

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-11674

Non-Argument Calendar

DANIEL JACK,

Plaintiff-Appellant,

versus

SELECT PORTFOLIO SERVICING, INC.,
U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE
FOR TOWD POINT MASTER FUNDING TRUST 2020-PM2,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

D.C. Docket No. 1:22-cv-01575-VMC

Before ROSENBAUM, JILL PRYOR, and BRANCH, Circuit Judges.

PER CURIAM:

Plaintiff-Appellant Daniel Jack, proceeding *pro se*, appeals the district court's dismissal of his amended complaint against Select Portfolio Servicing, Inc. ("SPS"), and U.S. Bank National Association ("U.S. Bank"). Jack argues that the district court erred in determining that he did not state a claim for accord and satisfaction. The district court reached this conclusion for two reasons: it determined that (1) Jack's complaint did not show a bona fide dispute as to the total loan amount, and (2) his complaint did not indicate that he clearly marked his check with language equivalent to "payment in full." Jack asserts that he stated a claim for accord and satisfaction because he averred that he sent SPS a letter stating that he would send a check to settle his dispute over the balance, SPS then deposited the check, and the check included language that could be considered equivalent to "payment in full." We disagree and affirm the decision of the district court.

I. BACKGROUND

In 2006, Jack obtained a loan of \$243,167.50 from Wachovia Bank. To secure repayment of the loan, Jack also executed a deed conveying his home to Wachovia.¹ Wells Fargo, which absorbed

¹ "Because this is an appeal from an order dismissing a complaint, we recount the facts alleged in the complaint, accept them as true, and construe them in

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Wachovia in 2008, assigned Jack's mortgage to U.S. Bank in 2020. SPS is currently the servicer of the loan.

In November 2021, Jack received a billing statement from SPS showing \$10,376.57 in "Other Charges and Fees," on top of the outstanding principal balance of \$187,897.81, for a total balance of \$198,274.38.

Jack called SPS in November to dispute just the charges of \$10,376.57, but SPS never gave him a "logical or satisfactory explanation" for the charges. Then, Jack sent a letter to SPS in December 2021 to dispute the full amount of \$198,274.38 reflected in the November billing statement "as being inaccurate and higher than the actual amount" he owed. Jack stated that he would send SPS a check for \$20,000 and that SPS's acceptance of the check would be "tacit agreement to settle the above-mentioned account." SPS responded that it would review Jack's "request(s) and route to the appropriate department for handling."

After receiving SPS's response letter, Jack sent a \$20,000 cashier's check to SPS, which deposited the check a few days later. On the watermark of the check and in small type, Jack printed, "By cashing this check Wells Fargo/SPS agrees to except [sic] this

the light most favorable to [Jack]." *Ounjian v. Globoforce, Inc.*, 89 F.4th 852, 856 (11th Cir. 2023). The actual facts may or may not be as presented.

\$20,000 payment in leu [sic] of the \$189,274.38 disputed debt on account No. No. [sic] 0028612638.”²

In January 2022, Jack sent another letter to SPS, thanking SPS for accepting his settlement offer and demanding the release of the lien on his home. SPS did not release the lien, so Jack brought this action for specific performance, claiming that SPS failed to honor a settlement agreement because his communications with SPS and SPS’s depositing of the check constituted accord and satisfaction.

The district court granted the defendant’s motion to dismiss the action for failure to state a claim. It found that Jack did not show that SPS had knowledge of the dispute at the time he tendered his check, and no writing on or accompanying the check indicated clearly and legibly that the check was intended to be payment in full.

II. STANDARD OF REVIEW

We review de novo the district court’s dismissal for failure to state a claim for relief, “accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff.” *Mills v. Foremost Ins. Co.*, 511 F.3d 1300, 1303 (11th Cir. 2008) (quotation marks omitted).

III. DISCUSSION

² The dollar amount written on the check differs from the amount mentioned in the letter to SPS and reflected in the November billing statement. The discrepancy appears to be due to an accidental transposition of numbers.

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To survive a motion to dismiss, a complaint must contain sufficient factual matter, which, accepted as true, states a claim for relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations . . . a plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quotation marks omitted, alterations adopted). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. But “a formulaic recitation of the elements of a cause of action will not do,” and the allegations “must be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555.

Additionally, “a district court can generally consider exhibits attached to a complaint in ruling on a motion to dismiss, and if the allegations of the complaint about a particular exhibit conflict with the contents of the exhibit itself, the exhibit controls.” *Hoefling v. City of Miami*, 811 F.3d 1271, 1277 (11th Cir. 2016).

Finally, “we hold the allegations of a *pro se* complaint to less stringent standards than formal pleadings drafted by lawyers.” *Campbell v. Air Jamaica Ltd.*, 760 F.3d 1165, 1168 (11th Cir. 2014). That said, “this leniency does not give a court license to serve as *de facto* counsel for a party, or to rewrite an otherwise deficient

pleading in order to sustain an action.” *Id.* at 1168–69 (quotation marks omitted).

