

UCC 1-207: Section 1-207 Supersedes the Common Law Doctrine of Accord and Satisfaction in Situations Involving the Tender of Negotiable Instruments in Full Satisfaction of Disputed Claims

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terpretation of section 2-725 does not limit available remedies,²⁸ the language of the decision indicates a pronounced bias toward the use of strict tort remedies and against the use of warranty remedies in cases of personal injury.²⁹ It is therefore submitted that the *Heller* decision may mark the inception of a trend in which the court will continue to place obstacles, both procedural and substantive, in the path of consumers seeking to bring personal injury suits based on breach of warranty. Moreover, the practical effect of the *Heller* decision is to frustrate the legislative purpose, embodied in the present version of section 2-318, of providing plaintiffs with an additional cause of action against remote seller.³⁰

Regina A. Matejka

UCC 1-207: Section 1-207 supersedes the common law doctrine of accord and satisfaction in situations involving the tender of negotiable instruments in full satisfaction of disputed claims

In New York, the common law doctrine of accord and satisfaction has been recognized as a means by which parties could settle disputed debts without resort to judicial intervention.¹ Under this

of limitations); B. CLARK & C. SMITH, *THE LAW OF PRODUCT WARRANTIES* § 9.01(2) at 9-7, 9-8 (policy behind notice provision and statute of limitations similar in that both place a time limit on seller's exposure to warranty liability); see also WHITE & SUMMERS, *UNIFORM COMMERCIAL CODE* § 11-10 at 422 (2d ed. 1982). It is suggested therefore that the support for a liberal construction of the notice requirement in consumer injury cases could similarly justify a liberal construction of section 2-725 in such cases (i.e., a determination that the limitations period accrues on delivery to the retail consumer).

²⁸ See *Heller v. U.S. Suzuki Motor Corp.*, 64 N.Y.2d at 412, 477 N.E.2d at 437, 488 N.Y.S.2d at 134; *supra* note 22.

²⁹ See *Heller*, 64 N.Y.2d at 410-11, 477 N.E.2d at 437, 488 N.Y.S.2d at 135. "As we noted in *Martin v. Dierck Equip. Co.*, . . . there is no need to recognize an action on implied warranty for personal injuries, and contend with the serious conceptual problems which arise when it is applied to personal injury actions, if the jurisdiction recognizes a tort action in strict products liability as New York does. . . . The tort remedy permits the injured plaintiff to seek redress from remote parties in the distributive chain regardless of privity." *Id.* [citation omitted]

³⁰ See *Heller*, 64 N.Y.2d at 415-16, 477 N.E.2d at 438, 488 N.Y.S.2d at 137 (Meyer, J., dissenting).

¹ See *Hudson v. Yonkers Fruit Co.*, 258 N.Y. 168, 171, 179 N.E. 373, 374 (1932) (Cardozo C.J.); *Nassoioy v. Tomlinson*, 148 N.Y. 326, 329-30, 42 N.E. 715, 716 (1896); *Jaffray v. Davis*, 124 N.Y. 164, 173, 26 N.E. 351, 354 (1891). The doctrine of accord and satisfaction

doctrine, a creditor's acceptance of a check for less than the amount claimed due discharged the debt² if the check included a

provides for the discharge of an existing claim against a debtor who renders "some performance different from that which was claimed as due [when the creditor accepts] such substituted performance . . . as full satisfaction of his claim." 6 A. CORBIN, CONTRACTS § 1276, at 115 (1962); *see also* Merrill-Lynch Realty v. Skinner, 63 N.Y.2d 590, 596, 473 N.E.2d 229, 232, 483 N.Y.S.2d 979, 982 (1984) (theory that parties enter new contract displacing old); Rosenblatt v. Birnbaum, 16 N.Y.2d 212, 219, 212 N.E.2d 37, 40, 264 N.Y.S.2d 521, 525 (1965) (accord and satisfaction exists when party assents to acceptance of payment in compromise of dispute). An accord is merely a contract under which an obligee promises to accept a performance in substitution for a different one promised under an earlier contract. *See* Werking v. Amity Estates Inc., 2 N.Y.2d 43, 51-52, 137 N.E.2d 321, 321-22, 155 N.Y.S.2d 633, 641 (1956), *appeal dismissed*, 353 U.S. 933, *reh'g denied*, 353 U.S. 989 (1957); RESTATEMENT (SECOND) OF CONTRACTS § 281 (1981). Satisfaction occurs on performance of the accord. Reilly v. Barrett, 220 N.Y. 170, 172-73, 115 N.E. 453, 454 (1917); RESTATEMENT (SECOND) OF CONTRACTS § 281(1) comment e (1981). *See generally* 6 A. CORBIN, *supra*, §§ 1276-1292 (1962) (treating accord and satisfaction). Because the doctrine encourages out-of-court settlement of disputed claims, it has been favored by the courts. *See* Post v. Thomas, 212 N.Y. 264, 273, 106 N.E. 69, 72 (1914).

