No. 01-21-00392-CV
Court of Appeals of Texas, First District

Ramirez v. Dick Law Firm, PLLC

Decided Sep 1, 2022

01-21-00392-CV

09-01-2022

ERIC RAMIREZ AND LA PUBLIC INSURANCE ADJUSTERS, INC., Appellants v. DICK LAW FIRM, PLLC AND ERIC DICK, Appellees

Julie Countiss Justice

On Appeal from the 113th District Court Harris County, Texas Trial Court Case No. 2019-30183

Panel consists of Justices Kelly, Countiss, and Rivas-Molloy.

MEMORANDUM OPINION

Julie Countiss Justice

Appellants, Eric Ramirez and LA Public Insurance Adjusters, Inc. ("LA Public Adjusters") (collectively, "appellants"), challenge the trial court's rendition of summary judgment in favor of appellees, Dick Law Firm, PLLC (the "Dick Law *2 Firm") and Eric Dick (collectively, "appellees"), in appellants' suit against appellees for breach of contract, theft of services, fraud, and quantum meruit. In their sole issue, appellants contend that the trial court erred in granting appellees summary judgment.[1]

[1] Appellants list three issues in the "Issues Presented" section of their appellants' brief. *See* Tex. R. App. P. 38.1(f). However, all three issues relate to a single core complaint, i.e., that the trial court erred in granting appellees summary judgment. Accordingly, we will treat appellants as raising a single issue on appeal, while still considering all arguments raised in their appellants' brief.

We reverse and remand.

Background

In their petition, appellants alleged that Dick, a lawyer, represented certain clients whose claims had been denied by their insurance companies or who had "bad faith claims against their insurance companies." Ramirez, a licensed public insurance adjuster, master builder, and building inspector, owned and was the director of LA Public Adjusters, a company that "provide[d] inspection and estimation services for damages resulting from coverable insurance claims."

In May 2012, appellants entered into "a continuing business relationship with [appellees] wherein [appellants] would provide estimation, appraisal[,] and expert witness services," and appellees agreed to pay appellants for the services that were provided. At times, appellees would pay appellants a "flat fee[]," and at other times, appellees would pay appellants "based on the square footage of [a] subject property." *3

Appellees would also pay appellants "hourly fees to prepare for and provide testimony at depositions or trials." Appellants' entitlement to payment for their services was not tied to or contingent on appellees receiving attorney's fees from representing their clients. And appellants had expressly rejected appellees' suggestion that payment for their services would be "capped at 10% of [the] attorney's fees" that appellees received.

Appellants asserted that they "assisted [appellees] with hundreds of insurance appraisals which were used by [appellees] to successfully recover hundreds of thousands of dollars for [appellees'] clients." And appellees received "thousands of dollars in attorney's fees." Beginning in December 2015, appellees breached their agreements with appellants and declined to pay appellants "more than approximately $115,000 in invoices for services [that appellants had] performed." On January 23, 2019, appellants "made a final demand on [appellees] that [they] pay the outstanding amounts, but th[at] demand went without response."

Appellants brought claims against appellees for breach of contract, theft of services, fraud, and quantum meruit. As to their breach-of-contract claim, appellants alleged that they entered into a valid and enforceable contract with appellees "to provide appraisal, estimating[,] and expert witness services" to appellees. After
4 appellants performed the requested services, appellees refused to pay appellants. *4

Appellants made a written demand, more than thirty days before filing suit, on appellees to pay the amount due to them, but appellees refused to pay.[2]

[2] *See* Tex. Civ. Prac. & Rem. Code Ann. § 38.002.

As to their theft-of-services claim,[3] appellants alleged that they "provided professional services" to appellees, appellees "intended to avoid payment for the professional services by intentionally or knowingly securing the performance of the services by agreeing to provide compensation," and "after the services were performed," appellees "fail[ed] to make payment after receiving notice [from appellants] demanding payment."

[3] This claim was brought under the Texas Theft Liability Act. *See id.* § 134.001- .005.

As to their fraud claim, appellants alleged that appellees made material representations to them that they would compensate appellants for the services appellants provided, the representations were false because appellees did not compensate appellants, appellees knew that the representations were false when they were made or appellees made the representations recklessly, appellees made the representations with the intent that appellants would act on them, and appellants relied on the representations by performing appraisal, estimating, and expert
5 witness services for appellees. *5

As to their quantum-meruit claim, appellants alleged that, to the extent there was not a valid contract between them and appellees, appellants provided valuable appraisal, estimating, and expert witness services to appellees, who accepted those services and benefitted from them. And appellees had reasonable notice that appellants expected to be paid for their services, but appellees did not pay appellants for the services that appellants had provided.

Appellants sought damages in the amount of $115,000-the amount of outstanding invoices which appellees had not paid-statutory damages,[4] exemplary damages, attorney's fees, and court costs.

[4] *See id.* § 134.005.

Appellees answered, generally denying the allegations in appellants' petition and asserting certain affirmative defenses, including accord and satisfaction.

Appellees moved for summary judgment on appellants' claims against them, asserting that they were entitled to judgment as a matter of law based on the affirmative defense of accord and satisfaction. Appellees explained that to prevail on summary judgment on the affirmative defense of common law accord and satisfaction, they needed to establish that (1) the parties had a legitimate dispute about the underlying obligation, (2) the parties specifically and intentionally agreed to discharge the obligation, (3) the amount paid by appellees to appellants
6 was in full satisfaction of the entire claim, (4) the parties had a meeting of the minds, *6 (5) there was an unmistakable communication to appellants that "tender of a sum less than the contract price was on the condition that acceptance would constitute a satisfaction of the underlying obligation," (6) the condition was plain, definite, and certain, (7) the statement accompanying the tender of a lesser sum was so clear, full, and explicit that it was not susceptible to any other interpretation, and (8) the offer was accompanied by declarations that appellants were certain to understand.

