FRED L. HAMILTON,	:	IN THE COURT OF COMMON PLEAS OF
Plaintiff	:	LYCOMING COUNTY, PENNSYLVANIA
	:	
vs.	:	NO. 99-01,113
	:	
MICHAEL L. HIGLEY, individually, and t/d/b/a/ HIGH COUNTRY LOG HOMES, INC.,	:	CIVIL ACTION - LAW
Defendants	:	

DATE: FEBRUARY 26, 2001

OPINION AND ORDER

BEFORE THE COURT is Defendants' Motion for Summary Judgment. For the reasons to be explained in this opinion, Defendant's motion is GRANTED.

Facts

The basic facts in this case are not in dispute. In 1997, Plaintiff and Defendant entered into an agreement for the construction of a log home. The contract price that Plaintiff agreed to pay was $84,598.00. In exchange, Defendant was to build a log home in accordance with his standard specifications. Construction of the home was to begin on September 15, 1997 and be completed by December 15, 1997 with stain to be applied no later than June 1, 1998. The parties began disputing in December 1997. As of January 1998, the house was not completed.

On February 3, 1998, Plaintiff's counsel sent Defendant a letter with a check for One Thousand Five-Hundred Seventy ($1,570.00) Dollars[1]. On February 9, 1998, Plaintiff wrote an additional check to Defendant in the amount of One Thousand ($1,000.00) dollars.

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[1] The letter was addressed to Michael L. Higley, President, High Country Log Home, Inc. and read as follows:

> Dear Mike:
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> Enclosed please find a check for $1,570.00. This check is being given to you to conclude all matters with regard to the contract with the Hamiltons. This does not mean that we are satisfied with the work that you have performed to date but this is to conclude all matters between you and the Hamiltons. All additional work, which needs to be completed, will be taken care by the Hamiltons.
>
> With the cashing of this check, payment is considered to be made in full for all work completed by you under the contract and that this settles all claims between both parties.

The letter was signed by Plaintiff's attorney and was prepared on the letterhead of Plaintiff's counsel. On the memo line of the accompanying check, the notation read "Full and Final payment".

In July 1999, Plaintiff brought suit against Defendant on the theories of breach of contract, unjust enrichment of both High Country Homes and Defendant individually, and breach of expressed and implied warranty.[2] Defendant responded by filing Preliminary Objections.[3]

Discussion

A summary judgment can only be granted when there is no genuine issue of any of material fact. Pa. R.C.P. 1035. Summary judgment may only be granted in cases where it is clear and free from doubt that the moving party is entitled to judgment as a matter of law. ***Hoffman v. Pellack***, 2000 PA Super 375, 2000 WL 1782375 (Pa. Super. 2000).

The outcome of this case turns not so much on the terms of the original contract, but rather on how the letter and check(s) sent from Plaintiff to Defendant are characterized. Defendant argues that the February 3, 1998 letter and check in the amount of $1570.00

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[2] Though the Complaint went through several incarnations, these grounds have remained basically unchanged since the original complaint was filed. See footnote 3 for a complete procedural history.

[3] On July 16, 1999 Plaintiffs filed a Complaint. On August 13, 1999, Defendant filed Preliminary Objections. On September 27, 1999, Plaintiff filed Answers to the Preliminary Objections. On November 24, 1999, the Court overruled the objection to Count 1, but sustained the objections on Counts II, III, and V (Defendant withdrew Count IV). On December 20, 1999, Plaintiffs filed their First Amended Complaint. On December 31, 1999, Defendants filed Preliminary Objections to Plaintiff's First Amended Complaint. On February 28, 2000, the Court issued an Order granting some and denying other of the objections. On March 20, 2000, Plaintiffs filed their Second Amended Complaint. On April 4, 2000, Defendants filed Preliminary Objections to Plaintiff's Second Amended Complaint. On July 14, 2000, the Court sustained some of the objections and overruled others. On August 4, 2000, Plaintiffs, without the Court's leave or consent of the adverse party, filed a Third Amended Complaint. On September 6, 2000, Defendants filed their Response to the Second Amended Complaint. On September 7, 2000, Defendants filed Preliminary Objections to the Third Amended Complaint. On September 26, 2000, Plaintiffs filed Answers to Preliminary Objections. On September 26, 2000, Plaintiffs filed Answers to New Matter and Counterclaim. On October 13, 2000, the Court issued an Order striking the Third Amended Complaint. The Court also granted Plaintiff's oral motion to file an amended complaint that was substantially the same as the Third Amended Complaint. On October 20, 2000, Plaintiffs filed their Fourth Amended Complaint. On October 26, 2000, Defendant's filed a Response to Fourth Amended Complaint. On November 15, 2000, Plaintiffs filed Answers to New Matter and Counterclaim to Fourth Amended Complaint. On November 30, 2000, Defendants filed a Motion for Summary Judgment. Plaintiffs did not file a response. Defendants filed their brief in support of the summary judgment motion on January 12, 2001. Plaintiff filed their brief in opposition to the summary judgment motion on January 29, 2001.

