FOR PUBLICATION

Appeals No. 01-034, 01-035 (Consolidated)

IN THE SUPREME COURT OF THE

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

TOWN HOUSE, INC.,
Plaintiff-Appellant,

v.

MOSES S. SABURO,
Defendant-Appellee.

JOETEN DEVELOPMENT INC.,
Plaintiff-Appellant,

v.

JACINTA F. CLEMON,
Defendant-Appellee.

OPINION

Cite as: *Town House, Inc. v. Saburo*, 2003 MP 2

Hearing held March 22, 2002
Decided January 14, 2003

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BEFORE: Alexandro C. CASTRO, Associate Justice, John A. MANGLONA, Associate Justice, Steven S. UNPINGCO, Justice Pro Tempore.

CASTRO, Associate Justice:

¶1 Appellants Joeten Development Inc. dba Price Costco [hereinafter Costco] and Town House, Inc. [hereinafter Town House] [collectively Appellants] appeal the Superior Court's decisions of October 17, 2001 and October 18, 2001 holding that a maker of a bad check is liable to the payee for (1) the amount owing on the check plus interest at 12 percent per annum OR other damages claimed OR, at the election of the payee (2) damages of treble the face amount of the check.

¶2 We have jurisdiction pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands and 1 CMC § 3102(a). We affirm.

ISSUE PRESENTED AND STANDARD OF REVIEW

¶3 The issue presented by these consolidated appeals is whether the Superior Court correctly interpreted and applied Section 2442(a) of Title 7 of the Commonwealth Code (Bad Checks Act of 1984).[1] This is a question of statutory construction which we review *de novo*. *Commonwealth v. Cabrera*, 4 N.M.I. 240, 250 (1995).

[1] *See* 7 CMC §§ 2441 and 2442.

FACTUAL AND PROCEDURAL BACKGROUND

¶4 Moses S. Saburo[2] [hereinafter Saburo] presented a number of checks to Town House department store.[3] Jacinta F. Clemon [hereinafter Clemon] presented a number of checks to Costco.[4] Each of these checks were returned for insufficient funds. Prevailing on their suit to collect on the returned checks, Appellants moved the Superior Court for damages in the amount owing on each "bounced" check PLUS an amount equal to three times the face value of the check.

¶5 Saburo and Clemon [hereinafter collectively Appellees] moved for a determination that the amount sought by Appellants was improper. The Superior Court agreed with Appellees and determined that, under 7 CMC § 2442(a), Appellants were entitled only to three times the amount of each "bounced" check. These timely appeals ensued.

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[2] On September 17, 2002, counsel for Saburo filed a Suggestion of Death, wherein counsel informed the Court of Saburo's death on August 31, 2002. In the Suggestion of Death, counsel proffered that the appeal was not mooted "because his estate, if any, will be answerable for the judgment entered in this action." On October 3, 2002, Appellants' counsel filed a response to the Suggestion of Death concurring that the appeal was not mooted by Saburo's death. We agree.

[3] In September 2000, Saburo issued six checks totaling $444.37 to Town House. Town House accepted the checks and presented them to its bank; the checks were returned unpaid by reason of insufficient funds. Opening Br. at 4.

[4] In October 1999, Clemon issued six checks to Costco. Costco accepted the checks and presented them to its bank; the checks were returned unpaid by reason of insufficient funds. *Id.*

ARGUMENTS

¶6 There are two main arguments in these cases. Appellants argue that a plain reading of the statute entitles them to the amount of the check plus, as a penalty, triple damages. Appellants contend that the logical[5] construction of the statute entitles them to (1) the amount of the check plus (2) either interest on the check at 12% per year OR damages of three times the amount of the check, but not less than $50 nor more that $750 plus reasonable attorney fees.[6]

¶7 Appellees counter that the plain reading of the statute results in the construction used by the Superior Court. They contend that the correct reading of the statute is: "The maker is liable to the payee for (1) the amount owing on the check plus interest at 12% OR other damages claimed OR, at the election of the payee (2) damages of treble the face amount of the check." Appellees argue that the "at the election of the payee" language used by the legislature shows that the choice of remedies available to the payee is between face value and interest or treble the face value of the check, and note that this is how the Superior Court construed the statute.

ANALYSIS

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[5] Appellants argue that the construction used by the Superior Court "fails the common sense test." *Id*. at 8. They assert that under the Superior Court's interpretation, a person who writes a bad check for one-dollar would pay a forty nine dollar penalty and a person who writes a bad check for forty nine dollars would pay a one dollar penalty. *Id*. This simply is not true. Using the Appellants' construction, a person who "bounced" a forty nine dollar check would pay $196 (face value plus three times face value). Appellees' construction results in the payment of $147 (three times face value). In either instance, the "penalty" added to the forty nine dollar check is greater than one dollar.

[6] Plaintiffs are entitled to attorney fees pursuant to 7 CMC § 2442(b), which reads, in pertinent part:

> In any action brought by the payee after the notice period required to collect any sum pursuant to subsection (a) of this section and regardless of whether the payee has elected the treble damage option provided in that subsection, the payee shall be entitled to reasonable attorney's fees as the court may deem satisfactory; provided that attorney's fees awarded in respect of each such check shall not be les than $125 nor more than $250 with respect to each instrument.

