conditional Tender by Check Under the Uniform Commercial Code*, 18 BUFFALO L. REV. 539 (1968-69).

law rules.[57] For example, section 1-103 of the code specifically states that the common law applies under the entire code unless explicitly displaced by it.[58] Although the comments are not law in the sense that the texts of the sections are, they are utilized by courts more frequently than any other source when questions of interpretation arise. The Wyoming Supreme Court relied upon them heavily in *Jahn.*[59] Without question, the official comments to section 1-207 support the conclusion drawn by the court in *Jahn.*

Substantial policy considerations also favor the interpretation of section 1-207 discussed in *Jahn.* Section 1-102 of the Uniform Commercial Code sets out some of the policies and purposes of the entire act. One of its purposes is to "simplify, clarify, and modernize the law governing commercial transactions."[60] Another policy is to "permit the continued expansion of commercial practices through custom, usage and agreement of the parties."[61] Finally, the section expresses a desire on the part of the framers of the code to "make uniform the law among various jurisdictions."[62] By construing section 1-207 as applicable to the conditional check situation, thus changing the doctrine of accord and satisfaction, these policies are not furthered.[63] Such applications merely add complexity to the well-settled law of accord and satisfaction, rather than simplifying or clarifying it as section 1-102(2)(a) calls for. The use of conditional checks, a common means of out-of-court settlement, would be severely curtailed rather than given renewed vitality. Furthermore, the uniformity which exists in relation to common law accord and satisfaction has been wrought with disparity and confusion where section 1-207 has been applied to it.[64] The Wyoming Supreme Court's interpreta-

57. Hawkland, *supra* note 9, at 331.
58. Official comment 1 to U.C.C. § 1-103 (1972 text).
59. Jahn v. Burns, *supra* note 12, at 830.
60. U.C.C. § 1-102(2)(a) (1972 text).
61. U.C.C. § 1-102(2)(b) (1972 text).
62. U.C.C. § 1-102(2)(c) (1972 text).
63. Rosenthal, *supra* note 54.
64. For example, in New York, where Hanna v. Perkins, *supra* note 39, arose, other cases decided subsequent to it have totally ignored U.C.C. § 1-207 although factual settings were similar. *See* Welbourne & Purdy, Inc. v. Mahon, 288 N.Y.S.2d 369 (Sup. Ct. App. Div. 1976); Consolidated Edison Company of New York, Inc. v. Arrol, 322 N.Y.S.2d 420 (Civil Ct., City of New York 1971).

tion, on the other hand, fosters the growth of the policies in section 1-102 of the code by keeping the doctrine of accord and satisfaction, as it now stands, intact. This will in turn expand the precedential value of the already large body of case law on the subject. Finally, the Wyoming interpretation will insure the use of conditional checks as valid, sensible means for settling commercial disputes.[65]

CONCLUSION

The law in relation to section 1-207 of the Uniform Commercial Code as it applies to the doctrine of accord and satisfaction presently remains a judicial muddle.[66] However, the Wyoming Supreme Court's decision in *Jahn v. Burns* is a step in the right direction.[67] Under the doctrine of accord and satisfaction, creditors are given substantial protection in that all of the requirements of a valid contract must be met before the doctrine applies.[68] Thus, full payment checks are generally not forced upon creditors, but are rather bargained for in good faith in most situations. It is hardly, in the words of Professors White and Summers, an "exquisite form of commercial torture."[69] By following the interpretation of section 1-207 found in *Jahn*, many disputes between debtors and creditors will continue to be decided outside the confines of the courtroom, truly a step forward for the presently overridden court systems.

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65. White, *Does U.C.C. Section 1-207 Apply to the Doctrine of Accord and Satisfaction by Conditional Check*? 11 CREIGHTON L. REV. 515 (1977).
66. Hawkland, *supra* note 9, suggested such a possibility in his article.
67. Jahn v. Burns, *supra* note 12.
68. White, *supra* note 65.
69. WHITE AND SUMMERS, UNIFORM COMMERCIAL CODE, § 13-21 (1972).