

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0879**

Detailed by Design LLC,
Appellant,

vs.

Linda Langer, et al.,
Respondents.

**Filed January 10, 2022
Affirmed; motion denied
Segal, Chief Judge**

Hennepin County District Court
File No. 27-CV-20-16319

Courtland C. Merrill, Lauren F. Schoeberl, Saul Ewing Arnstein & Lehr LLP, Minneapolis,
Minnesota (for appellant)

Robert J. Shainess, Hannah R. Stein, Capstone Law, LLC, Minneapolis, Minnesota (for
respondents)

Considered and decided by Frisch, Presiding Judge; Segal, Chief Judge; and Cleary,
Judge.*

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

In this breach-of-contract appeal, appellant-contractor challenges the district court's
grant of summary judgment based on respondent-homeowners' defense of accord and

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

satisfaction. The contractor argues (1) that there was no accord and satisfaction because the homeowners' letter and check to the contractor lacked an unambiguous, "conspicuous" statement that the payment was tendered in full satisfaction for the debt; and (2) that it did not waive its right to enforce the underlying contract by cashing the homeowners' check. We affirm.

FACTS

Respondents Linda and Stacey Langer (the Langers) hired appellant Detailed by Design, a contractor, to perform exterior construction work on their home in the summer of 2019. The parties entered into a written contract for the work with an agreed price of \$40,975, with half of the amount (\$20,487.50) to be paid up front. Detailed completed its work and sent an invoice to the Langers in September 2019 for \$23,490.50 (the remaining half of the agreed price plus some adjustments).

The Langers, however, were dissatisfied with some of the work. In October 2019, Stacey Langer sent a typed letter to Detailed's owner claiming that various invoiced items were "unacceptable," "ineffective," "very poorly done," or incomplete. The letter also claimed that the Langers had incurred significant water damage from the work that would cost additional money to repair. The letter stated:

My intention with this letter is to outline the remaining costs as communicated via your invoice, compare that with the work successfully completed, provide visibility to the partial damages we incurred, and communicate the final amount we are paying. My goal was to be as reasonable as possible in balancing the work your subcontractors completed with the damages we incurred based on decisions you made.

The letter included a bulleted list with the heading, “Details from invoice with some comments where the work was unacceptable.” The bulleted list set out elements of the work and the amount invoiced for each element. Stacey Langer added comments for two of the elements:

Grade foundation area around egress windows: \$550 (SL: I will not pay for this work as water remediation professionals have advised that we need to address the egress window so whatever was done here did not help and was ineffective.)

Plastic and grading around the house: \$1600 (SL: I will not pay for this as water remediation professionals have advised that we need to address the grading across our entire house. This means the work that was done was ineffective and, additionally, was very poorly done. We now have plastic sticking up around the house. Lastly, the side of the house that was the primary concern area that brought on this scope was left completely untouched.[]]

And as to a third element, Stacey Langer wrote: “Install siding on garage: \$4200 (SL: I would have expected some reduction given we paid for disposal of old siding but given I do not have a specific amount I am not reducing this.).” The letter then included a “Total Invoice” line with the full contract amount and a line for “Total Invoice Amount, minus work that was unsuccessfully completed.” This line subtracted out the \$2,150 that the Langers stated would not be paid.

The Langers noted in the letter that they incurred significant damages caused by Detailed’s decision “to remove gutters weeks before they were replaced with no plan to mitigate water from entering the house.” The letter stated that a “partial cost to remediate water damage” was \$5,384.43 and that there were more damages and remediation costs that were not being included. The letter ended with the following calculation:

New Invoice Amount: \$41,828
Already Paid: \$20,487.50
Amount Remaining: \$21,340.50
Damage from water (partial): \$5,384.50
Final Payment: \$15,956.07

The Langers mailed the letter to Detailed along with a check for \$15,956.07 with the words “Final payment” printed in the memo line on the check.

Detailed endorsed and cashed the Langers’ check. It did not object or otherwise respond to the Langers’ letter, and the Langers believed that “the matter was settled and over with.” Detailed, however, filed a claim in conciliation court seeking the difference between the amount paid by the Langers and the full invoice amount, equaling \$7,534.43. According to the company’s owner, the Langers still owed the money because the contract for the work included a provision that it could only be modified in a written agreement. Detailed also argued that it did not interpret the letter as a settlement offer and it only cashed the check because it needed to pay its subcontractors. The Langers counterclaimed, seeking \$15,791.83 to remediate alleged damages from the work. The conciliation court ruled for the Langers, awarding them \$6,083.

