

RESOLUTION 03-14-08

DIGEST

Accord and Satisfaction: Full Payment Checks

Repeals Civil Code section 1526 to restore the common law rule of full payment checks.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Same as Resolution 07-08-04, which was withdrawn.

Reasons:

This resolution repeals Civil Code section 1526 to restore the common law rule of full payment checks. This resolution should be approved in principle because it would remove a present conflict in the law, and would provide certainty with respect to the consequences of negotiating a check offered in full payment of a disputed amount.

California common law has historically provided that where a good faith dispute exists as to the amount of a debt or obligation, the debtor may tender a check containing the notation that it is being tendered as “payment in full”; the creditor’s negotiation of the check would constitute the creditor’s acceptance of the check as payment in full of the disputed amount, and as a binding accord and satisfaction between the parties. Civil Code section 1526, which was enacted in 1987, abrogated this common law rule. Subsequently, in 1992, Commercial Code section 3311 was enacted and codified the common law rule. Commercial Code section 3311 applies to all negotiable instruments, e.g. checks. The two statutes overlap and directly conflict with one another in the majority of disputed account situations. Two California courts have found that Civil Code section 1526 and Commercial Code section 3311 cannot be reconciled; have given effect to the later-enacted of the two statutes; and have indirectly found Civil Code section 1526 to be inoperative. (*Woolridge v. J.F.L. Electric, Inc.* (2002) 96 Cal.App.4th Supp. 52; *Directors Guild of America v. Harmony Pictures* (C.D.Cal. 1998) 32 F. Supp.2d 1184.) If no longer operative, Civil Code section 1526 should be repealed.

The common law rule produces a fair result and encourages informal dispute resolution. If a debtor offers an amount of money to a creditor on the condition that it be accepted as full payment, the creditor should not be permitted to keep the offered amount and still claim that more money is due.

Subdivisions (b), (c) and (d) of Civil Code section 1526 deal with situations involving an agreement between the parties to accept an amount tendered as resolution of a debt. These situations are more appropriately dealt with by the specific terms of the parties’ agreement, and do not require a statute to control how payments are to be made or the consequences of accepting the payments made.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to repeal Civil Code section 1526 as follows:

1 § 1526

2 ~~(a) Where a claim is disputed or unliquidated and a check or draft is tendered by the~~
3 ~~debtor in settlement thereof in full discharge of the claim, and the words “payment in full”~~
4 ~~or other words of similar meaning are notated on the check or draft, the acceptance of the~~
5 ~~check or draft does not constitute an accord and satisfaction if the creditor protests against~~
6 ~~accepting the tender in full payment by striking out or otherwise deleting that notation or if~~
7 ~~the acceptance of the check or draft was inadvertent or without knowledge of the notation.~~

8 ~~(b) Notwithstanding subdivision (a), the acceptance of a check or draft constitutes~~
9 ~~an accord and satisfaction if a check or draft is tendered pursuant to a composition or~~
10 ~~extension agreement between a debtor and its creditors, and pursuant to that composition~~
11 ~~or extension agreement, all creditors of the same class are accorded similar treatment, and~~
12 ~~the creditor receives the check or draft with knowledge of the restriction.~~

13 ~~A creditor shall be conclusively presumed to have knowledge of the restriction if a~~
14 ~~creditor either:~~

15 ~~(1) Has, previous to the receipt of the check or draft, executed a written consent to~~
16 ~~the composition or extension agreement.~~

17 ~~(2) Has been given, not less than 15 days nor more than 90 days prior to receipt of~~
18 ~~the check or draft, notice, in writing, that a check or draft will be tendered with a restrictive~~
19 ~~endorsement and that acceptance and cashing of the check or draft will constitute an accord~~
20 ~~and satisfaction.~~

21 ~~(c) Notwithstanding subdivision (a), the acceptance of a check or draft by a creditor~~
22 ~~constitutes an accord and satisfaction when the check or draft is issued pursuant to or in~~
23 ~~conjunction with a release of a claim.~~

24 ~~(d) For the purposes of paragraph (2) of subdivision (b), mailing the notice by first-~~
25 ~~class mail, postage prepaid, addressed to the address shown for the creditor on the debtor's~~
26 ~~books or such other address as the creditor may designate in writing constitutes notice.~~

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS:

Existing law: Contains a conflict with regard to the consequences of negotiating a “full payment” check. California common law historically provided that where a good faith dispute existed to the amount due, a debtor could tender a check with a restrictive notation to the effect of “payment in full” as a proposed accord and satisfaction, and the creditor’s negotiation of the check was deemed a binding acceptance notwithstanding any reservation of rights by the creditor. Civil Code section 1526, enacted in 1987, changed the common law and allows a creditor to negotiate the “full payment” check without prejudicing its right to the disputed balance by expressly reserving its rights. Uniform Commercial Code section 3311, however, continues to follow the common law rule.

This Resolution: Seeks to resolve the conflict of laws by deleting Civil Code section 1526.

The Problem: The current conflict in the law. Reported decisions that address the interplay of sections 1526 and 3311 have concluded that the provisions are irreconcilable. (See Directors Guild of America v. Harmony Pictures, Inc. (C.D. Cal. 1998) 32 F.Supp.2d 1184; Woolridge v. J.F.L. Electric, Inc. (2002) 96 Cal.App.4th Supp. 52.) An amendment to harmonize the statutes, for example that § 3311 applies only to commercial transactions, does not seem justified by any public policy or legislative intent. Action needs to be taken to resolve the conflict and settle the law so Californians can know the state of the law and adjust their conduct accordingly.

IMPACT STATEMENT:

This resolution will not affect any other statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: Autumn D. Spaeth, 650 Town Center Drive, Suite 950, Costa Mesa, CA 92626; phone (714) 966-1000; fax (714) 966-1002; aspaeth@wglp.com

RESPONSIBLE FLOOR DELEGATE: Autumn Spaeth