According to appellees, appellees and appellants "had a long-term working relationship." On January 5, 2019, appellants demanded $115,258.02 from appellees "for purported services rendered from 2017 to 2019." Appellees responded that they "did not owe [appellants] any money" and that appellants "owed [appellees] money because [appellants had been] over paid." Appellees, however, offered to give appellants "a check to resolve the dispute." On January 23, 2019, Ramirez emailed Dick asking, "[H]ow much?" and stating, "Let's see if we can come together and close this disagreement, I'm not asking for the past 4 years as of this moment." (Internal quotations omitted.) Appellees offered to pay appellants $1,287.50, and appellees paid appellants with a check that "clearly stated in the memo section 'full and final payment of any and all claims'" (the "February
7 2019 check"). Appellants "accepted [appellees'] offer" by depositing the February 2019 check. *7

Appellees also asserted that they could establish the affirmative defense of statutory accord and satisfaction under Texas Business and Commerce Code section 3.311,[5] which states that a party "may discharge a debt when (1) [the party] tender[s] [to the] claimant an instrument in good faith as full satisfaction of the claim, (2) the amount of the claim [i]s unliquidated or subject to a bona-fide dispute[,] and (3) the claimant obtained payment."

5 *See* Tex. Bus. & Com. Code Ann. § 3.311.

According to appellees, on January 18, 2019, appellees promised to issue appellants a check within thirty days, and appellees issued the February 2019 check in the amount of $1,287.50 for "full and final payment of any and all claims." (Internal quotations omitted.) That was a good faith attempt by appellees to resolve the dispute between them and appellants and "keep a healthy working relationship between the parties even though [appellees] believe[d] [that] they [were] owed money by [appellants]." Further, appellees explained that they and appellants "clearly had a 'bona-fide dispute' [because appellants] sent the January 5, 2019 demand for payment." In the demand, appellants threatened to file a grievance with the State Bar of Texas if appellees did not pay the amounts that appellants asserted they were owed. On January 23, 2019, Ramirez sent Dick an email stating, "Let's see if we can come together and close this disagreement, I'm not asking for the past 4 years as of
8 this moment." (Internal quotations omitted.) Appellees orally indicated *8 to appellants that they owed appellees money. Appellants then obtained $1,287.50 by depositing the February 2019 check from appellees.

Appellees attached to their summary-judgment motion certain exhibits, including an affidavit from Dick, stating:

> I am the managing member of the Dick Law Firm. My firm and . . . Ramirez's company ha[ve] had a long-term working relationship. On or near January 5, 2019, . . . Ramirez on behalf of himself and LA Public [Adjusters] made a demand to [myself] and [the] Dick Law Firm . . . to pay [them] a total sum of $115,258.02 for alleged services rendered. On January 18, 2019, . . . Ramirez appeared in [c]ourt to proceed [sic] expert testimony. While at
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> [c]ourt[,] . . . Ramirez inquired about the alleged debt. To which, I told him that I strongly disagreed with his allegations. In fact, I had advanced money to [appellants] on behalf of my clients where [appellants] did not perform any services, and [appellants] owe[d] me a substantial amount of money. Although [appellants] actually owe[d] [appellees] a considerable debt, I'm a Christian and believe in letting bygones by bygones. In that regard, I made an effort to resolve the dispute and to keep a good working relationship by offering to give [appellants] a check. On January 23, 2019[,] . . . Ramirez sent me an email about the check amount.
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> In an effort to resolve the dispute[,] I offered to pay [appellants] a sum total of $1,287.50. I tendered payment via a check and to memorialize all debts being extinguished between the parties[,] I wrote in the memorandum section "full and final payment of any and all claims." [Appellants] deposited th[e] check and the check was honored by the bank.
>
> These actions constituted a final dissolution of any outstanding debts (alleged or real) between all parties to this suit.

Appellees also attached to their summary-judgment motion two emails from Ramirez to Dick. The first one is
9 dated January 5, 2019, with a subject line: "Breach *9 of Contract/Ethical Standards - (State Bar of Texas)." (Emphasis omitted.) It states: "Please read asap and [c]arefully prior to responding . . . . You have a deadline of Wednesday[,] January 9th, 2019 to respond." (Emphasis omitted.) The email included an attachment titled, "Dick Law Firm - (Outstanding Balances)," which stated, as the "Remaining Balance," the amount of $120,785.79, related to clients from 2017 through 2019. (Emphasis omitted.) Another email from Ramirez to Dick, dated January 23, 2019, has a subject line stating: "LAPIA - 'Outstanding Balance.'" That email provides:

> I wanted to see if we can come to an agreement by Friday for payment and agreement [sic], before [the] State Bar of Texas contacts me to pursuing [sic] a complaint.
>
> Last Friday at trial, you mentioned that a payment will be issued in 30 days, "how much[?]"[]
>
> During . . . Hurricane Harvey[,] I had to take over 100k loan from my dad (bank transactions), to hire new employees to maintain your files and new clients as our monthly expenses were around 30k. . . . .
>
> I have agreed that if you pay the 2017-Current outstanding balance of $115,258.02, which includes the re-assignments and reimbursements as shown in Exhibit 1, than [sic] I will not pursue the complaint, litigation or go back 4 years as stated in the Texas Business and Commerce Code [section] 2.725.
>
> As I have an outstanding loan with my father, I will need to collect the FULL AMOUNT of the outstanding balance from 2017-current. If there are some small differences, please provide so that I can review to come into an agreement with 2 signatures.

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> *In the event that I do[] not get a response by this Friday January 25th*, I will continue to pursue litigation and not disturb you for the outstanding balance unless is [sic] court procedure.

> I have attached all my supporting documents that was [sic] submitted to the State Bar of Texas last week for your records. Let's see if we can come together and close this disagreement, I'm not asking for the past 4 years as of this moment.

Although the email included "25 attachments," those attachments were not included with appellees' summary-judgment motion. Finally, appellees attached to their summary-judgment motion a copy of the February 2019 check from Dick that was paid to "LA Public Adjusters" in the amount of $1,287.50. In the memo line is written: "Full & Final Payment of any & all claims."

In response to appellees' summary-judgment motion, appellants asserted that Dick, a lawyer, represented certain clients in claims against their insurance companies. Appellants provide "appraisal, inspection[,] and estimation services for damages resulting from coverage insurance claims." In May 2012, appellants entered into a continuing business relationship with appellees. Appellants would provide estimation, appraisal, and expert witness services for appellees, and appellees agreed to pay appellants for the services they provided. Appellants assisted appellees with hundreds of insurance appraisals. Beginning in December 2015, appellees breached their agreements with appellants and declined to pay appellants more than $115,000 for the services that appellants had provided. Appellants continued to request payment from appellees for the amounts owed, and *11 appellees assured appellants that payment would be forthcoming. Thus, appellants continued to perform services for appellees, but payment was never made to appellants.