Because an accord and satisfaction is a contract, all of the essential elements of a contract must be present for it to be valid and effective. Komp v. Raymond, 175 N.Y. 102, 107-08, 67 N.E. 113, 115 (1903). These elements include a proper subject matter, competent parties, adequate consideration and mutual assent. *Id.* at 108, 67 N.E. at 115.

To be binding, an accord and satisfaction must be based upon an unliquidated prior claim. *See* Naissoy v. Tomlinson, 148 N.Y. 326, 330, 42 N.E. 715, 716 (1896). A claim is unliquidated when there is a genuine dispute as to the amount due. *See id.*; Carlton Credit Corp. v. Atlantic Refining Co., 12 App. Div. 2d 613, 613, 208 N.Y.S.2d 622, 623, (1st Dep't 1960) (mem.), *aff'd*, 10 N.Y.2d 723, 176 N.E.2d 837, 219 N.Y.S.2d 269 (1961); *see also* Schuttinger v. Woodruff, 259 N.Y. 212, 216, 181 N.E. 361, 364 (1932) (must be genuine controversy concerning amount due). When a claim is unliquidated or disputed, the tender of less than the amount claimed owed is sufficient consideration for an accord. 6 A. CORBIN, *supra*, § 1288, at 160; *see also* Forster v. Manufacturers' Trust Co., 267 N.Y. 371, 374, 196 N.E. 294, 295 (1935) (accord and satisfaction in stock claim operated as release).

A valid accord and satisfaction bars enforcement of the original claim. Plant City Steel Corp. v. National Mach. Exch., 23 N.Y.2d 472, 477, 245 N.E.2d 213, 215, 297 N.Y.S.2d 559, 562 (1969); Reilly v. Barrett, 220 N.Y. 170, 173, 115 N.E. 453, 454 (1917); Loblaw Inc. v. Wylie, 50 App. Div. 2d 4, 8, 375 N.Y.S.2d 706, 710 (4th Dep't 1975).

² Schuttinger v. Woodruff, 259 N.Y. 212, 216-17, 181 N.E. 361, 362 (1932) (when honest dispute exists over amount of debt, tender and acceptance of check in full settlement of all accounts satisfies doctrine of accord and satisfaction).

The cashing or certification of a full payment check manifests assent to the accord and satisfaction when a notation on the check or an accompanying letter makes clear that the tender is conditioned on full settlement. *See* Hirsch v. S. Berger Import & Mfg. Corp., 67 App. Div. 2d 30, 34-35, 414 N.Y.S.2d 324, 327-28 (1st Dep't), *appeal dismissed*, 47 N.Y.2d 1008, 394 N.E.2d 290, 394 N.Y.S.2d 221 (1979); St. Regis Paper Co. v. Tonawanda Bd. and Paper Co., 107 App. Div. 90, 93, 94 N.Y.S. 946, 947-48 (4th Dep't 1905), *aff'd* 186 N.Y. 563, 79 N.E. 1115 (1906); Lange-Finn Constr. v. Albany Steel & Iron Supply Co., 94 Misc. 2d 15, 19, 403 N.Y.S.2d 1012, 1015 (Sup. Ct. Albany County 1978); *see also* RESTATEMENT (SECOND) OF CONTRACTS § 281 comment d, illustration 1 (1981) (concluding full payment notation "may form the basis for an enforceable accord").

