



Public Utilities
Commission

10-2329-EL-CSS

Case Number

Public Utilities Commission of Ohio
Attn: Docketing
180 E. Broad St.
Columbus, OH 43215

Formal Complaint Form

PETER J. WIELICKI

Customer Name (Please Print)

3314 FORTUNE AVE.

Customer Address

PARMA OHIO 44134

City

State

Zip

Against

11 00 25 510014

Account Number

SAME

Customer Service Address (if different from above)

SAME

City

State

Zip

THE ILLUMINATING CO.

Utility Company Name

Please describe your complaint. (Attach additional sheets if necessary)

PLEASE SEE ATTACHED

Peter J. Wielicki

Signature

(216) 398-4843

Customer Telephone Number

RECEIVED-DOCKETING DIV
2010 OCT -8 PM 12:48
PUCO

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business.
Technician me Date Processed 10-8-2010

September 9, 2010

SENT VIA FAX TO (614) 752-8351 ON THIS DATE

800-686-7826

Public Utilities Commission of Ohio
180 E. Broad St.
Columbus, Ohio 43215-3793

Attn: Ms. Andrea Smith
Complaint Investigator

Re: Informal Complaint
Account Number 11 00 25 5100 1 4

Dear Ms. Smith:

Per our phone conversation on September 9, 2010 please find the following in reference to the informal complaint that I filed with you in regard to The Illuminating Company.

A. COMPLAINT FACTS

At some point prior to or in 2007 I experienced a sharp spike in my electric bill which did not match my previous normal usage records. I contacted the Company and talked to a Customer Service Manager. The Manager did not give me his name stating that it was policy. I did speak with a manager not just a service representative. Based on an investigation by this individual it was determined that the usage was abnormal and may have occurred due to a number of reasons which may have included a faulty meter reading. An adjustment in the payment was discussed and agreed upon. I told the Manager that I would be sending the agreed upon payment via a restrictively endorsed check attached to a letter acknowledging the agreement. I requested the address and to whose attention such a payment should be sent to. I was advised that I should send it to The Illuminating Company, 76 S. Main St., A-RPC, Akron, Ohio 44308-1890, attention Customer Service Manager. I sent check #3528 in the amount of \$172.86, which, as stated, included a restrive endorsement which read "RESTRICTIVE ENDORSEMENT - Endorsement of this check voids all previous agreements and contracts, constitutes full Accord & Satisfaction without protest and voids all future claims on this account. Payee further agrees to remove all negative credit bureau information". A copy of this check and the letter is attached. This check was negotiated by the Company. Instead of correcting the account records to reflect the agreement the Company breached the agreement by continuing to demand payment including fees and interest. I contacted the Company by phone on several occasions but was unsuccessful in resolving the matter. On August 3, 2010 a Company representative showed up at my home threatening to turn off the power if payment was not made. A copy of the disconnection notice is attached.

B. LAW AND ARGUMENT

Although the Company has presented excuses for its acceptance of check #3528 without discharging the debt, none are legally sufficient to avoid the effect of the accord and satisfaction. The Company should be required to honor the agreement because there is no genuine issue of material fact, I am entitled to a credit as a matter of law, and reasonable minds can only come to a conclusion adverse to Company after construing the evidence in my favor. In this matter, even if everything the Company claims is true, there was still an accord and satisfaction.

(1) Check #3528 and its accompanying note discharges the Company's claim under R.C. Sect. 1303.40

Before it can be shown that the claim is discharged under R.C. Sect. 1303.40(A), it must be demonstrated that the three prerequisites apply. The check was tendered in good faith, meeting element (1), because I communicated the dispute to the Company beforehand by phone and sent the check with an explanatory cover letter addressed to the Customer Service Manager to make the effects of cashing the check clear to its intended recipient. Element (2) is met because I did not owe the amount claimed due to supporting data and reasons agreed to by the Company. Finally element (3) is indisputably met because the Company admits that it cashed the check.