On January 5, 2019, Ramirez sent Dick an email, attaching a "draft complaint" and a spreadsheet reflecting the "outstanding balances" that appellees owed related to "more than sixty different appraisals" performed by appellants. (Internal quotations omitted.) The outstanding balances totaled more than $120,000. On January 23, 2019, appellants "made a final demand on" appellees that they "pay the full outstanding amounts of $115,258.02," otherwise appellants would file the "draft complaint." Ramirez, in his January 23, 2019 email to Dick, stated: "[I]f there are some small differences, please provide so that I can review to come to an agreement with 2 signatures." (Internal quotations omitted.) "But absent a written agreement from both parties on a global settlement," Ramirez told appellees that "any payment for less than the total amount owed with language concerning a full payment would not discharge [appellees'] existing obligation to pay the full amount owed and would be considered a partial payment only for any individual appraisal." (Emphasis and internal quotations omitted.) Appellees sent appellants the February 2019 check "which did not identify any of the 60 clients or invoices that were at issue[] and contained no correspondence or written communication." Because "there was no written agreement to accept a lesser amount, and because the [February 2019] check *12 was written after [appellees] had been warned that any partial payment w[ould] be applied to settle a single invoice, [appellants] cashed the check."

Appellants argued that appellees were not entitled to summary judgment on appellants' claims because appellees had not established as a matter of law the affirmative defense of common law accord and satisfaction. According to appellants, appellees' "entire accord and satisfaction argument [was] premised on a single check dated February 9, 2019 made payable to LA Public Adjusters in the amount of $1,287.50 with the memo 'Full + Final Payment of any + all claims.'" Although appellees asserted that the February 2019 check was "paid to resolve the dispute and memorialize all debts being extinguished and constituted a final dissolution of any outstanding debts (alleged or real) between all parties," that check could not have been intended to fully and finally resolve the parties' dispute over the outstanding balance that appellants asserted appellees owed them because appellants had demanded "the FULL AMOUNT of the outstanding balance" from appellants and appellants had told appellees that "[a]ny payment received with the letters Full & Final Payment or likewise, w[ould] be considered as partial payment till . . . both parties ha[d] signed a formal agreement." (Emphasis and

internal quotations omitted.) In other words, appellants "never assented to the existing balance of any single appraisal being satisfied by a lesser payment." Instead, appellants clearly told appellees that "any checks or
13 payments for less than the full amount owed with *13 language concerning a full release would not discharge any existing obligation." Thus, a genuine issue of material fact existed as to "whether there was a clear and unmistakable communication that the acceptance of the [February 2019] check [by appellants] would constitute satisfaction of each debt as to each of the appraisals." (Internal quotations omitted.)

Appellants also asserted that the "notation on the [February 2019] check[,] 'Full + Final Payment of any + all claims[,]' [was] vague and ambiguous given the number of different appraisals involved." "For instance, there [were] questions as to whether the [February 2019] check was meant to settle 'any and all claims' concerning a single appraisal, which [was] likely, given that [appellees] owed [appellants] more than $120,000 in fees for more than sixty different appraisals." And because Ramirez "specifically and intentionally told [appellees] that any payment for less than the total amount with language concerning a full payment would not discharge [appellees'] existing obligation to pay the full amount owed and would be considered a partial payment only for any individual appraisal." (Internal quotations omitted.) Thus, because there was a genuine issue of material fact "concerning whether [appellees] made known to [appellants] in 'clear and unmistakable terms' that the tender of the [February 2019] check was intended to be made upon the condition that its acceptance would constitute a full satisfaction of all claims concerning each of the individual appraisals," appellants argued that
14 *14 summary-judgment on appellees' affirmative defense of common law accord and satisfaction was improper.

Appellants also argued that appellees were not entitled to summary judgment on appellants' claims because they had not established as a matter of law the affirmative defense of statutory accord and satisfaction.[6] Under Texas Business and Commerce Code section 3.311, "a claim is discharged if the [party] 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" and "that [party] in good faith tendered an instrument to the claimant as full satisfaction of the claim," "the amount of the claim was unliquidated or subject to a bona fide dispute," and "the claimant obtained payment of the instrument." (Internal quotations omitted.) According to appellants, "[t]o satisfy the requirements of [Texas Business and Commerce Code] [s]ection 3.311, the check and the accompanying communication must be so clear, full[,] and explicit as to be susceptible to no interpretation other than accord and satisfaction of all outstanding invoices." (Internal quotations omitted.) And here, "the [February 2019] check [from appellees] d[id] not meet th[at] standard because it d[id] not identify the specific claims, invoices, or appraisals that it attempt[ed] to release."
15 Further, although an accompanying written communication could clarify any *15 ambiguities, appellees did not send a written communication with the February 2019 check. "Because the notation on the [February 2019] check [was] susceptible to more than one reasonable interpretation," appellants asserted that "a fact question exist[ed] as to whether [appellants'] acceptance of the [February 2019] check constituted satisfaction of [appellees'] obligations on all claims relating to all appraisals and invoices, or all claims relating to only one of them."

6 *See id.* § 3.311(a), (b), (d).

Appellants attached to their summary-judgment response certain exhibits, including a declaration from Ramirez, stating:

> I am a licensed Public Insurance Adjuster, Master Builder, Res. Building Inspector, Appraiser, Expert Witness and the owner and director of LA Public Adjusters[] . . . . Through LA Public [Adjusters], I provide inspection and estimation services for damages resulting from coverable insurance claims.

Beginning in May of 2012, I entered into a continuing business relationship with . . . Dick . . . and his law firm, [the] Dick Law Firm[] . . . (collectively, "[appellees]"). Dick is a lawyer who represents clients in bad faith claims against their insurance companies.

Through LA Public [Adjusters], I would provide estimation, appraisal[,] and expert witness services for [appellees]. In exchange, [appellees] agreed to pay LA Public [Adjusters]/[Ramirez] for the services performed.

My business arrangement was directly with [appellees]; [appellees] would send me [a] new assignment by email as standard practice (Dropbox, etc.), I never was contracted by [appellees'] clients for business or with [appellees] as representatives or agents of their clients. I performed services on [appellees'] behalf; I never performed services for [appellees] as representatives or agents of their clients. Once the award was rendered, I presented all awards to [appellees] and not [appellees'] clients. I billed [appellees] for the services performed; I

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never billed [appellees'] clients for the services performed. I received payments directly from [appellees]; I never received payments from [appellees'] clients. I would not have agreed to an arrangement where [appellees] were not directly responsible for payments for the services performed. From 2012 through 2019, my business arrangements were with [appellees] in their personal capacity.