constitute an accord and satisfaction that release him from any further obligations to the Plaintiff. Defendant further argues that the second check for $1,000.00 is irrelevant. Plaintiff argues that the letter and first check were not intended as a complete release, but only to release the parties from further performance under the contract. Furthermore, Defendant's demand for an additional $1,000.00 amounted to a counteroffer that nullified the original offer.

It is a basic tenet of contract law that any analysis of the dispute should begin with a review of the language of the agreement. This commonsense approach applies to releases as well. ***Strickland v. University of Scranton***, 700 A.2d 979, 986 (Pa.Super 1997). If fraud, duress, or a mutual mistake does not procure the release then it is binding between the parties. ***Id*** at 986 (citing ***Lanci v. Metropolitan Insurance Company***, 564 A.2d 972, 974 (Pa. Super 1989). The Court notes that there are no averments of fraud, duress, or mutual mistake. This means that the Court must examine the language of the purported release to discern the intent. In reading the letter dated February 3, 1998, the Court finds the following statements significant:[4]

> This check is being given to you to conclude all matters with regard to the contract with the Hamiltons.
>
> …this is to conclude all matters between you and the Hamiltons.
>
> With the cashing of this check, payment is considered to be made in full for all work completed by you under the contract and that this settles all claims between both parties.

The Court further notes that on the memo line of the enclosed check was the caption: "Full and Final payment". Giving these words their ordinary meanings, the Court cannot conceive of how this letter could be viewed as anything other than a mutual offer to release all claims

between the parties. Plaintiff argues that this letter was not intended to be a full release, but only to release the parties from further performance under the contract. The Court is not convinced that in this case there is any difference between a full release and releasing further performance under the contract. Even if there is, the language of the letter is unequivocal, especially the clause that reads, "payment is considered to be made in full for all work completed by you under the contract and that this *settles all claims* between both parties (emphasis added)." As previously noted, Plaintiff acknowledges sending this letter, but argues that Defendant's demand for more money nullifies the effect of this release. The Court disagrees.

Considering how significant the checks are to this case, the Court observes that there are frustratingly few details about them. For example, the Court does not know if Defendant waited until he had the second check and then cashed both, or whether Defendant received the first check, cashed it, and then demanded additional payments. Nevertheless, the Court submits, that this factual gap notwithstanding, the legal outcome is the same. However, while the result may be the same, the underlying reasoning is not and it is to this analysis the Court now turns.

Checks Cashed Consecutively

Defendant argues that the second check for $1,000.00 is irrelevant. The factual scenario that fits this argument is that Defendant received and cashed the first check and then afterward demanded additional payments. When Plaintiff tendered the first check with the notation "full and final payment" and Defendant cashed it, this was an accord **and** satisfaction.

[4] See footnote 1 for the complete text of the letter.