Accord and satisfaction are contractual concepts in which a new agreement takes the place of an old one, ending the prior agreement. *Golden Peanut Co. v. Bass*, 547 S.E.2d 637, 641 (Ga. Ct. App. 2001). To establish a claim for accord and satisfaction through a payment of less than the amount due, a plaintiff must allege both (1) “[a]cceptance by a creditor of a check . . . marked ‘payment in full’ or with language of equivalent condition,” and (2) either (a) the existence of a “bona fide dispute or controversy . . . as to the amount due” or (b) an independent agreement between creditor and debtor that the payment will satisfy the debt. O.C.G.A. § 13-4-103(b). Jack does not allege that the parties reached an independent agreement, but he does allege that a bona fide dispute existed.

Under the bona fide dispute theory, a meeting of the minds is not required between the two parties and satisfaction occurs as an operation of law if the claimant keeps the payment while knowing of the implied condition. *Golden Peanut*, 547 S.E.2d at 643. But acceptance of a partial payment does not equate to a satisfaction if no bona fide dispute exists. *Id.* at 643–44.

For a dispute to be bona fide, typically “both parties must have understood and been aware that the dispute existed prior to the tender of the reduced payment.” *Rafizadeh v. KR Snellville, LLC*, 634 S.E.2d 406, 409 (Ga. Ct. App. 2006). “[T]he bona fide dispute must be a dispute between the parties and not one confined to the

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mind of the sender of the check.” *Kendrick v. Kalmanson*, 534 S.E.2d 884, 885. (Ga. Ct. App. 2000). A dispute can also be bona fide if the debtor notifies the creditor of the dispute contemporaneously with sending the creditor a check for an amount less than the total amount owed. *Hawthorne Grading & Hauling v. Rampley*, 556 S.E.2d 912, 913 (Ga. Ct. App. 2001). And “[e]ven if there is a preexisting dispute between the parties,” a bona fide dispute “requires good faith on the part of the debtor who submits a payment in full satisfaction of a claim.” *Withington v. Valuation Grp., Inc.*, 547 S.E.2d 594, 597 (Ga. Ct. App. 2001).

Generally, the issue of accord and satisfaction raises a jury question. *Quintanilla v. Rathur*, 490 S.E.2d 471, 477 (Ga. Ct. App. 1997). But when a complaint’s allegations fail to establish the elements of the cause of action, dismissal is appropriate. *See id.* (noting that summary judgment is appropriate when there is no genuine issue of material fact on the question of accord and satisfaction).

Here, Jack alleges that the dispute was bona fide because SPS became aware of the dispute through his November phone call and December letter, both of which preceded his sending of the \$20,000 check. But neither Jack’s allegations about the phone call nor the December letter SPS sent plausibly suggest that a bona fide dispute existed as to the entire loan balance, instead of just the \$10,376.57 in “unexplained fees.”

Regarding the November phone call, Jack took issue with only the \$10,376.57 in fees. Although Jack’s subsequent December letter broadly “dispute[d] the balance of \$198,274.34 . . . as being

inaccurate and higher than the actual amount I owe,” neither the letter nor Jack’s allegations reflect any dispute with the outstanding principal balance of \$187,897.81. And SPS’s response merely acknowledged the receipt of the letter—not its contents—and stated that the letter would be reviewed by the appropriate department at some time in the future. Jack then sent the \$20,000 check without waiting for a response or further explaining the nature of the dispute or the amount of the check. So this case is unlike *Hawthorne Grading*, 556 S.E.2d at 912, where the court found that a bona fide dispute existed where a letter accompanying a reduced payment explained why the reduced payment was offered as payment in full.

The allegations in the complaint and the supporting documents fail to make a plausible showing that SPS was aware that a dispute existed as to the entire loan balance “prior to the tender of the reduced payment.” See *Rafizadeh*, 634 S.E.2d at 409. Even liberally construing Jack’s pleadings, at most a bona fide dispute existed as to the \$10,376.57 in fees, which was the subject of Jack’s phone call to SPS. See *Mills*, 511 F.3d at 1303.

To the extent Jack had a good-faith basis to dispute the loan balance more broadly, that dispute remained “confined to the mind of the sender of the check,” and is insufficient to establish a claim for accord and satisfaction. *Kendrick*, 534 S.E.2d at 885. Accordingly, SPS’s “‘acceptance’ of the check, even with notice of the conditional language, does not, as a matter of law, constitute an accord and satisfaction as to the extent of [Jack’s] liability under the”

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mortgage. *Sunbelt Life Ins. Co. v. Bank of Alapaha*, 337 S.E.2d 410, 413 (Ga. Ct. App. 1985).

As we've mentioned, Jack's claim requires both the existence of a bona fide dispute and SPS's acceptance of a check "marked 'payment in full' or with language of equivalent condition." O.C.G.A. § 13-14-103(b). The district court held that the check Jack sent to SPS was not adequately marked with such language of condition because J wrote the incorrect monetary value on the check, and Jack did not show that the writing on the check was "clear and legible." But because Jack failed to plausibly show the existence of a bona fide dispute as to the entire loan balance, we need not decide whether Jack's writing on the check was sufficient to affirm the district court's dismissal. *See Treadwell v. Treadwell*, 463 S.E.2d 497, 499 (Ga. Ct. App. 1995) ("[W]here there is no bona fide controversy . . . the creditor's acceptance of checks with notice of conditions does not as a matter of law constitute an accord and satisfaction.")

IV. CONCLUSION

The district court did not err in granting the motion to dismiss because Jack failed to show the existence of a bona fide dispute at the time he tendered the check to SPS. Accordingly, we affirm.

AFFIRMED.