At times, [appellees] and I exchanged proposed appraisal agreements regarding our business relationship. The agreements [were] between LA Public [Adjusters]/[Ramirez] and [appellees]. The agreements [were] not between LA Public [Adjusters]/[Ramirez] and [appellees] as representatives or agents of [appellees'] clients. Although these formal written agreements were never executed, they reflect the personal and direct nature of my business relationship with [appellees]. The agreements state [that appellees] are responsible for payments to LA Public [Adjusters]/[Ramirez]. The agreements do not call for [appellees'] clients to pay LA Public [Adjusters]/[Ramirez].

In accordance with the parties' oral and written agreements, I assisted [appellees] with hundreds of insurance appraisals which were used by [appellees] to successfully recover hundreds of thousands of dollars. I performed these services for [appellees] and [appellees] accepted said services with the understanding that I expected compensation from [appellees] based on our agreements. [Appellees] often assured me that payment for my services would be forthcoming. I relied on [appellees'] representations and performed the services. To date, [appellees] have failed to pay more than approximately $115,000 in invoices for services performed.

I never agreed that the money owed by [appellees] would be released by a lesser amount paid. In January of 2019, I sent [appellees] an email in which I declared that I needed to collect the full amount of the outstanding balance. A true and correct copy of this email is attached as Exhibit 3. Attached to that email [was] a document titled "Notice of Lawsuit" in which I specifically stated[:] "Any payment received with the letters Full & Final Payment or likewise, will be considered as partial payment till . . . both parties ha[ve] signed a formal agreement form." Therefore, I specifically and intentionally told [appellees] that any payment for less than the total amount owed with language concerning a full payment would not discharge [appellees'] existing

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> obligation to pay the full amount owed and would be considered a partial payment only for any individual appraisal. Therefore, any payment that I may have received and accepted after my January 2019 correspondence that was less than the full amount owed by [appellees] for any specific appraisal was regarded only as a partial payment. To date, [appellees'] full existing obligation as to each appraisal has not been discharged.
>
> Attached to the summary[-]judgment response as Exhibit 4 is a true and correct copy of a document titled "Notice of Lawsuit" which states any payment received with phrases like "Full & Final payment" would be considered only a partial payment until the parties signed a formal agreement. Exhibit 4 was an attachment to the Exhibit 3 correspondence sent to [appellees].
>
> Attached to the summary[-]judgment response as Exhibit 5 is a true and correct copy of the proposed appraisal agreement drafted by [appellees] and sent to me in May of 2014 along with an accompanying email between me and Dick.
>
> Attached to the summary[-]judgment response as Exhibit 6 is a true and correct copy of the proposed appraisal agreement exchanged between the parties in January of 2015 along with an accompanying email between me and Dick.

(Emphasis omitted.)

Appellants also attached to their summary-judgment response the email from Ramirez to Dick, dated January 23, 2019, with the subject line stating: "LAPIA - 'Outstanding Balance.'" And appellants attached a document titled, "Notice of Lawsuit - Breach of Contract," which Ramirez had attached to his January 23, 2019 email. (Emphasis omitted.) The "Notice of Lawsuit" document states that appellants, on January 5, 2019, provided appellees with "an [o]utstanding [b]alance by email" and appellees had "shown no sign[] of wanting to fulfill [their] obligation *18 with payment." And appellants were requesting $115,258.02 from appellees. The "Notice of Lawsuit" document also states: "Any payment received with the letters Full & Final Payment or likewise, will be considered as partial payment till both parties ha[ve] signed a formal agreement form." The "Notice of Lawsuit" document is signed by Ramirez.

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Appellants then filed a supplemental response to appellees' summary-judgment motion. As to appellees' affirmative defense of common law accord and satisfaction, appellants asserted that a genuine issue of material fact existed as to whether appellees "made known to [appellants] in 'clear and unmistakable terms' that the tender of the February 2019 check was intended to be made upon the condition that its acceptance would constitute a full satisfaction of all claims." According to appellants, although appellees asserted "that the February 2019 check in the amount of $1,287.50 with the memo 'Full + Final Payment of any + all claims' was intended to release 'all claims' as to all appraisals," other checks written by appellees revealed that appellees "would regularly send [appellants] checks concerning individual appraisals that displayed the language 'Paid in Full' or 'Full and Final Payment' or 'Full + Final.'" Many of the checks were accompanied by letters from appellees to appellants that stated which appraisals they concerned, but some checks did not have an accompanying letter. And other checks sent by appellees "merely stated 'Appraisal Fees/Expert' with no cover letter or *19 identification of the case that the [check] . . . related to." Thus, given that the February 2019 check "only contained the memo 'Full + Final Payment of any + all claims' and did not contain a cover letter or any other written communication" and considering "the parties' course of conduct," there was no "clear, full[,] and explicit statement that [was] susceptible to no interpretation other than accord and satisfaction for all outstanding invoices." (Internal quotations omitted.)

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Similarly, as to appellees' affirmative defense of statutory accord and satisfaction, the February 2019 check could not constitute an "instrument . . . contain[ing] a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim" because it could be interpreted as settlement of "all claims" relating to one of the multiple appraisals at issue, given that appellees had regularly sent appellants checks with language like "Paid in Full," "Full and Final Payment," or "Full + Final" that applied to a specific case or invoice and not to the entirety of appellants' claims. (Internal quotations omitted.) Thus, because of "the previous dealings between the parties, the notation on the February 2019 check [was] susceptible to more than one reasonable interpretation and a fact question exist[ed] as to whether [appellants'] acceptance of the [February 2019] check constituted satisfaction of [appellees'] obligations on all claims relating to all appraisals and invoices, or all claims relating to only one of them." *20

Appellants attached to their supplemental-summary-judgment response, numerous copies of checks and letters from appellees to appellants. For instance, one check dated June 28, 2018 from Dick to LA Public Adjusters in the amount of $1,037.50, states, on the memo line: "Paid in Full - . . . Nguyen." That check is not accompanied by any letter. Another check, dated September 29, 2017, from Dick to LA Public Adjusters for the amount of $1,037.50, lists "Linda Vega" in the memo line. And a letter from Dick to appellants, dated October 3, 2017, which accompanied the September 29, 2017 check, states: "Please find attached check No. 6461 in the amount of $1[,]037.50 as full and final settlement on the . . . case" "Linda Vega V USAA." (Emphasis omitted.) Finally, another check, dated July 8, 2016, from Dick to LA Public Adjusters for the amount of $2,200 only states in the memo line: "Appraisal Fees/Expert" and is not accompanied by any letter.[7]

[7] Appellants attached copies of other checks and letters to their supplemental response to appellees' summary-judgment motion.