In Nassoioy v. Tomlinson, 148 N.Y. 326, 331, 42 N.E. 715, 716-17 (1896), the Court of

notation indicating that it was offered as full settlement.³ Under the common law, a payee could not reserve his right to the balance of the claimed debt when negotiating or indorsing a "full payment" check.⁴ Recently, however, in *Horn Waterproofing Corp. v. Bushwick Iron & Steel Co.*⁵ the New York Court of Appeals held that section 1-207 of the Uniform Commercial Code (the Code)⁶

Appeals explained why cashing a full payment check effects an accord and satisfaction: "[The creditor] cannot be permitted to assert that he did not understand that a sum of money offered 'in full' was not, when accepted, a payment in full. . . . When he indorsed and collected the check, . . . it was the same, in legal effect, as if he had signed and returned the receipt, because acceptance of the check was a conclusive election to be bound by the condition upon which the check was offered. The use of the check was . . . an acceptance of the condition The minds of the parties then met so as to constitute an accord . . ." *Id.*

³ See, e.g. *Geelan Mechanical Corp. v. Dember Constr. Corp.*, 97 App. Div. 2d 810, 810, 468 N.Y.S.2d 680, 680 (2d Dep't 1983) (mem.) (sufficient notation on check: "Accepted in Full & Final Payment on all Contract extras—C.O.'s etc."); *Wilcox Press, Inc. v. Beauty Fashion, Inc.*, 73 App. Div. 2d 988, 988, 423 N.Y.S.2d 565, 565 (3d Dep't 1980) (sufficient notation on check: "By endorsement this check when paid is accepted in full payment of the following account as per letter. . . . If incorrect please return"); *Channave v. Kraai*, 120 Misc. 2d 859, 859, 466 N.Y.S.2d 916, 917 (Monroe County Ct. 1983) (sufficient notation on check: "Pd. in Full").

⁴ 6 A. CORBIN, *supra* note 1, § 1279, at 127-30. At common law, obliteration of the words of condition or other indication that the check was being cashed under protest or with reservation of all rights did not prevent collection of the money from operating as an assent to the accord. *Id.* See generally J. WHITE & R. SUMMERS, *HANDBOOK OF THE LAW UNDER THE UNIFORM COMMERCIAL CODE* §§ 13-21, at 544 (2d ed. 1980) (dilemma caused to payee receiving such check described as "exquisite form of commercial torture"). New York originally followed this common law rule. See, e.g. *Schnell v. Perlmon*, 238 N.Y. 362, 370, 144 N.E. 641, 643-44 (1924) (acceptance of tender is assent despite words of protest); *Hirsch v. S. Berger Import & Mfg. Corp.*, 67 App. Div. 2d 30, 34-35, 414 N.Y.S.2d 324, 327-28, (1st Dep't) (cashing full payment check deemed assent to condition) *appeal dismissed*, 47 N.Y.2d 1008, 394 N.E.2d 290, 420 N.Y.S.2d 221 (1979); *Estate of Seidel*, 5 App. Div. 2d 760, 760, 169 N.Y.S.2d 210, 211 (4th Dep't 1958) (mem.) (acceptance of sum less than claim asserted permits conclusion that creditor assented to offered settlement). *But see* *Peckham Industries v. A. F. Lehmann*, 49 App. Div. 2d 172, 173, 374 N.Y.S.2d 144, 145 (3d Dep't 1975) (upon discovering agent's acceptance of check marked "Paid in Full," payee took steps to repudiate acceptance and prevent payment to his account; accord and satisfaction avoided).

⁵ 66 N.Y.2d 321, 488 N.E.2d 56, 497 N.Y.S.2d 310 (1985).

⁶ N.Y.U.C.C. § 1-207 (McKinney's 1964). Section 1-207 provides:

A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice" or "under protest" or the like are sufficient.

Id.

The legislative history surrounding New York's adoption of § 1-207 suggests that the section was intended to alter the doctrine of accord and satisfaction. *Hawkland, The Effect of UCC § 1-207 on the Doctrine of Accord and Satisfaction by Conditional Check*, 74 *COM. L.J.* 329, 332 (1969). The strongest support for this proposition comes from the appended "New York Annotations," derived from a 1961 report of the New York State Commission on

permits a payee to preclude an accord and satisfaction when accepting a "full payment" check by using an indorsement that explicitly reserves his rights.⁷

In *Horn*, the plaintiff entered into an oral contract with the defendant for the repair of a leaking roof on the defendant's building.⁸ After completing two days of work, the plaintiff determined that a new roof was required and submitted a bill for \$1,080 for the work already performed.⁹ The defendant disputed the value of

Uniform State Laws which provided in pertinent part:

This section permits a party involved in a Code-covered transaction to accept whatever he can get by way of payment, performance, etc., without losing his rights to demand the remainder of the goods, set-off a failure of quality, or to sue for the balance of the payment, so long as he reserves his rights.

