

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX: CHRISTIANSTED

FRANK A. GARBATY,	)	
	)	
Plaintiff,	)	CIVIL NO. 582/1983
	)	
v.	)	ACTION FOR DEBT
	)	
ROBERT CARPENTER and	)	
HUMTY DUMTY, INC.,	)	
	)	
Defendants.	)	

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SILVERLIGHT, J.

MEMORANDUM OPINION
November 25, 1983

In this action for debt to recover on a promissory note Plaintiff has moved for summary judgment.

A summary judgment is proper and shall be rendered if the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. FED. R. CIV. P. 56(c).

Defendant has in his answer filed an affirmative defense alleging Accord and Satisfaction on the promissory note. ^{1/} An accord and satisfaction is an offer in full satisfaction of an obligation. See generally, 1 AM. JUR. Accord and Satisfaction §1 et. seq. (1962). Whether an Accord and Satisfaction is reached usually presents a question of fact. Simpson v. Norwesco, Inc., 442 F.Supp. 1102 (S.D.S.D., 1977), aff'd 583 F.2d 1007 (8th Cir. 1978). Proie Brothers, Inc. v. Proie, 301 F.Supp. 680 (W.D.Pa., 1968) aff'd 414 F.2d 1365 (3rd Cir. 1969).

Defendant has raised an issue of fact which precludes a grant of summary judgment. It is therefore,

ORDERED, ADJUDGED and DECREED that plaintiff's Motion for Summary Judgment is hereby DENIED.

E N T E R :



IRWIN J. SILVERLIGHT, Judge

DATED: November 25, 1983.

^{1/} This defense is reasserted in an affidavit in support of the motion and remains uncontradicted.