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RE: Kathleen S. Trader v. David L. Wilson and Carolyn D. Wilson  
C.A. No. 01A-06-002

Date Submitted: November 14, 2001

Dear Counsel:

This is the Court's decision on the appeal by Appellants Carolyn and David Wilson (the "Wilsons") of the decision by the Court of Common Pleas in favor of Appellee Kathleen Trader ("Mrs. Trader"). The decision by the Court of Common Pleas is affirmed for the reasons stated herein.

#### PROCEDURAL POSTURE

Mrs. Trader filed suit against the Wilsons in the Court of Common Pleas seeking payment of the outstanding balance due on two Promissory Notes signed by the Wilsons. The Court of Common Pleas rejected the Wilsons' argument that they had been discharged from these debts by

an accord and satisfaction and ruled in favor of Mrs. Trader. The Wilsons filed a timely appeal with this Court.

#### STATEMENT OF FACTS

On or about May 22, 1992, Mrs. Trader, who was at that time Ms. Metz,<sup>1</sup> loaned \$50,000 to the Wilsons. In exchange, the Wilsons executed a Promissory Note in favor of Mrs. Trader. Under the terms of this Note, the Wilsons were to pay interest to Mrs. Trader in monthly installments, with the principal due on demand. On or about October 7, 1992, Mrs. Trader loaned another \$50,000 to the Wilsons. The Wilsons executed another Promissory Note with terms that were identical to those of the first Note.

Mr. Trader was a customer of the Wilsons' business, "Wilson's Auction." Between 1990 and 1995, Mr. Trader purchased numerous items on credit from Wilson's Auction. Mr. Trader's purchases made on credit totaled \$42,607.95. Mr. Trader also boarded three horses with the Wilsons. The Wilsons held the horses as security for Mr. Trader's debts to Wilson's Auction. Mr. Trader did not pay the Wilsons any fees toward the upkeep of the horses.

Mr. and Mrs. Trader were married in 1994. Testimony introduced below regarding how and when Mr. or Mrs. Trader approached the Wilsons to request the release of Mr. Trader's horses differed. In any event, the horses were released to Mr. Trader sometime in 1995. At the time of their release, Mr. Trader owed the Wilsons approximately \$8,600 for storage of the horses. From October of 1995 through March of 1998, Mrs. Trader made payments totaling \$2,900 on Mr. Trader's behalf

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<sup>1</sup> Although Mrs. Trader was Ms. Metz at the time the loans were made, I will refer to her as "Mrs. Trader" throughout this opinion in the interest of consistency. However, doing so is not intended to undermine the significance of the fact that Mrs. Trader and Mr. Trader were not yet married at the time the loans were made.

to Wilson's Auction.

On April 1, 1998, Mrs. Trader demanded payment on the Notes. The Wilsons tendered a check to Mrs. Trader in the amount of \$60,292.05 on April 13, 1998. The check contained the notation, "Balance on Note." The Wilsons arrived at this sum by deducting \$39,707.95 (the \$42,607.95 Mr. Trader owed to Wilson's Auction less the \$2,900 in payments Mrs. Trader had made on behalf of her husband) from the original amount due on the Notes (\$100,000.00).<sup>2</sup> Mrs. Trader held onto this check for several months and consulted her attorney before cashing the check on August 12, 1998. On August 18, 1998, Mrs. Trader's lawyer sent a letter to the Wilsons stating that his client expected the remainder of the monies owed. When the Wilsons refused to make further payment, Mrs. Trader filed suit in the Court of Common Pleas for the outstanding balance on the two Notes.

At trial, the Wilsons argued that Mrs. Trader had assumed her husband's debts to both them and Wilson's Auction and that the Wilsons' tendering of a check in the amount of \$60,292.05 was an accord and satisfaction. The Court of Common Pleas found that it did not have sufficient evidence before it to conclude that Mrs. Trader had assumed responsibility for her husband's debts to the Wilsons. In reaching this decision, the court made several key factual findings:

1. Mrs. Trader often wrote checks on behalf of her husband because of his inability to read or write.
2. After Mr. Trader's horses were released from the Wilsons' care in 1995, Mrs. Trader made several payments to the Wilsons, drawn on her own account. Except for one, all of these checks bore a notation indicating that the check was paid on Mr. Trader's bill.
3. Neither Mr. nor Mrs. Trader ever received a bill which totaled the amount due for the account balance which Mr. Trader owed to the Wilsons. Furthermore, in 1995, Mrs. Trader did not have any idea as to the scope of her husband's debt to Wilson's Auction. In fact, there was no evidence presented to suggest that anyone had specific knowledge of the debt

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<sup>2</sup> The \$8,600 allegedly owed for the horses was not figured into this calculation.

until April of 1998.

