

When "PAID IN FULL" Really Isn't

BY JUDY GEDGE

Break out the champagne! You've finally gotten a check on a long overdue account from Acme Inc. But on closer inspection, you see a marginal notation on the bottom corner of that Acme check. It says "payment in full." "That's crazy," you say to yourself. "Acme's outstanding invoice is for \$7,500, and this check is only for \$4,500. There must be some mistake."

You pick up the phone straight away and get Bill over at Acme on the line. After explaining the mix-up, you wait for the expected reassurances. To your surprise, Bill tells you that he wasn't fully satisfied with the service you provided and he thinks it's only worth \$4,500. That's all he is prepared to pay, and you can take it or leave it.

This is the first you've heard about any so-called faulty service, and you're convinced that Bill's short payment is really the result of a cash flow problem. But where does all this leave you? You'd really like to cross out those three words, "Payment in full," deposit the check, and send Acme an invoice for the balance. Then, if Acme doesn't pay up, you'll sure-as-shooting sue that no-good company! But let's see what your legal position would be if you accepted Acme's check.

It is well-settled law that if you accept a check marked "payment in full" (or something similar) where a claim is in dispute, you will be deemed to have accepted the condition of payment. That means that by accepting that check, you will be barred from seeking any further recovery of that claim. And any attempt to cross out the offensive language before depositing that check will be ineffective. Under the legal doctrine of accord and satisfaction, the agreement to accept a lesser sum of money on a disputed claim is in itself a binding contract (the accord), and when such agreed-upon payment is made, the original debt is satisfied (the satisfaction).

Where does all this leave you and your check from Acme? When presented with this check from your customer, Acme, you have only two options. One option is to cash that \$4,500 check and accept the fact that you will not be able to pursue Acme for the balance.

Now, for your other option. You can take a deep breath, return that check, and hire a lawyer to bring a collection action against Acme. If you do this, Acme is likely to raise the defense that you breached the contract by unsatisfactory service. When you both get to court, each of you can tell your side of the story. Then it will be up to the judge to deter-

mine, based on all the facts, whether you delivered the agreed-upon goods. Assuming that the judge finds in your favor, you will obtain a judgment in the amount of \$7,500. After you've paid your lawyer for representing you in court and paid all the filing and court fees, you may end up with that same \$4,500 you turned down from Acme (See option #1 above!)

Although this may not seem a fair result in this instance, let's turn the tables for a moment. Let's assume you had a good-faith dispute with one of your suppliers. He sent you a bill for \$10,000 on a job that you thought would cost no more than \$5,000. After discussing it thoroughly, you both agree to settle it for \$7,000. After you pay that \$7,000, you sure wouldn't expect to get sued for any balance owing. After all, a deal's a deal!

The important thing to remember is that by cashing a check marked "Paid in Full," you may well have burned your bridges behind you. If you cash that check, then make sure you're prepared to accept the consequences. ■

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