COURT OF APPEALS
DECISION
DATED AND FILED

January 19, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-2610

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

GRADDIE JUDE,

PLAINTIFF-APPELLANT,

V.

ALLIED INSURANCE CENTER, INC.,
A WISCONSIN CORPORATION AND
COMMERCIAL UNION MIDWEST
INSURANCE COMPANY,
A FOREIGN CORPORATION,

DEFENDANTS-RESPONDENTS.

APPEAL from judgments of the circuit court for Milwaukee County: MICHAEL J. SKWIERAWSKI, Judge. *Affirmed.*

Before Wedemeyer, P.J., Schudson and Curley, JJ.

PER CURIAM. Graddie Jude appeals from a summary judgment granted in favor of Allied Insurance Center, Inc. (Allied), and Commercial Union Midwest Insurance Company (Commercial). Jude claims the trial court erred when it: (1) concluded that acceptance of an $88,000 payment on her fire loss

constituted full accord and satisfaction; and (2) dismissed her bad faith and equitable estoppel claims against Allied and Commercial. Because the trial court did not err in ruling that Jude's complaint is barred by the doctrine of accord and satisfaction, we affirm.[1]

I. BACKGROUND

In 1993, Willie Jude, Graddie's brother, owned the property located at 2504 West Hopkins Street in Milwaukee. This property housed a barber shop operated by Graddie and four apartment units. In 1993, Willie obtained insurance coverage for the premises from Commercial through his agent, Allied. He obtained $80,000 of actual cash value coverage for the building.

Just prior to the policy's renewal in March 1994, an underwriter at Commercial performed a cost estimator on the property, which calculates a theoretical actual cash value estimate for the building. The cost estimator rendered an actual cash value of $218,296 for the property. The estimator disclosed that this value should not be relied on as a substitute for a detailed appraisal.

On April 19, 1994, Allied sent the renewal of the policy to Willie, with a note explaining the cost estimator figure. The note also stated, "If you feel

[1] Because of our decision on this first issue, it is not necessary for us to address the remaining arguments. *See* ***Gross v. Hoffman***, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938) (only dispositive issues need be addressed). The doctrine of accord and satisfaction applies in this case, which operates to dismiss Graddie's claims against the defendants. Accordingly, we need not address her alternate theories of bad faith and equitable estoppel. Graddie assented to the accord and satisfaction of her claim under the policies and therefore cannot now claim that the insurance company acted in bad faith or should be equitably estopped from paying the actual cash value of the loss. Even if we elected to also address these theories, we would affirm the dismissal for the same reasons that the trial court provided in its analysis.

this limit is not accurate, please supply a recent appraisal done on the building and the limit will be changed."

In October 1994, Graddie purchased the building from Willie for $36,000. At the closing, it was decided that Willie would assign to Graddie the existing insurance policy. Graddie never discussed the insurance with Willie, Allied or Commercial. She also indicated, via deposition testimony, that she did not pay attention to insurance issues and was not aware of the amount of insurance.

In May 1995, the policy came up for renewal. The actual cash value limit was increased to $229,000 and Graddie paid the premium for this amount. On July 4, 1995, the building was destroyed by fire, which was determined to be caused by arson. Graddie retained Sarasohn and Company to determine the cash value of the building for insurance purposes. Sarasohn set the cash value at $248,000. In response, Commercial hired Crawford & Co. to determine the actual cash value of the building. Crawford set the actual cash value at $77,000.

After a period of negotiation, an agreement was reached between legal counsel representing Graddie and the insurance companies. Graddie agreed to accept $88,000 for the building loss. In order to accept the $88,000, Graddie was required to execute a proof of loss, which stated that the "actual cash value" of the building is $88,040.12 and that the "whole loss and damage" is $88,040.12. The proof of loss did not contain any reservation of rights.

One year later, Graddie commenced this action against Commercial and Allied, alleging that Commercial breached the contract by failing to pay the policy limits and that such action constituted bad faith.

Commercial and Allied filed motions for summary judgment. Shortly before the hearing on the motions, Graddie moved to amend her complaint to add a claim for equitable estoppel. The trial court granted the motion to amend.