Based on the foregoing factual findings, the Court of Common Pleas concluded that Mrs. Trader did not assume the debts of her husband. Because the sum of money otherwise due on the Notes was liquidated and not subject to dispute, the Court of Common Pleas awarded Mrs. Trader the balance due on the Notes.

### ISSUES PRESENTED

The Wilsons set forth the following arguments on appeal:

1. The Wilsons were discharged of their obligation to pay the Notes by virtue of Accord and Satisfaction by Use of an Instrument pursuant to 6 *Del. C.* §3-311(d);<sup>3</sup>
2. The Wilsons were discharged of their obligation to pay the Notes by virtue of Accord and Satisfaction pursuant to 6 *Del. C.* § 311(a) and 311(b);<sup>4</sup>

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<sup>3</sup> This text of this statute reads:

A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.

6 *Del. C.* § 3-311(d).

<sup>4</sup> These subsections follow:

- (a) If a person against whom a claim is asserted proves that (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.
- (b) Unless subsection (c) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument

3. The Wilsons were discharged under the common law doctrine of accord and satisfaction by instrument;
4. The Wilsons were discharged under the common law defense of accord and satisfaction; and, finally,
5. The Court of Common Pleas erred in its finding that Mrs. Trader had not assumed the debts of her husband.

## DISCUSSION

### A. *Standard of Review*

The issues presented for review regard the Court of Common Pleas's rejection of the defense of accord and satisfaction. This is a mixed question of law and fact. *See Wilmington Stevedores, Inc. v. Steel Suppliers, Inc.*, Del. Supr., No. 80,1986, Walsh, J. (June 11, 1986) (ORDER).

When reviewing an appeal from the Court of Common Pleas, this Court reviews the decision below as the Supreme Court would consider an appeal. *Baker v. Connell*, 488 A.2d 1303, 1309 (Del. 1985). A two-fold standard of review is employed. First, this Court reviews errors of law *de novo*. *Downs v. State*, 570 A.2d 1142 (Del. 1990). Second, this Court is bound by findings of fact made by the Court of Common Pleas which are supported by the record and which are the product of a logical and deductive process. *Id.* at 1144.

Substantial evidence must support finding of facts the Court of Common Pleas made. *Shahan v. Landing*, 643 A.2d 1357 (Del. 1994). Such evidence is that which a reasonable mind might accept

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was tendered as full satisfaction of the claim.

6 *Del. C.* § 3-311 (a), (b). Note that the requirements outlined in subsection (a) apply to subsection (d), *supra* n.3, as well.

to support a conclusion. *Oceanport v. Wilmington Stevedores*, 636 A.2d 892 (Del. 1994). Substantial evidence is more than a scintilla but less than a preponderance. *Olney v. Cooch*, 425 A.2d 610 (Del. 1981). If substantial evidence exists for a finding of fact, this Court must accept that ruling, as it must not make its own factual conclusions, weigh evidence, or make credibility determinations. *Johnson v. Chrysler*, 213 A.2d 64 (Del. 1965). That this Court may have reached a different conclusion with respect to a factual issue is not enough to overturn the Court of Common Pleas's findings; rather, the Court of Common Pleas must have abused its discretion to warrant reversal. *Mooney v. Shahan*, Del. Super., C.A. No. 01A-02-002, Bradley, J. (Aug. 24, 2001).

*B. Accord and Satisfaction*

The Wilsons argue on appeal that the Court of Common Pleas failed to make any findings regarding whether there was a bona fide dispute or an unliquidated debt at issue in this case. They assert that there was a bona fide dispute regarding the debt and that, because of this, the debt was unliquidated. Accordingly, the Wilsons argue that the defense of accord and satisfaction, based either in common law or on statutory provisions, is not moot, contrary to the Court of Common Pleas's legal conclusion.

