

TRANSPORTATION LAW REPORT

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THE LAW ON "PAYMENT IN FULL" CHECKS

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What is the effect of writing "paid in full" on a check to pay for goods or services? Can a consumer (or other debtor) limit his or her obligation to pay the full price billed for goods or services by issuing a check for a lesser sum and writing, "acceptance constitutes full payment" on the check? Can the business (or individual) being paid preserve its rights to pursue the customer for the full amount it claims is due by merely striking through the "paid in full" notation on the check? What are the rights of the debtor (payer of the check) and the creditor (payee)?

CONFLICTING LAWS

California has two separate, conflicting, laws regarding the effect of "payment in full" checks, and the rights of the payer and the payee. California Civil Code, Section 1526, essentially allows a debtor who disputes a creditor's claim for money to pay a lesser sum and achieve a settlement of the amount claimed by putting "payment in full" (or similar words) on his check to the creditor. However, Civil Code, Section 1526, also allows the creditor to accept the check as partial payment, and not full settlement, by striking out the "payment in full" notation. Therefore, if the "paid in full" language is deleted, the debtor's intent to limit his

liability is negated, and the creditor can pursue the debtor for the balance claimed.

However, California Commercial Code, Section 3311, in essence provides that if a debtor places "payment in full" type language on a check when there is a dispute regarding the total amount due to the creditor, the debt is *discharged* if the creditor accepts the check. Striking through, or deleting, the "payment in full satisfaction of debt" notation on the check does not enable the creditor to pursue the debtor for the balance claimed. To pursue the debtor for the full amount the creditor claims is due, under Commercial Code, Section 3311, the creditor who receives a check with a "paid in full" notation must either (1) reject the check immediately or (2) tender repayment to the debtor within ninety (90) days after accepting the check. The creditor cannot keep the money and sue for the difference.

Thus, the rights of the parties regarding "payment in full satisfaction of all claims" checks are different under the two California statutes.

CONFLICT ADDRESSED

No California State Court has published a ruling to resolve the conflict between Civil Code, Section 1526 and Commercial Code, Section 3311. Although not technically binding on California State Courts, the United States District Court, Central District of California, has addressed this statutory conflict. In Director's Guild of America v. Harmony

Pictures, Inc. (1998) 32 F.Supp.2d 1184, the Federal District Court held that Commercial Code 3311 must prevail over Civil Code 1526. Therefore, at least in Federal Courts in California (and probably in the State Courts as well), a creditor cannot preserve the right to pursue the debtor for the full amount claimed by merely striking through a "paid in full" notation on a check, and depositing the check.

CREDIT POLICIES

Due to the decision of the U.S. District Court, creditors and debtors should establish policies regarding handling checks on disputed claims. CREDITORS, to avoid being bound by an accord (agreement) and satisfaction (payment), should reject a check received with a "payment in full" type notation (or tender repayment within 90 days). DEBTORS, to attempt to resolve claims for the amount the debtor actually believes to be due, may issue checks with a "payment in full" notation on the check.

Should questions arise regarding specific credit and collection issues, seek the advice of competent legal counsel.

If you know of someone else who may be interested in these issues or may need legal representation, please give them a copy of this newsletter or have them call Jay D. Fullman A Professional Corporation at (714) 255-2960.