Detailed appealed the conciliation court’s ruling to the district court. Again, the Langers asserted several defenses and counterclaims. The Langers then moved for summary judgment, asserting that Detailed’s claim was barred by accord and satisfaction. The district court agreed and granted summary judgment. Detailed now appeals.

DECISION

A grant of summary judgment is appropriate “if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of

law.” Minn. R. Civ. P. 56.01. This court “review[s] the grant of summary judgment de novo to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law.” *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). In determining whether a genuine issue of material fact exists, “[w]e view the evidence in the light most favorable to the party against whom summary judgment was granted.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

An accord and satisfaction occurs when a creditor accepts some specified performance in lieu of a debt. See Minn. Stat. § 336.3-311 (2020) (providing for “[a]ccord and satisfaction by use of instrument”). It has two components—the accord and the satisfaction. First, “[a]n accord is a contract in which a debtor offers a sum of money, or some other stated performance, in exchange for which a creditor promises to accept the performance in lieu of the original debt.” *Webb Bus. Promotions, Inc. v. Am. Elecs. & Ent. Corp.*, 617 N.W.2d 67, 72 (Minn. 2000). Second, “[t]he satisfaction is the performance of the accord, generally the acceptance of money, which operates to discharge the debtor’s duty as agreed to in the accord.” *Id.*

To demonstrate an accord and satisfaction, a party must prove four elements:

- (1) the party, in good faith, tendered an instrument to the claimant as full satisfaction of the claim; (2) the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim; (3) the amount of the claim was unliquidated or subject to a bona fide dispute; and (4) the claimant obtained payment of the instrument.

Id. at 73 (citing Minn. Stat. § 336.3-311(a)-(b)).¹ When all four elements are established, the accord and satisfaction discharges all rights and duties under the original contract. *Id.*

Detailed argues in its appeal that neither the Langers’ letter nor the “final payment” statement on the check were conspicuous enough to satisfy the requirements for an accord and satisfaction, and that it did not waive its right to seek full payment by cashing the check. We address both arguments below.

I. The Langers’ letter and “final payment” statement on the check conspicuously communicated that the check was being tendered as full satisfaction for Detailed’s invoice.

Detailed argues that the district court erred in granting summary judgment because neither the letter nor the statement on the check satisfied the statutory requirements that there be “a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.” Minn. Stat. § 336.3-311(b). Detailed maintains that the evidence, viewed most favorably to the company, shows that the communications were ambiguous—calling into question mutual assent and creating a genuine issue of material fact precluding summary judgment.

Under the statute, a conspicuous term is one “so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it.” Minn. Stat. § 336.1-201(b)(10) (2020). While the existence of an accord and satisfaction is a question of fact, “[w]hether a term is ‘conspicuous’ or not is a decision for the court.” *Id.* Here, the district court determined that “the words ‘final payment’ in the letter and on the check

¹ The balance of Minn. Stat. § 336.3-311, set out in subparts (c) and (d), is not relevant here.

[were] sufficiently conspicuous to show a valid accord as a matter of law.” And it also determined that there was no “evidence of ambiguity or equivocation about the offer.” We agree.

First, we note that the basic facts are not in dispute. Detailed acknowledges receipt of the Langers’ letter and the check with the words “final payment” written on the memo line. Second, the Langers’ intent is clear in the letter and the check. The very first sentence of the letter states that a purpose of the letter is to “communicate the final amount we are paying.” The letter also states, “I will not pay for this,” in connection with the grade foundation work and the plastic and grading around the house. The letter then sets out the Langers’ proposed offset for water damage remediation and ends with “Final Payment: \$15,956.07.” The words “Final payment” were also written on the memo line of the check. The letter is short, only a few lines longer than a single page, and is typed in a regular letter-size font. The words “Final payment” on the check are clearly printed, not scribbled, and easy to see and read.