Mrs. Trader counters that the defense of accord and satisfaction rested upon the Wilsons' assertion of a setoff claim against her and that the Wilsons failed to prove that their setoff claim was related to Mrs. Trader's liquidated claim against the Wilsons. Thus, according to Mrs. Trader, since the Wilsons failed to demonstrate that their setoff claim is collateral to Mrs. Trader's cause of action, there is no bona fide dispute and the defense of accord and satisfaction fails as a matter of law.

All claims the Wilsons asserted require either an unliquidated debt or a debt, liquidated or

unliquidated, that is subject to a bona fide dispute.<sup>5</sup> The burden to prove all the elements necessary for an accord and satisfaction is on the party alleging that it took place. *Acierno v. Worthy Brothers Pipeline Corp.*, 693 A.2d 1066, 1068-1069 (Del. 1997); *State v. Massachusetts Bonding and Ins. Co.*, 9 A.2d 77, 80 (Del. Super. 1939).

1. *Liquidated v. Unliquidated*

Whether a claim is liquidated or unliquidated is generally considered a question of fact. *State v. Massachusetts*, 9 A.2d at 80. A liquidated claim is one which has been fixed by agreement or can be exactly determined by the application of rules of arithmetic or of law. *Id.* The Court of Common Pleas found that Mrs. Trader loaned the Wilsons a total of \$100,000 based on two Notes, dated May 22, 1992, and October 7, 1992. Each Note was for the face amount of \$50,000, with interest at nine and three quarters percent and principal payable upon demand. Substantial evidence supports this factual finding and this Court will not disturb it. Copies of the Notes were attached to the original

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<sup>5</sup> The elements required for a common law accord and satisfaction are:

(1) that a bona fide dispute existed as to the amount owed that was based on mutual good faith; (2) that the debtor tendered an amount to the creditor with the intent that payment would be in total satisfaction of the debt; *and* (3) that the creditor agreed to accept the payment in full satisfaction of the debt.

*Acierno v. Worthy Brothers Pipeline Corp.*, 693 A.2d 1066, 1068 (Del. 1997) (emphasis added). As noted *supra*, in order for the statutory provisions upon which the Wilsons relied to apply, the Wilsons must prove:

(i) that [the Wilsons] in good faith tendered an instrument to [Mrs. Trader] as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) [Mrs. Trader] obtained payment of the instrument.

6 *Del. C.* § 3-311(a).

Complaint in this matter and the Wilsons do not challenge their authenticity or accuracy.<sup>6</sup> The claim at issue is based upon a fixed agreement and, accordingly, it is liquidated.

2. *Bona Fide Dispute*

The defense of accord and satisfaction may still be available to the Wilsons if the Court of Common Pleas erred in its conclusion that the money due Mrs. Trader was not the subject of a bona fide dispute. In order for a dispute to be deemed bona fide, it must be (1) honest and advanced in good faith, and (2) founded on some reasonable, tenable or plausible ground. *Acierno*, 693 A.2d at 1069. Like the question of whether a claim is liquidated, whether a claim is subject to a bona fide dispute is a factual determination. *Id.* The Wilsons argue that their setoff claim against Mrs. Trader constitutes a bona fide dispute as to the total sum owed.<sup>7</sup> The Court of Common Pleas found that Mrs. Trader did not assume her husband's debts and that she did not act as a guarantor of her husband's debts. Instead, she merely made payments on her husband's behalf.<sup>8</sup> Trial Tr. at 176-77.

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<sup>6</sup> In fact, the Wilsons or their agents drew up the Notes.

<sup>7</sup> A setoff claim is defined as, "A defendant's counter demand against the plaintiff, arising out of a transaction independent of the plaintiff's claim." *Black's Law Dictionary* 1376 (7th ed. 1999).

<sup>8</sup> The terms "guarantor" and "surety" are used interchangeably by the parties, as arguably both are at issue. *See* Trial Tr. at 12. There are legal distinctions, however. The following summary of these differences is helpful:

While a surety and guarantor have this in common, that they are both bound for another person, yet there are points of difference . . . . A surety is usually bound with his principal by the same instrument, executed at the same time and on the same consideration . . . . On the other hand, the contract of guarantor is his own separate undertaking, in which the principal does not join. It is usually entered into before or after that of the principal, and is often founded on a separate consideration from that supporting the contract of the principal.

