

SALEM SCHOOL DISTRICT No. 30 v. UNIT STRUCTURES, INC.
5-2248 341 S. W. 2d 50

Opinion delivered December 19, 1960.

1. ACCORD AND SATISFACTION—PRESUMPTION AND BURDEN OF PROOF.—A party pleading accord and satisfaction has the burden of sustaining such plea.
2. ACCORD AND SATISFACTION—PART PAYMENT DOES NOT ESTABLISH AS A MATTER OF LAW.—In an action on an account appellant pleaded accord and satisfaction as a defense and established part payment. *HELD*: Part payment, standing alone, does not as a matter of law establish accord and satisfaction of the entire account.
3. APPEAL AND ERROR—REVIEW OF CIRCUIT COURT'S FINDINGS IN CASE TRIED WITHOUT A JURY.—When a case is tried by the Circuit Court without a jury, the Court's findings of fact have the force and effect of a jury verdict.

Appeal from Fulton Circuit Court; *Harrell Simpson*, Judge; affirmed.

Oscar E. Ellis, for appellant.

McKay, Simpson & Crumpler, for appellee.

ED. F. McFADDIN, Associate Justice. The appellee sought to recover judgment against the appellant for \$224.97 and interest; the defense was accord and satisfaction. The cause was submitted to the Court without a jury (§ 27-1743, Ark. Stats.) on an agreed statement of facts. The judgment was for the appellee; and this appeal resulted.

On August 8, 1957, appellee sold and shipped to appellant certain materials. The invoice (# 8-578-4) was for \$7,499.00 and the invoice recited that there could be 2% discount for cash after freight was deducted. The invoice also stated: "Applicable sale, use, local, state and Federal taxes not included and to be paid by buyer." On August 19, 1957, the appellant sent its check to the appellee for \$7,183.18. There was deducted:

The freight of	\$158.20	
The 2% discount and exchange	157.62	315.82
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TOTAL		\$7,499.00

Thus, appellant did not pay the sales tax. On August 20th the appellee sent a bill to the appellant: "To bill you 3% State Sales Tax on invoice No. 8-578-4 dated Aug. 8, 1957, not included in Sight Draft. \$224.97." Appellant refused to pay the \$224.97, and claimed that the payment of the original invoice discharged the sales tax by accord and satisfaction.

We conclude that the judgment must be affirmed. The appellant, having pleaded accord and satisfaction, had the burden of sustaining such plea. *Shinn v. Kitchens*, 208 Ark. 321, 186 S. W. 2d 168. All the appellant established was the payment of \$7,499.00; and we have held that part payment, standing alone, does not, as a matter of law, establish accord and satisfaction of the entire account. *Sharp v. Sonenblick*, 213 Ark. 649, 212 S. W. 2d 18. There still remained an issue for the trier of the facts; and we have repeatedly held that when a case is tried by the Circuit Court without a jury, the Court's findings have the force and effect of a jury verdict. *Woodruff v. McDonald*, 33 Ark. 97; and *Norvell v. James*, 217 Ark. 932, 234 S. W. 2d 378, and cases there cited.

Affirmed.