The trial court granted appellees summary judgment on appellants' claims.

Standard of Review

We review a trial court's decision to grant summary judgment de novo. *Tex. Mun. Power Agency v. Pub. Util. Comm'n of Tex.*, 253 S.W.3d 184, 192 (Tex. 2007); *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005). In conducting our review, we take as true all evidence favorable to the non-movants, and we *21 indulge every reasonable inference and resolve any doubts in the non-movants' favor. *Valence Operating*, 164 S.W.3d at 661; *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 215 (Tex. 2003). If a trial court grants summary judgment without specifying the grounds for granting the motion, we must uphold the trial court's judgment if any of the asserted grounds are meritorious. *Beverick v. Koch Power, Inc.*, 186 S.W.3d 145, 148 (Tex. App.-Houston [1st Dist.] 2005, pet. denied).

To prevail on a summary-judgment motion, the movants have the burden of establishing that they are entitled to judgment as a matter of law and there is no genuine issue of material fact. Tex.R.Civ.P. 166a(c); *Cathey v. Booth*, 900 S.W.2d 339, 341 (Tex. 1995). When the defendants move for summary judgment, they must either (1) disprove at least one essential element of the plaintiffs' cause of action or (2) plead and conclusively establish each essential element of their affirmative defense, thereby defeating the plaintiffs' cause of action. *Cathey*, 900 S.W.2d at 341; *Yazdchi v. Bank One, Tex., N.A.*, 177 S.W.3d 399, 404 (Tex. App.-Houston [1st Dist.] 2005, pet. denied). Once the defendants meet their burden, the burden shifts to the plaintiffs, the non-movants, to raise a genuine issue of material fact precluding summary judgment. *See Centeq Realty, Inc. v. Siegler*, 899 S.W.2d 195, 197 (Tex. 1995); *Transcon. Ins. Co. v. Briggs Equip. Tr.*, 321 S.W.3d 685, 691 (Tex.

App.-Houston [14th Dist.] 2010, no pet.). The evidence raises a genuine issue of *22 fact if reasonable and fair-minded fact finders could differ in their conclusions in light of all of the summary-judgment evidence. *Goodyear Tire & Rubber Co. v. Mayes*, 236 S.W.3d 754, 755 (Tex. 2007).

Summary Judgment

In their sole issue, appellants argue that the trial court erred in granting summary judgment in favor of appellees on appellants' claims because appellees did not establish their entitlement to the affirmative defense of common law accord and satisfaction or the affirmative defense of statutory accord and satisfaction as a matter of law.

"A party may assert the [affirmative] defense of accord and satisfaction under a common law doctrine, under statutory authority, or both." *Baeza v. Hector's Tire & Wrecker Serv., Inc.*, 471 S.W.3d 585, 591 (Tex. App.-El Paso 2015, no pet.). As the parties asserting the affirmative defense of accord and satisfaction and the movants for summary judgment, appellees bore the burden of conclusively establishing their affirmative defenses of common law accord and satisfaction and statutory accord and satisfaction as a matter of law. *Star Elec., Inc. v. Northpark Office Tower, LP*, No. 01-17-00364-CV, 2020 WL 3969588, at *18 (Tex. App.- Houston [1st Dist.] July 14, 2020, no pet.) (mem. op.); *Richardson v. Allstate Tex. Lloyd's*, 235 S.W.3d 863, 865 (Tex. App.-Dallas 2007, no pet.). Where the *23 existence of accord and satisfaction is in doubt, summary judgment is not appropriate. *Richardson*, 235 S.W.3d at 865.

The affirmative defense of common law accord and satisfaction rests upon a new contract, express or implied, in which the parties agreed to the discharge of an existing obligation by means of a lesser payment tendered and accepted. *See Lopez v. Muñoz, Hockema & Reed, L.L.P.*, 22 S.W.3d 857, 863 (Tex. 2000); *Baeza*, 471 S.W.3d at 592; *Richardson*, 235 S.W.3d at 865. The term "accord" refers to the new agreement in which one party agreed to give or perform and the other to accept "something other than or different from what []he is, or considers [him]self to be, entitled to." *Baeza*, 471 S.W.3d at 592 (internal quotations omitted); *see also Garcia v. First Colony Mall, LLC*, No. 01-17-00336-CV, 2018 WL 2638684, at *8 (Tex. App.-Houston [1st Dist.] June 5, 2018, no pet.) (mem. op.). The term "satisfaction" refers to the actual performance of the new agreement, in which the party accepts the tendering of the lesser payment. *Baeza*, 471 S.W.3d at 592 (internal quotations omitted); *see also Garcia*, 2018 WL 2638684, at *8.

To prevail under the common law on their affirmative defense of accord and satisfaction, appellees had to establish a dispute between appellants and appellees. *Baeza*, 471 S.W.3d at 592; *see also Milton M. Cooke Co. v. First Bank & Tr.*, 290 S.W.3d 297, 304 (Tex. App.-Houston [1st Dist.] 2009, no pet.). It is the very existence of a dispute that provides the consideration for the parties' new contract *24 and for the accord and satisfaction itself. *Baeza*, 471 S.W.3d at 592; *see also Milton M. Cooke Co.*, 290 S.W.3d at 304. If appellees establish a pre-existing dispute, they must then establish that they and appellants "specifically and intentionally agreed that the tendering and acceptance of the reduced sum would discharge the underlying obligation that formed the basis of their dispute." *Baeza*, 471 S.W.3d at 592 (internal quotations omitted); *see also Milton M. Cooke Co.*, 290 S.W.3d at 304. Further, appellees had to establish that they tendered the reduced sum to appellants with an "unmistakable communication" to appellants that the tender of the reduced sum was upon the condition that acceptance would satisfy the underlying obligation. *Baeza*, 471 S.W.3d at 592 (internal quotations omitted); *see also Jenkins v. Henry C. Beck Co.*, 449 S.W.2d 454, 455 (Tex. 1969); *Garcia*, 2018 WL 2638684, at *9 ("For the accord and satisfaction defense to prevail, there must be a dispute and an unmistakable communication to the creditor that tender of the reduced sum is upon the condition that acceptance will satisfy the underlying obligation." (internal quotations omitted)). The condition must be plain, definite, and certain, and "the

statement accompanying the tender of a sum less than the contract price must be so clear, full, and explicit that it is not susceptible of any other interpretation." *Case Funding Network, L.P., v. Anglo-Dutch Petroleum Int'l, Inc.*, 264 S.W.3d 38, 50 (Tex. App.-Houston [1st Dist.] 2007, pet. denied) (internal quotations omitted).
25 Appellees' summary-judgment evidence must demonstrate that both appellees and *25 appellants agreed that the amount paid by appellees to appellants fully satisfied appellants' entire claim. *Garcia*, 2018 WL 2638684, at *9.