The elements of an accord and satisfaction are (1) a disputed debt; (2) a clear and unequivocal offer of payment in full satisfaction; and (3) acceptance and retention of payment by the offeree. ***PNC Bank v. Balsamo***, 634 A.2d 645, 655 (Pa. Super. 1993). Clearly all those elements are met in this case. If Defendant expressed a desire for more money, but proceeded to cash the check anyway, this is merely a "grumbling acceptance.[5]" Plaintiff was under no obligation to furnish additional funds, because cashing the check released the parties. If Defendant refused to perform by ceasing work and quitting the job until he received more money, then Plaintiff, under the terms of the accord, had several course of action available to him, including bringing a suit for breach of contract.

Checks Cashed Concurrently

Plaintiff argues that when Defendant demanded an additional $1,000.00, the demand constituted a counteroffer. The factual scenario that fits this argument is that Defendant received the first check but did not cash it. He then demanded and received an additional check, and then cashed both simultaneously. In this case, the letter and check for $1,570.00 could be interpreted as an offer to settle. Defendant's demand for more money is a counteroffer. And a counteroffer, as Plaintiff correctly argues, terminates the original offer. Had the transaction stopped at this point, Plaintiff would have prevailed because there was no deal 'on the table' - the counteroffer killed it. But this is not what happened. Defendant made a counteroffer, which Plaintiff was free to accept or reject, and Plaintiff elected to send more

[5] "An expression of acceptance is not prevented from being exact and unconditional by the fact that it is "grumbling," or that the offeree make some simultaneous "request", but it must appear that the "grumble" does not goes so far as to make it doubtful that the expression is really one of assent, and that the offeree has assented to the offer even though the offeror shall refuse to comply with the "request." 1 Arthur L. Corbin, Corbin on Contracts §3.30 (rev. ed. 1993).

money. In effect, Plaintiff accepted the counteroffer[6] and is bound by its terms, which in this case mean a release and a payment of $2,570.00 to Defendant.

The Court notes that it is unusual in a summary judgment motion to be lacking significant facts. However, because the Court has addressed both of the party's arguments and because the legal result is identical, the Court is comfortable rendering a decision under either of the above factual scenarios. The Court finds little merit in Plaintiff's contention that Defendant is barred from suing Plaintiff, because Plaintiff reserved a right to sue Defendant for matters arising before the offer to release all claims between them was made. The offer Plaintiff made contained no such reservation of rights. Clearly the Defendant, in accepting payment and surrendering his rights (which could have included the right to continue working or a right to seek lost profits from being wrongly terminated from the job) was entitled to rely on the words chosen by Plaintiff that the payment was to "release all claims." Defendant sought, and received a "sweetener" to enter into this agreement in the amount of an additional $1,000.00. Plaintiff has provided no evidence of that in making the additional payment;

[6] "If the party who made the prior offer properly expresses assent tot he terms of the counter-offer, a contract is thereby made on those terms. The fact that the prior offer became inoperative is now immaterial, and the terms of that offer are also immaterial except in so far as they are incorporated by reference in the counter-offer itself. Very frequently, they must be adverted to in order to determine what the counter-offer is. Often, the acceptance of a counter-offer is evidenced by the action of the offeree in proceeding with performance rather than by words." 1 Arthur L. Corbin, Corbin on Contracts §3.35 (rev. ed. 1993).

Plaintiff did so with any reservation of rights or modification of the initial offer except as to the amount needed to conclude matters between Plaintiff and Defendant.[7]

ORDER

For the reasons described in the preceding Opinion, Defendant's Motion for Summary Judgment is GRANTED

BY THE COURT,

William S. Kieser, Judge

cc: Court Administrator
John A. Smay, Esquire
Scott T. Williams, Esquire
Judges
Jeffrey L. Wallitsch, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)

[7] At the summary judgment hearing, Defendant cited Pa.R.C.P. 1035.3 which provides that the adverse party in a summary judgment proceeding may not rest upon the pleadings, but must file a response within 30 days after service of the motion. For failing to respond, a summary judgment may be entered against the non-responding party. In this case, Defendants filed their Motion for Summary Judgment on November 30, 2000. There was no response forthcoming from Plaintiffs until they filed their brief on January 29, 2001. The Court observes that this is clearly outside of the time parameters called for in the rule. However, because this case is being decided on the merits, the Court need not render a decision on the procedural issue.