The Company's claim that the discharge should not occur because I paid an "undisputed" amount, which could be seen as a challenge to element (3). However, R.C. Sect. 1303.40 does not state anything against paying with a undisputed amount, but only requires that the "claim" be "unliquidated" or subject to a bona fide dispute. See Section 1303.40 (emphasis added). In this matter, the claim itself was definitely subject to a bona fide dispute. My check and letter made it clear that the check was to settle the current amount due and also any claim the Company had for prior amounts claimed.

The Company demonstrated that it could alter bills after submission to me, and could have done so with the disputed bill at the time payment was sent, either altering it upwards or downwards. Had the Company accepted the check and then revised the bill payment downwards due to an error, the accord and satisfaction would still be valid. Clearly, any debt that could still change is unliquidated, so prerequisite (3) is satisfied. Therefore, the analysis can continue under R.C. Sect. 1303.40(A).

(2) Any debt was discharged under R.C. Sect. 1303.40(A) because the check and accompanying letter both contained conspicuous statements that the check was to be regarded as payment in full

R.C. Sect. 1303.40(A) specifies that a debt can be discharged if 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. A statement is conspicuous when "it is so written that a reasonable person against whom it is to operate ought to have noticed it." R.C. Sect. 1301.01. The official comment to UCC 3-311 further specifies, "if the claimant can reasonably be expected to examine the check, almost any statement on the check should be noticed and is therefore conspicuous."

Check #3528 and its accompanying letter clearly meet these requirements. Check #3528 included a restrictive endorsement on its rear side, with "RESTRICTIVE ENDORSEMENT" in large block letters and specified that the check was an accord and satisfaction. (See Check #3528). Furthermore, the letter sent with the check specified that it was "offered as payment in full for any and all current and prior claims." This letter was short and could have been read in a matter of seconds. The letter was also sent with an "Attn: Customer Service Manager" line at the top, so that the Customer Service Manager would receive the check and make a decision on whether to cash it or enter a legal dispute. (See letter). Therefore, both the check and accompanying communication were very clear that cashing the check would cause a full discharge of the debt.

The Company alleges that the statement on the back of the check is insufficient because nobody looks at the backs of checks, and they just look at the front and send them to the bank to be cashed. The letter sent was addressed to the Customer Service Manager. As discussed above, any statement on the check should be sufficient if it is expected that someone will examine the check. I had plenty of reason to assume that the check would be examined. R.C. Sect. 1303.40(B) contains two protections against the accidental cashing of restrictively endorsed checks, giving the recipient 90 days to return the accepted amount with a statement that the money was not accepted as an accord and satisfaction, or alternative allowing them to send a conspicuous statement stating that such communications were to be sent to a particular office. R.C. Sect. 1303.40(B)(1). The Company failed to avail itself of these reasonable protections, so it cannot use its failure to look at the back of my check as an excuse for not accepting it.

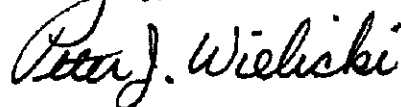
C. CONCLUSION

The facts of this case are clear. The Company cashed a check with a clear indication the payment was in full satisfaction of the debt claimed. If the Customer Service Manager to whom the check and letter was sent failed to read them before accepting the check's benefit, that is solely the Company's fault. Therefore, based on the above, a decision by the PUCO should be made that accord and satisfaction is applicable here and the Company should be required to credit my account the amount claimed plus fees and interest.

Should the PUCO not decide in favor of me, then I wish to proceed with a formal complaint and any other avenues which are available to me.

Should you have any questions or require additional information feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Peter J. Wielicki". The signature is written in a cursive style with a large, stylized "P" and "W".

Peter J. Wielicki
3314 Fortune Ave.
Parma, Ohio 44134
216-398-4843
wielicki@cox.net

August 19, 2007

The Illuminating Company
76 S. Main St., A-RPC
Akron, Ohio 44308-1890

Attn: Customer Service Manager

Re: Account #11 00 25 5100 1 4
Payment in Full

Dear Sir:

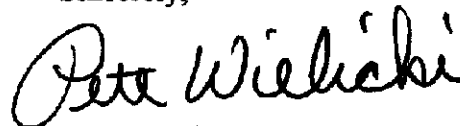
This correspondence is to confirm the agreement reached in regard to the above referenced account.