Here, we will presume, without deciding, that appellees established a dispute between them and appellants as to the amount owed for appellants' services. And, instead, we will focus on the other elements of common law accord and satisfaction-that is, whether appellees conclusively established that appellees and appellants "specifically and intentionally agreed" that the tendering and acceptance of the reduced sum would discharge all of appellees' obligations to appellants and whether the tender of the February 2019 check for $1,287.50 to LA Public Adjusters constituted an "unmistakable communication" to appellants that their acceptance of the check would satisfy the underlying obligation. *See Baeza*, 471 S.W.3d at 592- 93 (internal quotations omitted); *see also Milton M. Cooke Co.*, 290 S.W.3d at 304.

In their summary-judgment motion, appellees asserted that appellants "sent a demand letter on January 5, 2019 requesting payment" from appellees, and appellees' subsequent tender of the February 2019 check for $1,287.50 to LA Public Adjusters with the words "Full & Final Payment of any & all claims" constituted an "unmistakable communication" to appellants that their acceptance of the check would satisfy appellees' underlying obligations. Further, when appellants "deposited the [February 2019] check[,] they intentionally
26 agreed" that the *26 acceptance of the reduced amount discharged all of appellees' obligations to appellants.

Although appellees sent LA Public Adjusters the February 2019 check after they received appellants' "demand letter" and appellants deposited the check, these facts, standing alone, are insufficient to establish the affirmative defense of common law accord and satisfaction. *See Baeza*, 471 S.W.3d at 592-93; *Cleveland Reg'l Med. Ctr., L.P. v. Celtic Props., L.C.*, 323 S.W.3d 322, 335 (Tex. App.-Beaumont 2010, pet. denied); *Pate v. McClain*, 769 S.W.2d 356, 361-62 (Tex. App.- Beaumont 1989, writ denied) ("Mere acceptance of a tendered check . . . is simply not enough to constitute accord and satisfaction."); *see, e.g.*, *Jenkins*, 449 S.W.2d at 455-56. Yet, appellees argue that because appellees wrote, "Full & Final Payment of any & all claims," on the memo line of the February 2019 check, there was an "unmistakable communication" to appellants that their acceptance of the February 2019 check would satisfy appellees' underlying obligation and that appellants, by depositing the check, "specifically and intentionally agreed" that appellees' payment of $1,287.50 would discharge all of appellees' obligations to appellants.

A statement that accompanies the tender of the lesser sum, must be so clear and so explicit and so complete that the statement is simply not susceptible of any other interpretation but one of complete accord and complete
27 satisfaction. *See Pate*, 769 S.W.2d at 361-62; *see also Jenkins*, 449 S.W.2d at 455 ("[T]he statement *27 accompanying the tender of a sum less than the contract price must be so clear, full[,] and explicit that it is not susceptible of any other interpretation."). Although appellees' February 2019 check stated "Full & Final Payment of any & all claims" on the memo line, before appellees sent LA Public Adjusters the February 2019 check, appellants had informed appellees that they believed that appellees owed appellants $115,258.02. Appellants had also demanded the full amount of the outstanding balance owed to them and had told appellees explicitly that "[a]ny payment received with the letters Full & Final Payment or likewise, w[ould] be considered as partial payment," unless the parties signed a formal agreement. As Ramirez stated in his declaration, which appellants attached to their summary-judgment response:

> I never agreed that the money owed by [appellees] would be released by a lesser amount paid. In January of 2019, I sent [appellees] an email in which I declared that I needed to collect the full amount of the outstanding balance. . . . Attached to that email [was] a document titled "Notice of Lawsuit" in which I specifically stated[:] "Any payment received with the letters Full & Final Payment or likewise, will be considered as partial payment till . . . both parties ha[ve] signed a formal agreement form." Therefore, I specifically and intentionally told [appellees] that any payment for less than the total amount owed with language concerning a full payment would not discharge [appellees'] existing obligation to pay the full amount owed and would be considered a partial payment only for any individual appraisal. Therefore, any payment that I may have received and accepted after my January 2019 correspondence that was less than the full amount owed by [appellees] for any specific appraisal was regarded only as a partial payment. To date, [appellees'] full existing obligation as to each appraisal has not been discharged.

28 *28

Under these circumstances, we cannot conclude that appellees established, as a matter of law, that they and appellants "specifically and intentionally agreed" that the tendering and acceptance of the February 2019 check would discharge appellees' obligations to appellants. *See Baeza*, 471 S.W.3d at 592-93 (where plaintiff presents some evidence to establish that it did not agree to accept lesser sum, affirmative defense of common law accord and satisfaction not established as matter of law); *see also Liberman v. Safeco Ins. Co. of Ind.*, No. 1:18-CV-00594-LY, 2020 WL 1902561, at *4 (W.D. Tex. Jan. 9, 2020) (noting summary judgment not appropriate where "there [was] a direct conflict between [plaintiff's] and [defendant's] [a]ffidavits [as to] whether the parties [had] agreed the $7,500 would constitute a full settlement of all obligations").

Further, the parties' course of dealing in previous transactions indicates a common understanding about appellees' payments that does not support appellees' position that they and appellants "specifically and intentionally agreed" that the tendering and acceptance of the February 2019 check would discharge appellees' obligations to appellants or that the language in the February 2019 check constituted an "unmistakable communication" to appellants that the tender of the reduced sum was upon the condition that acceptance would satisfy appellees' underlying obligation. *Cf.* Tex. Bus. & Com. Code Ann. § 1.303(b) ("A course of dealing is a
29 sequence of conduct concerning previous transactions between the parties to a *29 particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.).

