SUPREME COURT OF VIRGINIA

Johnston v. First Union Nat. Bank, 271 Va. 239

624 S.E.2d 10 (2006) · No. Record No. 050376 · Decided January 13, 2006

SUMMARY

The Supreme Court of Virginia held that a debtor's check marked "Acc't. Paid in full" discharged the disputed mortgage debt under Virginia Code § 8.3A-311 because the debtor acted in good faith, the amount claimed was subject to a bona fide dispute, and the bank accepted and retained the check beyond the statutory repayment period. The court reversed the relevant portion of the circuit court's decree and entered final judgment for the debtors. A dissent would have affirmed the trial court's finding that the tender was not made in good faith.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Russell, Senior Justice; Hassell, Chief Justice; Lacy, Justice; Keenan, Justice; Koontz, Justice; Kinser, Justice; Lemons, Justice
JURISDICTION	Virginia
DECIDED	January 13, 2006
DOCKET	Record No. 050376
DISPOSITION	reversed
PROCEDURAL POSTURE	The Johnstons appealed from a circuit court decree denying their claim that a mortgage debt had been discharged by accord and satisfaction after the Bank accepted and retained a check marked "Acc't. Paid in full."
STANDARD OF REVIEW	The circuit court's factual findings are reviewed under Code § 8.01-680 and may not be disturbed unless plainly wrong or without evidence to support them. The Supreme Court also reviewed the legal application of Code § 8.3A-311 to the undisputed facts.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Wendell W. Johnston, Hallie M. Johnston v. First Union National Bank, n/k/a Wachovia Bank, National Association

TOPICS

accord and satisfaction | uniform commercial code | secured transactions | foreclosure | commercial litigation

PRACTICE AREAS

Commercial law | Contracts | Real estate law | Remedies

QUESTIONS PRESENTED

1. Whether the Johnstons' mortgage debt was discharged under Code § 8.3A-311 when Mrs. Johnston tendered a check conspicuously marked "Acc't. Paid in full," the Bank accepted and retained the check, and the amount of the debt was subject to a bona fide dispute.
2. Whether Mrs. Johnston acted in good faith when she tendered the check to a bank teller rather than directly to the branch manager who had previously discussed the disputed balance.
3. Whether the Uniform Commercial Code provisions governing accord and satisfaction applied instead of Code § 11-12.

HOLDINGS

1. Code § 8.3A-311 governs an accord and satisfaction arising from the tender and acceptance of an instrument marked as full satisfaction of a disputed debt, including where the creditor's acceptance may have been inadvertent.
2. Mrs. Johnston carried her initial burden of proving that she acted in good faith when she presented the check marked "paid in full" to the Bank's teller.
3. The mortgage claim was subject to a bona fide dispute and was not liquidated and undisputed for purposes of Code § 8.3A-311.
4. Because Mrs. Johnston proved a good-faith tender of an instrument containing a conspicuous full-satisfaction statement, the claim was subject to a bona fide dispute, and the Bank neither designated a recipient for disputed-debt communications nor refunded the check within 90 days, the mortgage debt was discharged under Code § 8.3A-311.

KEY QUOTATIONS

> *"If the requirements of sections (a) and (b) are met, however, an accord and satisfaction is presumed."* (*13)

> *"An error of law is not equivalent to bad faith."* (*14)

> *"By retaining her payment beyond 90 days, the Bank failed to avail itself of that protection."* (*14)

> *"As a result, the provisions of subsection (b) of Code § 8.3A-311 took effect and the debt was discharged."* (*14)

FACTUAL BACKGROUND

The Johnstons had a mortgage loan secured by real property, and Mrs. Johnston believed that making 180 scheduled payments plus listed late charges would fully satisfy the loan. After discovering a discrepancy between the Bank's stated balance and her records, she attempted to resolve the dispute through the local branch and others. She later tendered a check for the final two scheduled payments, marked "Acc't. Paid in full," to a bank teller while stating that she wanted to pay the accounts in full. The Bank accepted and deposited the check, did not refund it within 90 days, and later asserted that more than $5,600 in principal remained due.

PROCEDURAL HISTORY

The Johnstons sued the Bank seeking a declaration that the mortgage loan had been fully paid and discharged and other relief. After an ore tenus hearing, the circuit court found that Mrs. Johnston had not acted in good faith, that no accord and satisfaction occurred, and that the Bank's recalculation of the balance was correct. The Supreme Court of Virginia granted an appeal, reversed the portion of the decree concerning discharge of the mortgage debt, and entered final judgment for the Johnstons; in a separate order entered the same day, it affirmed the portion setting aside the foreclosure sale and trustee's deed.

DISPOSITION

reversed

REMAND INSTRUCTIONS

No remand was ordered. The court reversed the appealed portion of the circuit court's decree and entered final judgment in favor of the Johnstons.

CASES CITED

- Gelles & Sons Gen. Contr. v. Jeffrey Stack, Inc., 264 Va. 285, 569 S.E.2d 406 (2002)
- Webb Bus. Promotions, Inc. v. American Elec. & Entm't Corp., 617 N.W.2d 67 (Minn. 2000)
- Ex parte Meztista, 845 So. 2d 795 (Ala. 2001)
- McMahon Food Corp. v. Burger Dairy Co., 103 F.3d 1307 (7th Cir. 1996)
- DeChene v. Smallwood, 226 Va. 475, 311 S.E.2d 749 (1984)