Please find attached my check #3528 in the amount of \$172.86 which is offered as payment in full for any and all current and prior claims. This is not to be considered as a partial payment. Be advised that this check contains a restrictive endorsement.

Kindly correct my records to reflect a zero balance due.

Should you have any questions concerning this matter feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Peter J. Wielicki". The signature is written in a cursive style with a large, stylized "P" and "W".

Peter J. Wielicki
3314 Fortune Ave.
Parma, Ohio 44134
216-398-4843

[Supreme Court Center](#) | [US Laws](#) | [Blawgs.FM](#) | [BlawgSearch.com](#) | [Justia](#)[Justia](#) > [Law](#) > [Ohio Law](#) > [Ohio Code](#) > [TITLE \[13\] XIII](#)[Commercial Transactions - Other Commercial Transactions](#) >[1303. Commercial Paper](#) > **1303.40. (UCC 3-311) Accord and satisfaction by use of instrument.**[Search Justia](#)**1303.40. (UCC 3-311) Accord and satisfaction by use of instrument.**[Search](#)[Ohio Code](#)[All US State Codes](#)**§ 1303.40. (UCC 3-311) Accord and satisfaction by use of instrument.**

If a person against whom a claim is asserted proves that that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, that the amount of the claim was unliquidated or subject to a bona fide dispute, and that the claimant obtained payment of the instrument, all the following apply:

(A) Unless division (B) of this section applies, the claim is discharged if the person against whom the claim is asserted proves that 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.

(B) Subject to division (C) of this section, a claim is not discharged under division (A) of this section if either of the following applies:

(1) The claimant, if an organization, proves both of the following:

(a) Within a reasonable time before the person against whom the claim is asserted tendered the instrument to the claimant, the claimant sent a conspicuous statement to the person that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place.

(b) The instrument or accompanying communication was not received by that designated person, office, or place.

(2) The claimant, whether or not an organization, proves that within ninety days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. Division (B)(2) of this section does not apply if the claimant is an organization that sent a statement complying with division (B)(1) of this section.

(C) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.

HISTORY: 145 v S 147. Eff 8-19-94.

Not analogous to former RC § 1303.40 (129 v S 5), repealed 145 v S 147, § 2, eff 8-19-94.

Official Comment

1. This section deals with an informal method of dispute resolution carried out by use of a negotiable instrument. In the typical case there is a dispute concerning the amount that is owed on a claim.

Case #1. The claim is for the price of goods or services sold to a consumer who asserts that he or she is not obliged to pay the full price for which the consumer was billed because of a defect or breach of warranty with respect to the goods or services.

Case #2. A claim is made on an insurance policy. The insurance company alleges that it is not liable under the policy for the amount of the claim.

In either case the person against whom the claim is asserted may attempt an accord and satisfaction of the disputed claim by tendering a

check to the claimant for some amount less than the full amount claimed by the claimant. A statement will be included on the check or in a communication accompanying the check to the effect that the check is offered as full payment or full satisfaction of the claim. Frequently, there is also a statement to the effect that obtaining payment of the check is an agreement by the claimant to a settlement of the dispute for the amount tendered. Before enactment of revised article 3, the case law was in conflict over the question of whether obtaining payment of the check had the effect of an agreement to the settlement proposed by the debtor. This issue was governed by a common-law rule, but some courts held that the common-law was modified by former section 1-207 which they interpreted as applying to full settlement checks.

2. Comment d. to Restatement of Contracts, section 281 discusses the full satisfaction check and the applicable common-law rule. In a case like case #1, the buyer can propose a settlement of the disputed bill by a clear notation on the check indicating that the check is tendered as full satisfaction of the bill. Under the common-law rule the seller, by obtaining payment of the check accepts the offer of compromise by the buyer. The result is the same if the seller adds a notation to the check indicating that the check is accepted under protest or in only partial satisfaction of the claim. Under the common-law rule the seller can refuse the check or can accept it subject to the condition stated by the buyer, but the seller can't accept the check and refuse to be bound by the condition. The rule applies only to an unliquidated claim or a claim disputed in good faith by the buyer. The dispute in the courts was whether section 1-207 changed the common-law rule. The Restatement states that section "need not be read as changing this well-established rule."