*Black's Law Dictionary* 1455 (7th ed. 1999) (quoting 1 George W. Brandt, *The Law of Suretyship*



In effect, the Court of Common Pleas found that, because Mr. Trader's debts were unrelated to the Wilsons' debt to Mrs. Trader, there could be no dispute over the amount owed on the Notes. Since the Court of Common Pleas concluded that Mrs. Trader did not guarantee her husband's debts, it concluded that the defense of accord and satisfaction was moot. Trial Tr. at 178.

I concur with the Court of Common Pleas's determination that the Wilsons do not have a viable claim against Mrs. Trader for the debts of her husband. The Wilsons incurred the debt to Mrs. Trader long before Mrs. Trader married Mr. Trader. There is no evidence to support a finding that Mrs. Trader knew the amount of money Mr. Trader owed Wilson's Auction at the time of the Traders' marriage or at any other time prior to the time the check at issue was presented to her. The only evidence in the record relating to any knowledge of Mrs. Trader's as to Mr. Trader's debts with the Wilsons (prior to the Wilsons' issuance of the \$60,292.05 check) is one conversation whereby Mr. Wilson conveyed the fact that Mr. Trader owed money for the care of his horses. There is no evidence that *anyone* knew the scope of Mr. Trader's debt to Wilson's Auction at any time prior to the issuance of the check. The Court of Common Pleas found that Mrs. Trader was extremely clear and careful in conveying to the Wilsons that she considered her husband's debts, whatever they were, to be his problem.<sup>9</sup> In fact, not only were the debts unrelated but there is evidence that the Wilsons did not pursue their setoff claim in good faith. The amount of Mr. Trader's debt was unknown to all parties at the time Mrs. Trader allegedly agreed to assume his debts. The charge for the horse

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*and Guaranty* § 2, at 9 (3d ed. 1905)). Presumably, the Wilsons argued that Mrs. Trader acted as a surety with respect to Mr. Trader's debt to the Wilsons for the cost of upkeep of his horses and as a guarantor with respect to Mr. Trader's debt to Wilson's Auction.

<sup>9</sup> The Court of Common Pleas placed significant emphasis on Mrs. Trader's forthrightness with the court. This is a credibility assessment which this Court may not disturb.

care, the one debt of which Mrs. Trader arguably had specific knowledge, was not included in the deductions taken from the \$100,000 amount due. The Wilsons did not request that Mrs. Trader make a written guarantee for her husband's debts, despite the large dollar amount involved. Since the setoff against Mrs. Trader is without merit, there can be no bona fide dispute as to the dollar amount owed on the Notes and the defense of accord and satisfaction fails.

Although this Court affirms the Court of Common Pleas's determination that there was not a viable setoff claim against Mrs. Trader, even if the setoff claim were meritorious, public policy would be better served by requiring unrelated debts to be handled separately by the courts. If the Court were to allow every unrelated setoff claim to cancel out other debts owed to the original plaintiff in the context of an accord and satisfaction situation, then liquidated debts of all types could be called into question based on fabricated setoff claims. When other jurisdictions have been presented with similar facts, they have held that in order for a bona fide dispute to arise, a setoff claim must be related to the same transaction that is the subject of the lawsuit. *See, e.g., Cartan & Jeffrey v. WM. Thackaberry Co.*, 117 N.W. 953, 953-54 (Iowa 1908) (holding that an indebtedness alleged in a separate transaction was not sufficient to create a bona fide dispute as to the debt at issue); *Holman Mfg. Co. v. Dapin*, 193 N.W. 986, 987 (Wis. 1923) (emphasizing the import of the fact that the setoff claim brought arose out of the same transaction as the debt at issue).

In summary, the evidence presented below was insufficient to support a finding of either an unliquidated debt or a debt subject to a bona fide dispute.