Detailed argues, however, that the wording was not conspicuous because the language was not sufficiently noticeable.² In support of its argument, Detailed points to

² Detailed discussed the font and size of the full satisfaction wording for the first time in its reply brief. The Langers moved to strike this portion of Detailed’s reply, asserting that it was a new argument. A party may not raise a new issue in its reply brief. *Anderson v. Comm’r of Health*, 811 N.W.2d 162, 166 (Minn. App. 2012), *rev. denied* (Minn. Apr. 17, 2012). And a reply brief “must be confined to new matter raised in the brief of the respondent.” Minn. R. Civ. App. P. 128.02, subd. 3. However, the issue of conspicuousness is not new—it was discussed at length by the district court and in both parties’ briefs. And Detailed’s argument does respond to the Langers’ discussion of the statutory definition of “conspicuous” in its brief. Thus, we deny the motion to strike and consider Detailed’s argument.

two examples included in the statute that appear immediately after the definition of “conspicuous”:

Conspicuous terms include the following:

(A) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

Minn. Stat. § 336.1-201(b)(10). Detailed argues that, because “[t]he letter was written in standard black, mono-sized text,” it did not satisfy the conspicuousness requirements. We are not persuaded.

The definition in the statute focuses on whether the wording is such that a “reasonable person against which it is to operate ought to have noticed.” *Id.* The provision then states that “[w]hether a term is ‘conspicuous’ or not is a decision for the court.” *Id.* The examples that follow are just that, examples. It is not an exhaustive list. Detailed’s argument may be more persuasive if the final payment language at issue was buried in a multiple-page document in microscopic font. But here, we have a simple, short letter and “Final payment” wording that is clearly printed on the memo line of the check.

A number of cases have held that writing words such as “payment in full” is sufficient to provide notice of intent for an accord. *See, e.g., Winter Wolff & Co. v. Co-op Lead & Chem. Co.*, 111 N.W.2d 461, 463, 468 (Minn. 1961) (affirming grant of summary judgment based on accord and satisfaction where letter and check stated that it was offered

as “payment in full”); *Beck Elec. Constr. Co. v. Nat’l Contracting Co.*, 173 N.W. 413, 413-14 (Minn. 1919) (finding accord and satisfaction where it was stated on the check, “payment of contract in full”); *T.B.M. Props. v. Arcon Corp.*, 346 N.W.2d 202, 203 (Minn. App. 1984) (affirming grant of summary judgment based on accord and satisfaction where check stated, “Final Payment for Rent Owed T.B.M. Now or Forever”), *rev. denied* (Minn. Oct. 31, 1984)³; *see also Newman v. Marcus*, No. A07-1165, 2008 WL 4224402, at *2 (Minn. App. Sept. 16, 2008) (cited for its persuasive value, affirming the grant of summary judgment based on accord and satisfaction where memo line of check stated, “Final Payment Settlement”), *rev. denied* (Minn. Nov. 18, 2008).

We thus have no doubt that Detailed “ought to have noticed” the final-payment wording and affirm the district court’s determination that it was “conspicuous.”

II. The accord and satisfaction bars Detailed’s claim for enforcement of the contract according to its original terms.

Detailed next argues that summary judgment was inappropriate because there is a genuine issue of material fact regarding whether it waived its right to sue under the contract by cashing the check. It argues that, because waiver is “the intentional relinquishment of a known right,” *Carlson v. Doran*, 90 N.W.2d 323, 328 (Minn. 1958), a jury must decide the factual question of whether it intentionally relinquished its claim against the Langers by cashing the check. In support of its argument, Detailed again points to the statement in

³ While we note that *Winter*, *Beck*, and *T.B.M* predate Minn. Stat. § 336.3-311, the enactment of that statutory section “was intended to codify the common law elements of accord and satisfaction” and the holdings thus remain apposite. *Webb Bus. Promotions*, 617 N.W.2d at 75.

the affidavit of its owner that he did not know the Langers' letter was a settlement offer. Detailed also points to language in the parties' contract that any change to the price must be in writing and agreed upon by the parties or signed by both parties.

Yet an accord and satisfaction is not a contract modification, but a new contract that discharges all rights and duties under a previous one. *Webb Bus. Promotions*, 617 N.W.2d at 72-73. The question of Detailed's subjective understanding is not relevant to whether an accord and satisfaction has been established. Once the four elements set out in Minn. Stat. § 336.3-311(a)-(b) are proven, then, by operation of law, an accord and satisfaction has occurred and all rights and duties under the original contract are discharged. *Id.* at 73, 76. For that reason, "the creditor waives a cause of action relating to the original debt," regardless of the creditor's subjective intent. *Id.* at 74. We thereby reject Detailed's waiver argument.

Affirmed; motion denied.