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**IN THE
COURT OF APPEALS OF INDIANA**

QUAIL RUN ASSOCIATES)
LIMITED PARTNERSHIP,)

Appellant-Respondent,)

vs.)

B. STEVE HANCHER)

Appellee-Complainant.)

No. 93A02-0702-EX-158

APPEAL FROM THE CIVIL RIGHTS COMMISSION

The Honorable Barry Baynard, Commissioner

Alpha Blackburn, Commissioner

Charles D. Gidney, Commissioner

Steven A. Ramos, Commissioner

Cause No. H0ha04070326

Hud No. 05-04-0917-8

OCTOBER 2, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Respondent/Appellant Quail Run Associates Limited Partnership (“Quail Run”) appeals from the Indiana Civil Rights Commission’s (“Commission”) decision in favor of Complainant/Appellee B. Steve Hancher (“Hancher”). We reverse and remand with instructions.

ISSUES

The following issue is dispositive:

Whether the Commission erred in denying Quail Run’s request for a dismissal of the case on the basis that Hancher had agreed to forgo an action against Quail Run in exchange for early termination of his lease.

FACTS AND PROCEDURAL HISTORY

In 2001, Hancher signed a lease for a one-bedroom apartment in the Quail Run complex located in Columbus, Indiana. At that time, Hancher, who suffers from a degenerative disc disease, was able to walk with the aid of a cane. For a period in 2004, however, Hancher was forced by the disease to use a wheelchair.

In late April of 2004, Hancher went to Quail Run’s leasing office and informed an employee of his impairment. Hancher requested that Quail Run either make changes to his apartment as an accommodation for his impairment or allow him to terminate his lease without penalty, and he demanded that the changes be made within five or six working days. Hancher also informed the Quail Run employee that the steps in front of the leasing office made it difficult for him to enter the office. He explained that his ex-wife, Linda Hancher, had to pull his wheelchair up the steps, and that the procedure

caused him physical pain. However, he did not make an explicit request that changes be made to the entrance.

The Quail Run employee who spoke to Hancher did not have the authority to authorize or deny the requested accommodations. He did, however, express his opinion that Quail Run probably would not make the changes to the apartment or allow Hancher to terminate his lease early.

Hancher consulted with a private attorney, and the attorney sent a letter, dated May 11, 2004, to Quail Run. In the letter, Hancher's attorney threatened to file suit and pursue other remedies unless Quail Run complied with Hancher's request for accommodations. Through its attorney, Quail Run informed Hancher that he could terminate his lease without penalty. Hancher moved out of his apartment at the end of May 2004, and he was not penalized for doing so.

On May 11, 2004, Hancher also filed a housing discrimination complaint through the Columbus Human Rights Commission. The State Civil Rights Commission conducted an inquiry related to Hancher's complaint, and the Executive Director issued a "Notice of Finding," in which she concluded that Hancher could not pursue the complaint as it pertained to accommodations to his apartment. However, the Executive Director did determine that Quail Run's rental office was inaccessible to persons with disabilities and that "there is probable cause to believe that violation of the Indiana Civil Rights Law occurred." Appellant's App. at 30. The Executive Director concluded that a public hearing was necessary.

A public hearing was held before an administrative law judge on July 21, 2005, in which the Civil Rights Commission's Staff Counsel argued that Hancher had asked for an accommodation to allow easier access to Quail Run's leasing office. Among other things, Quail Run argued that an accord and satisfaction had occurred when it released Hancher from his lease.

The administrative law judge entered findings of fact and conclusions of law in support of his determination that (1) there was no mention of the leasing office in Hancher's letter to Quail Run, and therefore the promises made therein did not limit Hancher's ability to pursue an action for damages caused by the steps leading up to the office, and (2) a damage award of \$5,000 was justified. Subsequently, four of the Commission's commissioners reviewed and adopted the administrative law judge's findings of fact, conclusions of law, and order. This appeal ensued.

DISCUSSION AND DECISION

The issue of accord and satisfaction turns on whether, in the letter sent by Hancher's attorney, Hancher agreed to forego all his claims against Quail Run or only his claims pertaining to his apartment in exchange for release from his rental agreement. In pertinent part, the letter stated:

I helped [Hancher] obtain disability benefits and am familiar with his physical impairments. Although he was not wheelchair bound at the beginning of the lease term, he has since become so. It is now impossible for him to continue living in the apartment because (1) there is no ramp to make the apartment wheelchair accessible; (2) the bathroom is not wheelchair accessible; and (3) the kitchen counters are at a height which makes them impossible to use from a wheelchair.