Appellees had previously sent LA Public Adjusters checks containing the words "Paid in Full," "Full and Final Payment" or "Full + Final," but these checks were not meant to discharge all of appellees' obligations to appellants. (Internal quotations omitted.) Some of those checks were accompanied by letters identifying them as applicable to a certain client of appellees, but other checks were not accompanied by a letter. Still yet, appellees sent checks to LA Public Adjusters simply stating: "Appraisal Fees/Expert" with no accompanying letter or no identification of the client to which it pertained. These previous checks were for amounts around $1,000 or $2,000. Notably, none of these checks, which were deposited by appellants over the years, ever satisfied all obligations that appellees owed to appellants and appellees never asserted that they did.

Like the checks involved in the past dealings between appellees and appellants, the February 2019 check was in the amount of $1,287.50-an amount similar to the previous checks sent by appellees that only applied to a certain client and not to all of appellees' obligations to appellants. And although the February 2019 check included the language, "Full & Final Payment," on the memo line, appellees had written similar phrases on

other checks when they did not intend for those checks to satisfy all obligations they owed to appellants.
30 Appellees did not *30 include a letter with the February 2019 check. Given the similarity between the parties' course of dealing and the manner in which appellees tendered the February 2019 check, it is possible that appellants could have interpreted the February 2019 check to apply only to a certain invoice for which appellees owed appellants an outstanding balance and not to the entirety of appellees' obligations owed to appellants. *Cf. Flores v. Hansen*, No. 2-09-465-CV, 2010 WL 3618737, at *4 (Tex. App.-Fort Worth Sept. 16, 2010, no pet.) (mem. op.) (defendant "failed to prove that he communicated to [plaintiff] that he was tendering payment to satisfy all claims [plaintiff] could have against [defendant] as a result of the incident in such 'clear, full, and explicit' terms that [plaintiff] could not possibly mistake [defendant's] intent"); *see also Liberman*, 2020 WL 1902561, at *4 (concluding summary-judgment not appropriate where "jury could differ as to whether the language in the letter and check stub depict[ed] a clear final settlement of all [defendant's] obligations . . . or only show[ed] a settlement of [one of plaintiff's] claim[s]").

Here, the notation on the February 2019 check is susceptible to more than one reasonable interpretation, and thus, we cannot say that the language on the February 2019 check constituted an "unmistakable communication" to appellants that the tender of the reduced sum was upon the condition that acceptance would satisfy appellees' underlying obligations. *See Jenkins*, 449 S.W.2d at 455-56; *George Linskie Co. v. Miller-*
31 *Picking Corp.,* *31 463 S.W.2d 170, 171-73 (Tex. 1971) (trial court erred in granting summary judgment on affirmative defense of accord and satisfaction where "defendant did not make known to plaintiff in clear and unmistakable terms that the tender was intended to be made upon the condition that its acceptance would constitute full satisfaction of all pending claims discussed in the letter"); *Metromarketing Servs., Inc. v. HTT Headwear, Ltd.*, 15 S.W.3d 190, 197-98 (Tex. App.-Houston [14th Dist.] 2000, no pet.) (although check stub contained notation, "[f]inal payment for commissions for EJR less deductions," holding notation was susceptible to more than one interpretation and fact question existed as to whether plaintiff's acceptance of check constituted satisfaction of defendant's obligations on all outstanding invoices or only three invoices (internal quotations omitted)).

We conclude that appellees did not establish as a matter of law that there was an "unmistakable communication" to appellants that the tender of the reduced sum of $1,287.50 was upon the condition that acceptance would satisfy appellees' underlying obligations to appellants or that the parties specifically and intentionally agreed to discharge appellees' existing obligations. *See Lopez*, 22 S.W.3d at 863. Thus, we hold that the trial court erred in granting appellees summary judgment on their affirmative defense of common law accord and satisfaction. *See Richardson*, 235 S.W.3d at 865 (where defendant did not "conclusively establish
32 [the *32 requirements of] the affirmative defense of accord and satisfaction . . . the trial court could not properly have granted summary judgment on [defendant's] accord and satisfaction defense"); *Stevens v. State Farm Fire & Cas. Co.*, 929 S.W.2d 665, 674 (Tex. App.-Texarkana 1996, writ denied) ("Where the existence of an accord and satisfaction is in doubt, the question is one of fact for the jury.").

In addition to the affirmative defense of common law accord and satisfaction, the Texas Business and Commerce Code provides a method to establish the affirmative defense of statutory accord and satisfaction when one party has tendered a negotiable instrument, such as a check, to another party who has made a claim against him. *See* Tex. Bus. & Com. Code Ann. § 3.311; *Baeza*, 471 S.W.3d at 593- 94; *see also* Tex. Bus. & Com. Code Ann. § 3.104(f) (check is "[a]n instrument" for purposes of section 3.311). Under Texas Business and Commerce Code section 3.311, a party may discharge a debt when: (1) that party in good faith tendered an

instrument to the claimant as full satisfaction of the claim, (2) the amount of the claim was unliquidated or subject to a bona fide dispute, and (3) the claimant obtained payment of the instrument. *See* Tex. Bus. & Com. Code Ann. § 3.311(a); *Baeza*, 471 S.W.3d at 593-94.

As Texas courts have recognized, Texas Business and Commerce Code section 3.311's requirements for the affirmative defense of statutory accord and satisfaction are similar to the requirements of the affirmative
33 defense of common *33 law accord and satisfaction. *See Baeza*, 471 S.W.3d at 594; *Milton M. Cooke, Co.*, 290 S.W.3d at 304 ("[S]ection 3.311 does not conflict with the common-law doctrine of accord and satisfaction . . .; rather, [section 3.311] is consistent with the doctrine as interpreted by Texas courts."); *Case Funding Network*, 264 S.W.3d at 50 ("Texas has adopted the Uniform Commercial Code's . . . provisions on accord and satisfaction, which are consistent with the Texas courts' recognition of the common law doctrine of accord and satisfaction."); *see also* Tex. Bus. & Com. Code Ann. § 3.311, cmt. 3 ("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."); *Barnes v. Univ. Fed. Credit Union*, No. 03-10-00147-CV, 2013 WL 1748788, at *5 n.6 (Tex. App.-Austin Apr. 18, 2013, no pet.) (mem. op.) ("Because [s]ection 3.311 of the [Texas Business and Commerce] Code-governing accord and satisfaction by use of a negotiable instrument-does not conflict with the common law doctrine of accord and satisfaction, we may use common law principles of accord and satisfaction to supplement the [c]ode's provisions."). As such, a party attempting to assert that a debt has been discharged under Texas Business and Commerce Code section 3.311 "by the tendering of an instrument" must still establish that the claimant was "clearly made aware that the instrument was intended to discharge the debt
34 prior to its acceptance." *Baeza*, 471 S.W.3d at 594. *34

