

# What Does The Law Say?

## CASE II

### Andy's Electrical v Laurie Sykes (Pty) Ltd

1979 (3) SA 341 (N)



***Contractors are sometimes handed a reduced payment amount for works executed, such payment being issued under the term "full and final settlement of your account". What are the consequences if the contractor accepts such payment?***

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The courts were called to answer a similar question in **Andy's Electrical v Laurie Sykes (Pty) Ltd 1979 (3) SA 341 (N)** and the facts of this case were as follows:

The contractor claimed an amount from the employer for work done. In response, the employer drew up a modified account which, together with a cheque for a lesser amount, was sent to the contractor under the term '***in full and final settlement of your account***'. The contractor acknowledged receipt of the amount 'without prejudice to further rights'. The contractor then deposited the cheque, which was paid, and thereafter he instituted action for the balance which he claimed to be due. The trial court found for the employer.

The contractor then took the matter on appeal and was heard by Judge Didcott who had this say (343):

*"...Mr Gordon (for the employer) made much of the respondent's<sup>1</sup> admission that it actually owed the appellant<sup>2</sup> the sum of R814,91 which was paid. It is plain, however, that in itself such a feature does not tell against a compromise...*

*...Per se, it seems to have no greater impact, when all is said and done, than to suggest an alternative explanation for the payment, which is the possibility that it was aimed at a recognised debt and nothing more.*

*In effect, it thus raises rather than answers the question of the payment's real purpose...*

*...More often than not, something at least is due by debtors facing liquidated claims, and they know it. It would have been unfortunate if the law had penalised such*

debtors for candour when they tried to compromise, and had encouraged them to go instead through the charade of pretending they owed nothing at all.

Yet this may be thought to result from a strictly literal reading of some judgements...**these have distinguished offers of compromise from payments of admitted debts**, as if the one sort of transaction necessarily excluded the other.

Such decisions are apt to be misunderstood unless one is careful...as to treat the payments of acknowledged debts to which they referred as mere payments, unaccompanied by offers of compromise.

The real dichotomy is then evident between an offer to settle the whole claim by the payment of a particular amount, for which liability may or may not simultaneously be conceded, and the payment of a sum admittedly due on the footing that the rest of the claim is not covered and remains in issue. Once the respondent's admission of its debt for R814,91 is seen in its proper perspective, the stated case leaves the letter's concluding sentence with a setting which, as far as the present enquiry goes, is largely colourless. That sentence then stands on its own as evidence of what, in all the circumstances, the respondent truly meant by the payment.

The expression 'in full settlement' which one finds in the sentence has led to judicial disagreement... A payment 'in full settlement of my debt', for instance, sounds very much like the discharge of an admitted liability and that alone...The words 'my debt' suggest one that is acknowledged, not just alleged. Such indebtedness, and nothing more, is then identified as the object of the 'settlement'. And a 'settlement' is sometimes an appropriate label, in common parlance at any rate, for an outright payment, as distinct from a compromise.

A payment 'in full settlement of your claim', on the other hand, has a very different ring...Once again, the context may illuminate something else behind the terminology...Unless it does, however, the 'claim' as a whole has now become the target of the 'settlement', and the 'settlement' itself assumes the unmistakable hue of a compromise...

What the respondent intended to settle completely by its payment, according to the last sentence of the letter, was 'your account'. That, to my mind, meant exactly the same as 'your claim'. Mr Gordon drew attention to the letter's earlier reference to 'our final account with you'. This, he said, had betokened the respondent's admitted debt. So, to be sure, it had. But the expressions 'our final account with you' and 'your account' were not used as synonyms. That seems obvious enough. The amount of our final account with you', the respondent insisted, was only R814,91. It knew full well that a much larger sum had been claimed in 'your account'. Indeed, that was its very complaint.

I therefore construe the letter's concluding sentence **as an offer of compromise**. That, to my mind, was the ordinary meaning of its language, read against the background of the dispute which had developed. No clue to a different intention can be found in the letter itself or in the other circumstances revealed by the stated case. It follows that I agree with the magistrate's decision.

One final point remains to be mentioned. Mr Gordon argued that, even if the letter made it plain that the respondent's object in paying what it did had been to settle the entire claim, this mattered not because a condition to that effect was foreign to

*the payment merely of an admitted debt and might be ignored (346) by the creditor with impunity. That, however, strikes me as a contradiction in terms. Once it is evident that the payment's real purpose is the settlement of the whole dispute, the product is an offer of compromise, not the mere discharge of an acknowledged liability, and the condition characterising it as such is its very essence, which the creditor disregards at his peril. . . .*

*For these reasons the appeal must fail, and it is dismissed, with costs...<sup>3</sup>*

In conclusion an employer may tender less than the amount the contractor considers to be due. Although, in the absence of agreement to that effect, the contractor is not obliged to accept a tender of an installment. Normally however the contractor is only too happy to receive something. **Before accepting, the contractor should however consider, whether he is being offered payment or a compromise.** In either case the employer may have used the words "in full settlement", so that the words themselves are not conclusive. If **payment** is made the contractor can accept the amount and later claim the balance because the employer cannot vary the terms of his contract unilaterally by adding a condition that no further payment may be claimed, but if there is **an offer of a compromise** and that offer is accepted no further claim is possible<sup>4</sup>

1. The employer
2. The contractor
3. Extracted from Farlam & Hathaway, Contract Cases, Materials, Commentary, Third Edition by G Lubbe and C Murray.
4. Extracted from The Principles of the Law of Contract, Fourth Edition by AJ Kerr [Back to the top](#)

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