It is my understanding that [Hancher] has asked that his lease be terminated immediately, and that you have refused. My purpose in writing is to make that request formally and in writing, as an alternative to filing suit immediately.

.....

[Hancher] and I have both spoken with the Director of the Human Rights Commission. She is prepared to begin action through the Commission and to assist [Hancher] in proceeding through HUD. I intent [sic] to go ahead and file suit in Bartholomew Circuit Court, seeking immediate termination of the lease and all other remedies to which [Hancher] may be entitled, including attorney fees. Before doing so, however, I wanted to explore the possibility of reaching a harmonious resolution without litigation.

If you are willing to consider a reasonable accommodation for this handicapped individual, please contact me within seven days from the date of this letter. If I fail to hear from you, I will have no alternative but to file suit.

Appellant's App. at 26-27.

Accord and satisfaction is a method of discharging a contract, or settling a cause of action by substituting for such contract or dispute an agreement for satisfaction. *Mominee v. King*, 629 N.E.2d 1280, 1282 (Ind. Ct. App. 1994); *Sunderman v. Sunderman*, 116 Ind.App. 157, 63 N.E.2d 154, 157 (1945). Under Indiana law, an “accord” is an express contract by which the parties agree to settle a dispute, and a “satisfaction” is the parties’ performance of their contractual obligations. *Sims-Madison v. Inland Paperboard and Packaging, Inc.*, 379 F.3d 445, 450 (7th Cir. 2004). Accord and satisfaction is an affirmative defense, and the party asserting the defense bears the burden of proof. *Fifth Third Bank of Southeastern Indiana v. Bentonville Farm Supply*,

Inc., 629 N.E.2d 1246, 1249 (Ind. Ct. App. 1994), *trans. denied*. As a contract, accord and satisfaction requires a meeting of the minds or evidence that the parties intended to agree to a particular remedy. *Sedona Development Group, Inc. v. Merrillville Road, et al.*, 801 N.E.2d 1274, 1278-79. Interpretation of a contract is a question of law, and no deference is owed to an administrative agency's determination. *Kinnaird v. Secretary, Indiana Family and Social Services Administration*, 817 N.E.2d 1274, 1278 (Ind. Ct. App. 2004), *trans. denied*.

Quail Run cites *Georgos v. Jackson*, 790 N.E.2d 448, 453 (Ind. 2003) and *Mendenhall v. Skinner and Broadbent Co., Inc.*, 728 N.E.2d 140, 145 (Ind. 200) for the proposition that Indiana strongly favors settlement agreements which discourage litigation and encourage negotiation and settlement of disputes. It also cites *Estate of Spry v. Greg and Ken, Inc.*, 749 N.E.2d 1269, 1273 (Ind. Ct. App. 2001) for the proposition that language referring to the release of "all" people "is clear unless other terms in the instrument are contradictory." Quail Run refers to the letter's statement that if Hancher's demands are not met, he would be "seeking immediate termination of the lease and *all other remedies to which [Hancher] may be entitled.*" Using the aforementioned cases as its basis for argument, Quail Run contends that the letter's reference to "all other remedies" is indicative of Hancher's offer to release Quail Run from all actions pertaining to Hancher's use of Quail Run's facilities, not just actions related to his apartment.

The accord letter explicitly refers to Hancher's contact with the Columbus Human Rights Commission and the threat of an administrative action. Indeed, the

contemporaneous complaint filed with the Commission addresses the accessibility problems occasioned by the steps to Quail Run's rental office. Thus, we conclude that the subject of the complaint was part of the accord offered by Hancher. Given the offer of an accord that involves forbearance of lawsuits, actions through the Commission, and all other remedies, we conclude that the offer of accord included any actions arising from accessibility to the leasing office. The Commission erred in concluding otherwise.

CONCLUSION

We reverse and remand with instructions that the Commission vacate the administrative law judge's order.

Reversed and remanded.

BAKER, C.J., and BAILEY, J., concur.