3. As part of the revision of article 3, section 1-207 has been amended to add subsection (2) stating that section 1-207 "does not apply to an accord and satisfaction." Because of that amendment and revised article 3, section 3-311 governs full satisfaction checks. Section 3-311 follows the common-law rule with some minor variations to reflect modern business conditions. In cases covered by section 3-311 there will often be an individual on one side of the dispute and a business organization on the other. This section is not designed to favor either the individual or the business organization. In case #1 the person seeking the accord and satisfaction is an individual. In case #2 the person seeking the accord and satisfaction is an insurance company. Section 3-311 is based on a belief that the common-law rule produces a fair result and that informal dispute resolution by full satisfaction checks should be encouraged.

4. Subsection (a) states three requirements for application of section 3-311. "Good faith" in subsection (a)(i) is defined in section 3-103(a)(4) as not only honesty in fact, but the observance of reasonable commercial standards of fair dealing. The meaning of "fair dealing" will depend upon the facts in the particular case. For example, suppose an insurer tenders a check in settlement of a claim for personal injury in an accident clearly covered by the insurance policy. The claimant is necessitous and the amount of the check is very small in relationship to the extent of the injury and the amount recoverable under the policy. If the trier of fact determines that the insurer was taking unfair advantage of the claimant, an accord and satisfaction would not result from payment of the check because of the absence of good faith by the insurer in making the tender. Another example of lack of good faith is found in the practice of some business debtors in routinely printing full satisfaction language on their check stocks so that all or a large part of the debts of the debtor are paid by checks bearing the full satisfaction language, whether or not there is any dispute with the creditor. Under such a practice the claimant cannot be sure whether a tender in full satisfaction is or is not being made. Use of a check on which full satisfaction language was affixed routinely pursuant to such a business practice may prevent an accord and satisfaction on the ground that the check was not tendered in good faith under subsection (a)(i).

Section 3-311 does not apply to cases in which the debt is a liquidated amount and not subject to a bona fide dispute. Subsection (a)(ii). Other law applies to cases in which a debtor is seeking discharge of such a debt by paying less than the amount owed. For the purpose of subsection (a)(iii) obtaining acceptance of a check is considered to be obtaining payment of the check.

The person seeking the accord and satisfaction must prove that the requirements of subsection (a) are met. If that person also proves that the statement required by subsection (b) was given, the claim is discharged unless subsection (c) applies. Normally the statement required by subsection (b) is written on the check. Thus, the canceled check can be used to prove the statement as well as the fact that the claimant obtained payment of the check. Subsection (b) requires a "conspicuous" statement that the instrument was tendered in full satisfaction of the claim. "Conspicuous" is defined in section 1-201(10). The statement is conspicuous if "it is so written that a reasonable person against whom it is to operate ought to have noticed it." If the claimant can reasonably be expected to examine the check, almost any statement on the check should be noticed and is therefore conspicuous. In cases in which the claimant is an individual the claimant will receive the check and will normally indorse it. Since the statement concerning tender in full satisfaction normally will appear above the space provided for the claimant's indorsement of the check, the claimant "ought to have noticed" the statement.

5. Subsection (c)(1) is a limitation on subsection (b) in cases in which the claimant is an organization. It is designed to protect the claimant against inadvertent accord and satisfaction. If the claimant is an organization payment of the check might be obtained without notice to the personnel of the organization concerned with the disputed claim. Some business organizations have claims against very large numbers of customers. Examples are department stores, public utilities, and the like. These claims are normally paid by checks sent by customers to a designated office at which clerks employed by the claimant or a bank acting for the claimant process the checks and record the amounts paid. If the processing office is not designed to deal with communications extraneous to recording the amount of the check and the account number of the customer, payment of a full satisfaction check can easily be obtained without knowledge by the claimant of the existence of the full satisfaction statement. This is particularly true if the statement is written on the reverse side of the check in the area in which indorsements are usually written. Normally, the clerks of the claimant have no reason to look at the reverse side of checks.