C. *Mrs. Trader's Assumption of Mr. Trader's Debts*

The Wilsons also argue that the Court of Common Pleas erred in finding that Mrs. Trader did not assume her husband's debts. The Delaware statute of frauds provides that an agreement to

answer for the debt of another must be reduced to writing to be enforceable. 6 *Del. C.* § 2714(a). The contract to assume the debt of another “must not only be in writing but the writing must contain on its face enough to show that the person signing it was assuming liability.” *Woodcock v. Udell*, 97 A.2d 878, 881 (Del. Super. 1953). Where the promissor becomes a guarantor or surety upon a debt of a third person and promises to be personally and primarily liable for the debt, the agreement does not fall within the statute of frauds if the promissor receives a personal benefit for her promise. *Id.*

The Wilsons posit that Mrs. Trader’s checks to Wilson’s Auction containing the notation “Payment of Gary Trader’s Bill” are sufficient to bind her to her alleged oral agreement to assume Mr. Trader’s debt. The Court of Common Pleas concluded that the facts surrounding Mrs. Trader’s submission of these checks to Wilson’s Auction did not support a finding that Mrs. Trader was acting as a guarantor. The Court of Common Pleas, citing Mrs. Trader’s testimony, found that she did not guarantee the debt of her husband. Rather, the Court of Common Pleas held that she acted merely as a conduit by accepting money from Mr. Trader as he earned it and dispersing it to his various creditors on his behalf.

The Wilsons argue that the Court of Common Pleas placed undue emphasis on its finding that there was no meeting of the minds between Mr. Wilson and Mrs. Trader as to the amount of money at stake when the Court of Common Pleas determined that Mrs. Trader did not guaranty her husband’s debts. The Court of Common Pleas did, indeed, find that Mr. Wilson and Mrs. Trader did not have a meeting of the minds as to the total sum involved. However, I find that the rationale for the Court of Common Pleas’s decision rested on other factual findings, as well. The Court of Common Pleas was specific in noting that, based upon Mrs. Trader’s testimony, it concluded that she was not acting as a guarantor for Mr. Trader’s debts. Mrs. Trader’s testimony related many facts

above and beyond the fact that she did not know what Mr. Trader's total debts were. She testified that she was very clear about her money dealings with the Wilsons, that she was explicit in telling the Wilsons that Mr. Trader's debts were not her own and that she did not wish to speak with the Wilsons regarding them. Furthermore, the Court of Common Pleas found that Mrs. Trader did make an offer to the Wilsons to pay them \$10,000 for the debt on Mr. Trader's horses. Although the Wilsons did not accept the offer, it is additional evidence that supports the Court of Common Pleas's conclusion that Mrs. Trader was consistent with respect to her financial dealings with the Wilsons and did not enter into an agreement to repay a debt of an unknown sum.

At trial, the Wilsons also argued that Mrs. Trader accepted a personal benefit from the sale of Mr. Trader's horses and that this benefit received bound her to repay the debts of Mr. Trader. The Court of Common Pleas did not make a specific finding on this issue and the argument has been abandoned on appeal. No evidence was introduced at trial to indicate that Mrs. Trader received any personal benefit from the sale of her husband's horses. In addition, the money owed for the care of the horses was due to the Wilsons in their individual capacities and the debt which Mrs. Trader allegedly assumed was owed to Wilson's Auction.

I agree with the Court of Common Pleas's conclusion. Mrs. Trader did not execute a written agreement by which she assumed Mr. Trader's debt. Her signature on the checks presented to Wilson's Auction was insufficient to support a written contract. Additionally, regarding this alleged contractual obligation, there was no meeting of the minds as Mrs. Trader could not ascertain the amount of debt at the time. Mrs. Trader did not receive any personal benefit from the alleged assumption of her husband's debt and, therefore, the guaranty is not exempt from compliance with the statute of frauds.

*D. Conclusion*

Based on the foregoing, I find the conclusions of the Court of Common Pleas that Mrs. Trader did not assume the debts of her husband and that her cashing of the Wilsons' check did not constitute an accord and satisfaction were correct. Therefore, Mrs. Trader is due the balance on the Notes in the principal amount of \$39,707.95, plus interest at the Promissory Note rate of nine three quarters percent from April 1, 1998. The decision of Court of Common Pleas rendered on May 30, 2001, is affirmed.

**IT IS SO ORDERED.**

Very Truly Yours,

E. Scott Bradley

cc: Prothonotary's Office