Section 3.311 has two methods for establishing this key element. *Id.* at 594- 95. First, under section 3.311(b), a claim will be discharged by the tendering and acceptance of a negotiable instrument "if the [party] 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." Tex. Bus. & Com. Code Ann. § 3.311(b); *see also Baeza*, 471 S.W.3d at 594; *Barnes*, 2013 WL 1748788, at *5 (to prevail on affirmative defense of statutory accord and satisfaction party had to establish "the check or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered in full satisfaction of the claim").

We conclude that appellees failed to meet the statutory requirement contained in Texas Business and Commerce Code section 3.311(b). As we noted above, the February 2019 check was sent to appellants with no accompanying letter, and the notation on the February 2019 check was susceptible to more than one reasonable interpretation. *See Jenkins*, 449 S.W.2d at 455-56 (holding whether payments by party to claimant carried unequivocal notice that payments were tendered in full satisfaction of all claims was question of fact when numerous amounts were disputed and alleged accord was susceptible to multiple interpretations); *see also*
35 *George Linskie Co.*, 463 S.W.2d at 171-73 (holding no accord and satisfaction as a matter *35 of law when letter accompanying tender was susceptible of multiple interpretations); *Grynberg v. Grey Wolf Drilling Co.*, 296 S.W.3d 132, 139-40 (Tex. App.-Houston [14th Dist.] 2009, no pet.) (party's statements on check were "not so clear, full[,] and explicit as to be susceptible to no interpretation other than accord and satisfaction of all outstanding invoices" (internal quotations omitted)). Thus, we cannot say that the February 2019 check or an accompanying written communication-of which there was none in this case-contained a statement that could have fulfilled the statutory requirement under section 3.311(b) as a matter of law. *See* Tex. Bus. & Com. Code Ann. § 3.311(b); *cf. Baeza*, 471 S.W.3d at 594- 95; *Barnes*, 2013 WL 1748788, at *7 (party did not establish as matter of law that check or accompanying letter contained conspicuous statement "to the effect that the

instrument was tendered in full satisfaction of the claim" where, at time party tendered check, "there were numerous claims and counterclaims between the parties" and "the letter accompanying the check did not explicitly state in clear and unmistakable terms that it was in full satisfaction of any or all claims" (internal footnotes and quotations omitted)). As noted above, "the statement accompanying the tender of a sum less than the contract price must be so clear, full, and explicit that it is not susceptible of any other interpretation," and such did not occur in this case. *See Case Funding Network*, 264 S.W.3d at 50 (internal quotations omitted); *see*
36 *also Barnes*, 2013 WL 1748788, at *7 (statement accompanying check was *36 "susceptible to multiple interpretations" and "any inferences to be drawn from the [statement] presented issues of fact [to be] properly submitted to [a] jury").

Second, under Texas Business and Commerce Code section 3.311(d), a claim will be discharged by the tendering and acceptance of a negotiable instrument "if the [party] against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or the 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." Tex. Bus. & Com. Code Ann. § 3.311(d); *see also Baeza*, 471 S.W.3d at 595. No such proof exists here.

We conclude that appellees did not establish as a matter of law that appellants knew that the February 2019 check that appellees tendered was "in full satisfaction" of appellants' claims against appellees. *See* Tex. Bus. & Com. Code Ann. § 3.311(d); *Baeza*, 471 S.W.3d at 595. As discussed above, although appellees' February 2019 check stated "Full & Final Payment of any & all claims" on the memo line, before appellees sent LA Public Adjusters the check, appellants had informed appellees that they believed that appellees owed appellants $115,258.02. And appellants had demanded the full amount of the outstanding balance owed to them and had told appellees explicitly that "[a]ny payment received with the letters Full & Final Payment or likewise,
37 w[ould] be considered as partial payment," unless the *37 parties signed a formal agreement. As Ramirez stated in his declaration, attached to appellants' summary-judgment response:

> I never agreed that the money owed by [appellees] would be released by a lesser amount paid. In January of 2019, I sent [appellees] an email in which I declared that I needed to collect the full amount of the outstanding balance. . . . Attached to that email [was] a document titled "Notice of Lawsuit" in which I specifically stated[:] "Any payment received with the letters Full & Final Payment or likewise, will be considered as partial payment till . . . both parties ha[ve] signed a formal agreement form." Therefore, I specifically and intentionally told [appellees] that any payment for less than the total amount owed with language concerning a full payment would not discharge [appellees'] existing obligation to pay the full amount owed and would be considered a partial payment only for any individual appraisal. Therefore, any payment that I may have received and accepted after my January 2019 correspondence that was less than the full amount owed by [appellees] for any specific appraisal was regarded only as a partial payment. To date, [appellees'] full existing obligation as to each appraisal has not been discharged.

Cf. Baeza, 471 S.W.3d at 595.

Based on the foregoing, we conclude that appellees did not establish as a matter of law the affirmative defense of statutory accord and satisfaction. *See* Tex. Bus. & Com. Code Ann. § 3.311(a), (b), (d) And we hold that the trial court erred in granting appellees summary judgment on the affirmative defense of statutory accord and satisfaction. *See Richardson*, 235 S.W.3d at 865 (where defendant did not "conclusively establish [the

requirements of] the affirmative defense of accord and satisfaction . . . the trial court could not properly have
38 granted summary judgment on [defendant's] accord and satisfaction defense"); *Stevens*, 929 S.W.2d at 674 *38
("Where the existence of an accord and satisfaction is in doubt, the question is one of fact for the jury.").

We sustain appellants' sole issue.[8]

8 Due to our disposition, we need not address any remaining arguments in appellants' briefing. *See* Tex. R. App. P. 47.1.

Conclusion

We reverse the judgment of the trial court and remand the case for further proceedings consistent with this opinion.