Indorsement by the claimant normally is done by mechanical means or there may be no indorsement at all. Section 4-205(a). Subsection (c)(1) allows the claimant to protect itself by advising customers by a conspicuous statement that communications regarding disputed debts must be sent to a particular person, office, or place. The statement must be given to the customer within a reasonable time before the tender is made. This requirement is designed to assure that the customer has reasonable notice that the full satisfaction check must be sent to a particular place. The reasonable time requirement could be satisfied by a notice on the billing statement sent to the customer. If the full satisfaction check is sent to the designated destination and the check is paid, the claim is discharged. If the claimant proves that the check was not received at the designated destination the claim is not discharged unless subsection (d) applies.

6. Subsection (c)(2) is also designed to prevent inadvertent accord and satisfaction. It can be used by a claimant other than an organization or by a claimant as an alternative to subsection (c)(1). Some organizations may be reluctant to use subsection (c)(1) because it may result in confusion of customers that causes checks to be routinely sent to the special designated person, office, or place. Thus, much of the benefit of rapid processing of checks may be lost. An organization that chooses not to send a notice complying with subsection (c)(1) may prevent an inadvertent accord and satisfaction by complying with subsection (c)(2). If the claimant discovers that it has obtained payment of a full satisfaction check, it may prevent an accord and satisfaction if, within 90 days of the payment of the check, the claimant tenders repayment of the amount of the check to the person against whom the claim is asserted.

7. Subsection (c) is subject to subsection (d). If a person against whom a claim is asserted proves that the claimant obtained payment of a check known to have been tendered in full satisfaction of the claim by "the claimant or an agent of the claimant having direct responsibility with respect to the disputed obligation," the claim is discharged even if (i) the check was not sent to the person, office, or place required by a notice complying with subsection (c)(1), or (ii) the claimant tendered repayment of the amount of the check in compliance with subsection (c)(2).

A claimant knows that a check was tendered in full satisfaction of a claim when the claimant "has actual knowledge" of that fact. Section 1-201(25). Under section 1-201(27), if the claimant is an organization, it has knowledge that a check was tendered in full satisfaction of the claim when that fact is

"brought to the attention of the individual conducting that transaction, and in any event when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information."

With respect to an attempted accord and satisfaction the "individual conducting that transaction" is an employee or other agent of the organization having direct responsibility with respect to the dispute. For example, if the check and communication are received by a collection agency acting for the claimant to collect the disputed claim, obtaining payment of the check will result in an accord and satisfaction even if the claimant gave notice, pursuant to subsection (c)(1), that full satisfaction checks be sent to some other office. Similarly, if a customer asserting a claim for breach of warranty with respect to defective goods purchased in a retail outlet of a large chain store delivers the full satisfaction check to the manager of the retail outlet at which the goods were purchased, obtaining payment of the check will also result in an accord and satisfaction. On the other hand, if the check is mailed to the chief executive officer of the chain store subsection (d) would probably not be satisfied. The chief executive officer of a large corporation may have general responsibility for operations of the company, but does not normally have direct responsibility for resolving a small disputed bill to a customer. A check for a relatively small amount mailed to a high executive officer of a large organization is not likely to receive the executive's personal attention. Rather, the check would normally be routinely sent to the appropriate office for deposit and credit to the customer's account. If the check does receive the personal attention of the high executive officer and the officer is aware of the full satisfaction language, collection of the check will result in an accord and satisfaction because subsection (d) applies. In this case the officer has assumed direct responsibility with respect to the disputed transaction.

