



# The Arrow

## PAYMENT IN FULL?

Among the many problems faced by creditors is the handling of payments from customers in the form of checks with wording such as "payment in full" or "endorsement of this constitutes full and final satisfaction of all debts between the parties." The general rule is that depositing such a check constitutes an accord and satisfaction between the parties, and thus serves to extinguish any additional outstanding amounts due from a customer, in spite of the fact that they were in dispute. *Hardison v. Jackson*, 871 S.W.2d 410 (Ark. App. 1994), *Weed v. Commissioner of Revenue*, 550 N.W.2d 285 (Minn. 1996). Kentucky followed this rule as well. *White v. Goodfellow Motor Co.*, 177 S.W.2d 892 (Ky. 1944). This presented creditors with a dilemma when presented with a check for a significant amount of money, but for a sum less than the full balance the creditor felt was owed.

However, in 1991, the Kentucky Court of Appeals ruled that a creditor may accept a restrictively endorsed check if it marks through the restrictive endorsement on the check and indicates that the check is being taken with a "reservation of rights." The creditor must contemporaneously send the debtor a letter indicating that the creditor has accepted the check as partial payment, and that the creditor continues to demand the balance. *Ditch Witch Trenching Company of Kentucky, Inc. v. C & S Carpentry Services, Inc.*, 812 S.W.2d 171 (Ky. App. 1991). Until October, 1997,

the issue of a check sent to a lockbox where the creditor had no opportunity to reserve rights or object was an unsettled area of law in Kentucky. As a result of a very recent decision of the Kentucky Supreme Court, a check sent to bank lockboxes and deposited by the bank containing words to the effect that "endorsement of this check constitutes full and final satisfaction of all debts between the parties" will serve to act as an accord and satisfaction of any and all debts between the parties. In *Weickert v. Alliant, Inc.*, 954 S.W.2d (Ky. 1997), the Court held that creditors who use a lockbox must now make sure that the bank or company that operates the lockbox does not deposit any check with restrictive language or their claims will be compromised.

In some states, such as California and Indiana, state statutes allow creditors to send the funds back to the debtor when a "payment in full" check has been deposited in error. A new section of the Uniform Commercial Code, 3-311, now adopted in Kentucky as KRS 355.3-311, allows a creditor under some circumstances to return payments tendered as payment in full within 90 days and preserve their right to pursue debtors for the full amount of the debt.

If you have questions about the status of the law on this issue, you should consult with your attorney. Also, you may wish to put your bank official on notice that the bank should be alert for restrictively endorsed checks.

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