The trial court ruled that Graddie's acceptance of the $88,000 constituted a full accord and satisfaction of her rights under the insurance policy. Although this ruling dismissed Graddie's action in toto, the trial court also ruled on Graddie's alternative theories. It found that Graddie's bad faith action could not be maintained because there was a reasonable dispute as to the value of the building. A bad faith action requires that the insurer refused to pay benefits to its insured under the policy without any reasonable basis for the denial. *See* ***Anderson v. Continental Ins. Co.***, 85 Wis.2d 675, 691, 271 N.W.2d 368, 376 (1978). The trial court dismissed the equitable estoppel action because Graddie had not relied on any actions by Commercial or Allied. This finding defeats an equitable estoppel action because in order to establish equitable estoppel, a party must show action or inaction by another which the party relied on to his or her detriment. *See* ***Sprangers v. Greatway Ins. Co.***, 182 Wis.2d 521, 514 N.W.2d 1 (1994). Judgment was entered. Graddie now appeals.

II. DISCUSSION

This case arises following a summary judgment. The standards governing review of summary judgments have been often repeated and, therefore, we decline to set them forth here. *See* ***Green Spring Farms v. Kersten***, 136 Wis.2d 304, 315, 401 N.W.2d 816, 820 (1987). Our review is *de novo*. *See* ***id.***

The dispositive issue in this case involves whether Graddie's conduct in signing the proof of loss and accepting the $88,000 payment constitutes

a full accord and satisfaction sufficient to sustain the trial court's dismissal of her complaint. We conclude that it does.

A payment in full settlement of a claim for which the amount is in dispute discharges the entire claim under the doctrine of accord and satisfaction. *See* ***Tower Ins. Co. v. Carpenter***, 205 Wis.2d 365, 371, 556 N.W.2d 384, 386-87 (Ct. App. 1996). Accord and satisfaction requires that a dispute exist between parties as to the amount owed; a tender of an amount intended by the offeror and reasonably understood by the offeree as full satisfaction of the dispute; and acceptance of the tender. *See* ***Hoffman v. Ralston Purina Co.***, 86 Wis.2d 445, 453-54, 273 N.W.2d 214, 217 (1979). It is not necessary for the magic words "full payment" or "full and final release" to be used. *See* ***Olson v. Northwestern Furniture Co.***, 6 Wis.2d 178, 182-83, 94 N.W.2d 179, 181 (1959).

Having reviewed the record in the instant case, we conclude that the elements necessary to dismiss Graddie's complaint under the doctrine of accord and satisfaction have been met. It is undisputed that the first element is satisfied. There clearly was a dispute between Graddie and Commercial as to the value of the building.

The second element is satisfied as well. The second element requires that a tender is made which is intended by the offeror and reasonably understood by the offeree to constitute full satisfaction of the dispute. Graddie argues that this condition was not met. She contends that the checks issued by Commercial failed to expressly indicate that they were in full satisfaction of her claim under the policy and that she did not execute any release. She also contends that she viewed the payments as a partial advance on her claims. Her arguments fail.

The fact that the checks did not contain the "magic words" is irrelevant. *See* ***Myron Soik & Sons, Inc. v. Stokely U.S.A., Inc.***, 175 Wis.2d 456, 466, 498 N.W.2d 897, 901 (Ct. App. 1993). The facts demonstrate that a reasonable person would have understood that the $88,000 payment was in full satisfaction of the claim. The check indicates it was for payment of "fire damages to the building." The proof of loss clearly states that this amount was the "actual cash value" of the property and states that this amount constitutes the "whole loss or damage." There is no reservation of rights contained in the document. The tender was the result of negotiation and settlement between the parties. Graddie did not express any reservation or indication of what she now claims—that she believed the $88,000 to represent only an advance of the policy limits. Graddie was advised by an attorney who notarized her signature. We agree with the trial court's conclusion that, under these facts, Graddie should have reasonably understood that the $88,000 payment was in full satisfaction.

The final element is also not disputed. Clearly Graddie accepted (and cashed) the check and signed the proof of loss. Therefore, her claims are barred by the doctrine of accord and satisfaction and the trial court did not err in dismissing her complaint.[2]

By the Court.—Judgments affirmed

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

[2] We are also in agreement with the trial court's analysis of the public policy issues raised in this case. That is, if the practice of insuring a property at a higher value than its actual value violates public policy, the matter should be addressed by the legislature.