If a full satisfaction check is sent to a lock box or other office processing checks sent to the claimant, it is irrelevant whether the clerk processing the check did or did not see the statement that the check was tendered as full satisfaction of the claim. Knowledge of the clerk is not imputed to the organization because the clerk has no responsibility with respect to an accord and satisfaction. Moreover, there is no failure of "due diligence" under section 1-201(27) if the claimant does not require its clerks to look for full satisfaction statements on checks or accompanying communications. Nor is there any duty of the claimant to assign that duty to its clerks. Section 3-311(e) is intended to allow a claimant to avoid an inadvertent accord and satisfaction by complying with either subsection (c)(1) or (2) without burdening the check-processing operation with extraneous and wasteful additional duties.

8. In some cases the disputed claim may have been assigned to a finance company or bank as part of a financing arrangement with respect to accounts receivable. If the assignor debtor was notified of the assignment, the claimant is the assignee of the account receivable and the "agent of the claimant" in subsection (d) refers to an agent of the assignee.

ATTENTION OCCUPANTS!

24 HOUR
~~Notice~~
NOTICE

ELECTRIC SERVICE TO THESE PREMISES HAS BEEN DISCONNECTED

SHUT-OFF DATE 8-3-10	SHUT-OFF TIME 10:30 AM
CUSTOMER NAME PETE WIELICKI	ACCOUNT NO. 110025510014

SERVICE ADDRESS
3314 FORTUNE AVE PARMA OH 44134

We received no response to our request for payment of your overdue electric bill. As a result, your electric service has been disconnected.

In order to have service restored, the past due or defaulted payment plan balance and a reconnection charge must be paid. A security deposit may also be required.

Please call us toll-free at 1-800-686-9901 for information on how to pay your bill or for agencies that might be able to provide assistance. To ensure same-day restoration, you must contact us before 12:30 p.m. and make a payment or provide proof of payment.

Amount Past Due
\$ 302.88
Reconnection Fee
\$ 35.00
Security Deposit
\$ 74.00
Total Required For Reconnection
\$ 411.88

Important Information

We urge you to call our toll-free number concerning restoration of service. Do not attempt to reconnect the electric meter yourself. An unauthorized reconnection is both dangerous and against the law.

Under the law, any proof of unauthorized reconnection or tampering is considered sufficient evidence that the customer reconnected the meter or caused the tampering. Violators of the law may be subject to jail sentences and fines. In addition, violators must pay for the value of electricity used and the cost of repairs or replacement.

Please be aware that using candles, portable heaters, gas appliances and gasoline or diesel-powered generators to light or heat your home may be dangerous. Portable heaters and burning candles that are left unattended, especially around children and pets, can create a fire hazard. In addition, portable heaters and gasoline or diesel-powered generators can produce deadly levels of carbon monoxide and should never be operated inside the home or garage. For more safety information, contact your local fire department.

If you have a complaint in regard to this disconnection notice that can not be resolved after you have called The Cleveland Electric Illuminating Company or for general utility information, residential and business customers may contact the Public Utilities Commission of Ohio for assistance at 1-800-686-7826 (toll free) or for TTY at 1-800-686-1570 (toll free) from 8:00 a.m. to 5:00 p.m. weekdays, or at www.puco.ohio.gov. Residential customers may also contact the Ohio Consumers' Counsel for assistance with complaints and utility issues at 1-877-742-5622 (toll free) from 8:00 a.m. to 5:00 p.m. weekdays, or at www.pickocc.org.

Visit us at www.53.com

PETER J. WIELICKI 05-88
ANNE K. WIELICKI
3314 FORTUNE AVE.
PARMA, OHIO 44134

6-271/410
0061307807

3528

8/19/07
Date

Pay to the
Order of

ILLUMINATING Co. \$ 172⁸⁶

ONE HUNDRED SEVENTY TWO ⁸⁶/₁₀₀ Dollars



REGISTERED
TO CLEAR
DATE OF BIRTH



Fifth Third Bank
(NORTHEASTERN OHIO)
CLEVELAND, OHIO

For

110025510014

Peter Wielicki

RESTRICTIVE ENDORSEMENT

Endorsement of this check voids all previous agreements and
contracts, constitutes full Accord & Satisfaction without
protest and voids all future claims on this account. Payee
further agrees to remove all negative credit bureau information

Visit us at www.33.com
3528