REPORT OF THE COMM'N ON UNIFORM STATE LAWS TO THE LEGISLATURE OF THE STATE OF NEW YORK 19-20 (1961). See *Hawkland, supra*, at 332 (discussion of legislative history of section 1-207 in New York). Additional support may be found in the New York Law Revision Commission Study of the Uniform Commercial Code: Problems of Codification of Commercial Law, [1955] 1 N.Y. LAW. REV. COMM'N REP. 1208 [hereinafter cited as N.Y. LAW REV. COMM'N REP.]. The commission commented on proposed section 3-802(3) which would have discharged *all* obligations when full payment checks were retained by payees, thus codifying the common law rule of accord and satisfaction and extending it to liquidated claims. *Id.* The deletion of section 3-802(3) as advocated in the 1956 Recommendations of the Editorial Board for the Uniform Commercial Code, see 18 E. KELLY, UNIFORM COMMERCIAL CODE DRAFTS 155-56 (1984); see also *id.* at 375 & 465 (official Edition Uniform Commercial Code adhering to 1956 Editorial Board recommendations), evinces a disapproval of the hardship worked by codification of the common law rule as well as a concern over the potential for abuse. 18 E. KELLY, *supra* at 156.

⁷ 66 N.Y.2d at 332, 488 N.E.2d at 62, 497 N.Y.S.2d at 316.

The lower courts of New York that have held section 1-207 applicable to the tender and acceptance of "full payment" checks differ on the issue of the scope of section 1-207; some have refused to apply the section to full payment check cases in which the underlying contract was not covered by the Code; see *Geelan Mechanical Corp. v. Dember Constr. Corp.*, 97 App. Div. 2d 810, 811, 468 N.Y.S.2d 680, 681 (2d Dep't 1983); *Channave v. Kraai*, 120 Misc. 2d 859, 860, 466 N.Y.S.2d 916, 917-18 (Monroe County Ct. 1983); *Blottner, Derrico, Weiss & Hoffman P.C. v. Fier*, 101 Misc. 2d 371, 374, 420 N.Y.S.2d 999, 1002 (N.Y.C. Civ. Ct. Queens County 1979). Other lower courts have applied section 1-207 regardless of the nature of the underlying claim. See *Ayer v. Sky Club Inc.*, 70 App. Div. 2d 863, 864, 418 N.Y.S.2d 57, 58 (1st Dep't 1979) (mem.); *Lange-Finn Constr. Co., v. Albany Steel & Iron Supply Co.*, 94 Misc. 2d 15, 17-18, 403 N.Y.S.2d 1012, 1014 (Sup. Ct. Albany County 1978); cf. *Hanna v. Perkins*, 2 U.C.C. REP. SERV. (Callaghan) 1044, 1046 (Westchester County Ct. 1965) (acknowledging applicability of section 1-207 in *dicta*); some courts have applied section 1-207 to Code-covered cases involving the sale of goods. See *Braun v. C.E.P.C. Distrib. Inc.*, 77 App. Div. 2d 358, 361, 433 N.Y.S.2d 447, 449 (1st Dep't 1980); *Continental Information Sys. v. Mutual Life Ins. Co.*, 77 App. Div. 2d 316, 320-21, 432 N.Y.S.2d 952, 954 (4th Dep't 1980); *Kroulee Corp. v. Klein & Co.*, 103 Misc. 2d 441, 442, 426 N.Y.S.2d 206, 208 (Sup. Ct. Queens County 1980); *Aguiar v. Harper & Row Publishers*, 114 Misc. 2d 828, 833, 452 N.Y.S.2d 519, 523 (N.Y.C. Civ. Ct. N.Y. County 1982).

⁸ 66 N.Y.2d at 322, 488 N.E.2d at 56, 497 N.Y.S.2d at 310.

⁹ *Horn Waterproofing Corp. v. Bushwick Iron & Steel Co.*, 105 App. Div. 2d 684, 684,

the work performed and sent the plaintiff a check for \$500 which bore a notation indicating that it was tendered in full payment for the plaintiff's services.¹⁰ The plaintiff indorsed the check, adding the words "under protest," and deposited the \$500 into its account.¹¹ The plaintiff sued to recover the balance of the bill in the Civil Court, Queens County.¹² The defendant's motion to dismiss, denied below,¹³ was granted by the Appellate Division.¹⁴ The Appellate Division reasoned that because the underlying contract was for services, section 1-207 of the code was inapplicable.¹⁵ Thus, the court dismissed the action on the basis of accord and satisfaction.¹⁶ In a strong dissent, Judge Weinstein asserted that the common law rule as applied to creditors was inequitable¹⁷ and suggested that the Code should be given a more liberal construction to promote its underlying policies and purposes.¹⁸

The Court of Appeals reversed the decision below and held that the plaintiff's reservation of rights was effective,¹⁹ concluding that the doctrine of accord and satisfaction is replaced by section

481 N.Y.S.2d 125, 126 (2d Dep't 1984) (mem). *Id.* The plaintiff in *Horn* originally sent a bill to the defendant for \$1,241.92, but when the defendant disputed the value of the work done, the plaintiff submitted a revised bill for \$1,080. *Id.*

¹⁰ 66 N.Y.2d at 322, 488 N.E.2d at 57, 497 N.Y.S.2d at 311. In *Horn*, the back of the check contained the notation "This check is accepted in full payment, settlement, satisfaction, release and discharge of any and all claims and/or demands of whatsoever kind and nature." *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 323, 488 N.E.2d 57, 497 N.Y.S.2d at 311. The civil court denied the defendant's motion, and the Supreme Court, Appellate Term, affirmed. The Appellate Term held that the Code was applicable to the commercial transaction involved and that under section 1-207 the plaintiff had properly reserved his right to claim the balance of the bill. *Id.*

¹⁴ 105 App. Div. 2d 684, 684, 481 N.Y.S.2d 125, 126 (2d Dep't 1984).

¹⁵ *Id.* at 686, 481 N.Y.S.2d at 127.

¹⁶ *Id.*

¹⁷ *Id.* at 686, 481 N.Y.S.2d at 128 (Weinstein, J., dissenting).

¹⁸ *Id.* at 689, 481 N.Y.S.2d at 130 (Weinstein, J., dissenting).

¹⁹ 66 N.Y.2d at 332, 488 N.E.2d 62, 497 N.Y.S.2d at 316. To be effective, a reservation under section 1-207 must be sufficient to indicate an intention to preserve rights. 1 R. ANDERSON, THE UNIFORM COMMERCIAL CODE, § 1-207:4, at 435 (3d ed. 1981). The Code states that an "explicit" reservation must be made. N.Y. U.C.C. § 1-207 (McKinney 1964). Although the form a reservation must take is not defined by the Code, 1 R. ANDERSON, *supra*, § 1-207:4, at 436, conduct clearly demonstrating that the individual does not intend to waive his rights is sufficient to indicate a reservation of rights for the purposes of section 1-207. See *Deering Milliken Inc., v. Clark Estates Inc.*, 57 App. Div. 2d 773, 773, 394 N.Y.S.2d 436, 438, (1st Dep't) *aff'd*, 43 N.Y.2d 545, 373 N.E.2d 1212, 402 N.Y.S.2d 987 (1977); see also Caraballo, *The Tender Trap: UCC 1-207 and its Applicability to an Attempted Accord and Satisfaction By Tendering a Check in a Dispute from Sale of Goods*, 11 SETON HALL 445, 455-58 (1981) (stressing explicitness requirement).

1-207 when negotiable instruments are used in full payment tenders.²⁰ The Court compared the application of the common law rule in New York²¹ with the legislative history of section 1-207²² and concluded that the latter reflected "a fairer policy in debtor-creditor transactions."²³ Despite strong arguments of commentators to the contrary,²⁴ Judge Jasen ruled that the "plain language of the provision, 'without much stretching,' would seem applicable to a full payment check."²⁵ Judge Jasen mentioned the *Report of The Commission on Uniform State Laws to the Legislature of the State of New York* as strong support that section 1-207 was not restricted to situations such as the acceptance of an incomplete shipment of goods or other performance in part.²⁶ The court also emphasized that the location of section 1-207 in the introductory article of the Code and the expansive language of the section indicated that it was meant to be applied to all "Code-covered" commercial transactions.²⁷ Judge Jasen reasoned that to the extent full

²⁰ 66 N.Y.2d at 326, 488 N.E.2d 59, 497 N.Y.S.2d 313. Before concluding that the common law should be overridden by the Code, the *Horn* Court noted the disagreement among commentators, *id.* at 324 n.3, 488 N.E.2d at 58 n.3, 497 N.Y.S.2d at 312 n.3, as well as among the courts of New York, *see supra* note 7, and those of other jurisdictions. *Compare Bivens v. White Dairy*, 378 So. 2d 1122, 1124 (Ala. Civ. App. 1979) (Code supersedes common law), *cert. denied, sub nom. ex parte Bivens*, 378 So. 2d 1125 (1980); and *Scholl v. Tallman*, 247 N.W.2d 490, 492 (S.D. 1976) (same) and *Baillie Lumber Co. v. Kincaid Carolina Corp.*, 4 N.C. App. 342, 346, 167 S.E.2d 85, 90 (1969) (same); *with Flambeau Prod. Corp. v. Honeywell Information Sys.*, 116 Wis. 2d 95, 112, 341 N.W.2d 655, 664 (1984) (common law unaffected by 1-207) and *Chancellor v. Hamilton Appliance Co.*, 175 N.J. Super. 345, 352, 418 A.2d 1326, 1330 (1980) (same).

²¹ 66 N.Y.2d at 325, 488 N.E.2d at 58, 497 N.Y.S.2d at 312; *see supra* note 8.

²² *Id.* at 327-28, 488 N.E.2d at 60, 497 N.Y.S.2d at 314.

²³ *Id.* at 324, 488 N.E.2d at 58, 497 N.Y.S.2d at 312.

²⁴ *See, e.g.,* CORBIN ON CONTRACTS, § 1279 at 396 (C. Knafman ed. 2d ed. Supp. 1982); *Hawkland, supra* note 6, at 332; *Rosenthal, Discord and Dissatisfaction: Section 1-207 of the Uniform Commercial Code*, 78 COLUM. L. REV. 48, 63-64 (1978).

²⁵ 66 N.Y.2d at 327, 488 N.E.2d at 59, 497 N.Y.S.2d at 313. The *Horn* Court noted that the Official Comments to the Code are subject to a variety of interpretations because they do not specifically address the doctrine of accord and satisfaction. *Id.* at 327-28, 488 N.E.2d at 59-60, 497 N.Y.S.2d at 313-14; *accord Hawkland, supra* note 6, at 331; *Rosenthal, supra* note 24, at 63.

²⁶ 66 N.Y.2d at 328-29, 488 N.E.2d at 60-61, 497 N.Y.S.2d at 314-16.

²⁷ *Id.* at 329, 488 N.E.2d at 61, 497 N.Y.S.2d at 315. Article I of the Code serves a two-fold function, setting forth basic definitions for use in the rest of the Code and stating principles of law applicable to non-Code commercial transactions. 1 R. ANDERSON, *supra* note 19, § 1-101:9, at 7.

Although technically the Code is to be applied only to substantive matters covered in Articles II through IX, it is often applied to non Code situations by analogy. 1 R. ANDERSON, *supra* note 19, § 1-101:16, at 15; *see, e.g., Cable-Wiedemer, Inc. v. A. Friederich & Sons Co.*, 71 Misc. 2d 443, 445-46, 336 N.Y.S.2d 139, 141-42 (Monroe County Ct. 1972) (construction

payment tenders employ negotiable instruments as the form of payment, they are Article III transactions governed by section 1-207 regardless of the underlying contract.²⁸ Finally, the court noted that this construction of the section would "liberalize, or 'de-technicalize'" the law governing full payment check tenders.²⁹

Although application of the accord and satisfaction doctrine to full payment check tenders seems to provide an efficient method for private settlement of disputed claims,³⁰ the inequities of the doctrine become apparent in situations involving overreaching debtors who seek to force settlement on unwilling creditors.³¹ It is submitted that to the extent that the Court of Appeals may have minimized the opportunity for such overreaching in full payment check tenders, the *Horn* decision is worthy of praise. However, the court also sought to dismiss all doubts as to whether section 1-207 supersedes the common law with respect to full payment tenders,³² and declared that the section applies to any tender of a negotiable

contract).

²⁸ 66 N.Y.2d at 330-31, 488 N.E.2d at 61-62, 497 N.Y.S.2d at 315-16. Article III, entitled "Commercial Paper," applies to all drafts, checks, certificates of deposit and notes as defined in section 3-104 of the Code. T. QUINN, QUINN'S UNIFORM COMMERCIAL CODE COMMENTARY AND LAW DIGEST § 3-103[A] (1978).

The Court noted that one commentator otherwise opposed to interpreting § 1-207 as superseding the doctrine of accord and satisfaction conceded that a full payment check is a Code covered transaction subject to § 1-207 regardless of the underlying contract. 66 N.Y.2d at 330, 488 N.E.2d at 61, 497 N.Y.S.2d at 315-16 (citing Rosenthal, *supra* note 24, at 70).

²⁹ 66 N.Y.2d at 331, 488 N.E.2d at 62, 497 N.Y.S.2d at 316 (summarizing Judge Weinstein's Appellate Division dissent). The stated purposes of the Code are, *inter alia*, to simplify, clarify and modernize the law governing commercial transactions, to permit the growth of commercial practices through custom, usage and agreement, and to provide uniform commercial law to all jurisdictions. N.Y. U.C.C. § 1-102 (McKinney 1964).

³⁰ See Note, *Accord and Satisfaction: The Full Payment Check*, 3 DET. C.L. REV. 621, 644 (1982). Accord and satisfaction has been described as an effective compromise tool for use in such areas as: "Mutual Discharge of Reciprocal Obligations," 6 A. CORBIN, *supra* note 1, § 1286, at 157; and "Settlement of Doubtful, Disputed or Otherwise Unliquidated Claims." *Id.* § 1288, at 159.

³¹ See Note, *UCC Section 1-207 and the Full Payment Check: The Struggle Between the Code and the Common Law — Where Do the Debtor and Creditor Fit In?*, 7 U. DAYTON L. REV. 421, 432 (1982). In certain contexts, creditors might feel compelled to take what little they can get in a full payment tender for fear that they would otherwise be remediless. See generally Note, *Role of the Check in Accord and Satisfaction: Weapon of the Overreaching Debtor*, 97 U. PA. L. REV. 99, 104-09 (1948) (accord and satisfaction used as weapon in landlord/tenant, insurance and employment contracts).

³² 66 N.Y.2d at 330, 488 N.E.2d at 61-62, 497 N.Y.S.2d at 315-16. The Horn Court declared that "a debtor's tender of a full payment check is an Article III transaction governed by section 1-207, regardless of the nature of the contract underlying the parties' commercial relationship." *Id.*

instrument as full payment of a disputed claim.³³ It is submitted that the sweeping language of the decision may have been premature. Although the court indicated that its application of section 1-207 is consistent with the recognized policies of the Code,³⁴ it has been suggested that the reservation of rights allowed by the section may in some instances breach the good faith requirements of the Code.³⁵ Additionally, at least one commentator has suggested that a better interpretation of section 1-207 would focus on the "explicitness" required of the reservation provided thereunder.³⁶ If requiring timely notification of a reservation of rights under section 1-207 were required, the good faith of creditors seeking to vary the terms of conditional offers would be ensured,³⁷ and those who fail to comply with the good faith requirements of the Code would be relegated to the harsher common law doctrine of accord and satisfaction.³⁸ Finally, it is suggested that rather than clarifying the law of commercial transactions, the *Horn* decision may simply serve to warn debtors which forms of payment will no longer be applicable to full payment tenders.³⁹

While the Court of Appeals' decision in *Horn* purported to render the commercial law more simple, clear and uniform, it is submitted that the decision has fallen short of its goal. Nevertheless, the case has established a uniform rule for all transactions involving the tender of negotiable instruments in full satisfaction of a claim.

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³³ *Id.* at 326-27, 488 N.E.2d at 59, 497 N.Y.S.2d at 313.

³⁴ *Id.* at 327 n.6, 488 N.E.2d at 60 n.6, 497 N.Y.S.2d at 314 n.6.

³⁵ CORBIN, *supra* note 24, § 1279, at 473. To allow the recipient of a check, tendered under the reasonable expectation that acceptance would constitute full settlement, to vary the terms of the acceptance by placing his own markings on the instrument would be a breach of the good faith requirements of the Code. *Id.*

³⁶ See Caraballo, *supra* note 19, at 454-56. The term "explicit," though not defined by the Code, implies that the offeree must notify the offeror of the rejection of full settlement payment to make a reservation effective. *Id.* at 455.

³⁷ *Id.*

³⁸ See *id.* at 458.

³⁹ It has been noted that it is possible for a debtor in a non-Code transaction to tender as full payment an instrument excluded from the Code by section 3-105(2)(a) and thereby avoid any implication of the Code. See Rosenthal, *supra* note 24, at 71.