7 CMC § 2442(b).

¶8 The resolution of this case requires us to interpret Title 7, Section 2442(a) of the Commonwealth Code, a portion of the Bad Checks Act of 1984, 7 CMC §§ 2441-2442. Section 2442(a) consists of four sentences and reads:

> Any person, who makes, utters, draws or delivers any check, payment of which is refused or dishonored due to lack of funds or credit to pay, or is refused or dishonored because the maker has no account with the drawee bank under the account number specified in the check, and who fails to pay to the payee the amount thereof together with such charges as may be lawfully imposed by the bank within 30 days following a written demand delivered personally to the maker, or mailed to the maker by certified mail to the maker's address shown on the check, or mailed to such other address of the maker as may be actually known by the payee, shall be liable to the payee for the amount owing upon such check plus interest at the rate of 12 percent per annum or other damages claimed or, at the election of the payee, damages of treble the face amount of the check; provided that in no case such damages be less than $50 nor more than $750 in respect of any such instrument. As a condition of the award of treble damages, the written demand of the payee or transferee to the maker shall have a conspicuous notice containing a statement substantially as follows:
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> > YOUR FAILURE TO PAY THE CHECK AMOUNT TOGETHER WITH ANY LAWFUL CHARGES WITHIN 30 DAYS FOLLOWING DELIVERY OR MAILING OF THIS NOTICE MAY RESULT IN A COURT JUDGMENT AGAINST YOU FOR THREE TIMES THE AMOUNT OF THIS CHECK.
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> A cause of action under this section may be brought in small claims court or in any other appropriate court. The right to treble damages shall not accrue, and no action shall be brought therefore, until 30 days have passed from the mailing or personal delivery of the written demand of the payee containing the notice.

7 CMC § 2442(a).

¶9 We have had occasion to discuss the Bad Checks Act of 1984 before. In *Bank of Hawaii v. Sablan*, 1997 MP 9, 5 N.M.I. 75, we determined that the Bad Checks Act was ambiguous as to when the thirty-day notice period provided for by 7 CMC § 2442(a) begins. "A statute is considered ambiguous when it is capable of more than one

meaning." *Bank of Hawaii*, 1997 MP 9 ¶10, 5 N.M.I. at 76 (*citing Wisconsin Dep't. of Revenue v. Nagle-Hart, Inc.*, 234 N.W.2d 350, 352 (Wis. 1975)).

¶10 To resolve the ambiguity, we looked to the "intent of the legislature and the effect that the statute has on those it sought to effect," *Id*. at ¶14, 5 N.M.I. at 77, and determined that the Bad Checks Act is a "hybrid statute" that is both remedial and penal.[7] *Id*. While we acknowledged that the intent of the statute was to protect citizens from those who pass bad checks, we also found that the statute offered protection to those guilty of passing the checks. *Id*. As a consequence, we resolved the ambiguity on behalf of the maker of the bad check, and held that the maker had "thirty days from the receipt of the demand letter in which to pay the amount owed." *Id*. at ¶16.

¶11 The fact that a portion of 7 CMC § 2442(a) was previously held ambiguous is not dispositive of the question now before us. In fact, it is possible to interpret the damages portion of the statute without searching for the intent of the legislature any place other than the language of the statute itself. We construe statutory language "according to its plain-meaning, where it is clear and unambiguous." *Gioda v. Saipan Stevedoring Co., Inc.*, 1 N.M.I. 310, 315 (1990). However, statutory language must be read in the context of the entire statute. *Commonwealth v. Hasinto*, 1 N.M.I. 379, 383 n.4 (1990) (*citing Waikiki Resort Hotel, Inc. v. City and County of Honolulu*, 624 P.2d 1353 (Haw. 1981)). *See also Gutierrez v. Ada*, 528 U.S. 250, 255, 120 S. Ct. 740, 744, 145 L. Ed. 2d 747, 753 (2000) ("[W]ords and people are known by their companions."); *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341, 117 S. Ct. 843, 846, 136 L. Ed. 2d 808, 813 (1997) ("The

[7] "It is remedial in that it allows the maker an opportunity to cure by paying the outstanding amounts of the checks. It is penal in that if the maker does not cure within the statutory time limit, then they will be accessed a penalty of treble damages and/or attorney's fees." *Bank of Hawaii v. Sablan*, 1997 MP 9 ¶ 14, 5 N.M.I. 75, 77.

plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that statute is used, and the broader context of the statute as a whole."); *United States v. Am. Trucking Ass'n, Inc.*, 310 U.S. 534, 542, 60 S. Ct. 1059, 1063, 84 L. Ed. 1345, 1350 (1940) ("To take a few words from their context and with them thus isolated to attempt to determine their meaning, certainly would not contribute greatly to the discovery of the purpose of the draftsmen of a statute . . . .").

¶12 While the first sentence of Section 2442(a) is hardly a model of lucidity[8] any perceived ambiguity concerning the amount of damages vanishes upon reading the second sentence which begins "[a]s a condition of the *award of treble damages*." 7 CMC § 2442(a) (emphasis added). Had the legislature intended otherwise, it would have mentioned "quadruple damages" or "treble damages plus the face value of the check."

¶13 Further, the legislatively mandated notice informs the issuer that the check holder could obtain a judgment "for three times the amount of this check." *Id.* We find that this notice evidences the legislature's intent that treble damages, and not "treble damages plus face value" be recoverable.

¶14 Assuming *arguendo* that there is an ambiguity as to the amount of damages available to the holder, the "just and equitable" result is to resolve the ambiguity in such a way as to offer the greatest protection to the maker. *See Bank of Hawaii*, 1997 MP 9 ¶16, 5 N.M.I. at 77. By placing an upper limit on the amount of treble damages available,[9] the legislature has evidenced its concern that the drafters of dishonored checks shouldn't pay too steep a penalty.

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[8] It contains 181 words, many clauses and less than perfect punctuation.

[9] See 7 CMC § 2442(a).

¶15 In support of their argument that the proper reading allows for the face value of the check plus treble damages, Appellants assert that the legislature intended to provide meaningful penalties for people who write bad checks and argue that, under the interpretation shared by us and the trial courts,[10] the worst offenders often pay the smallest fine.[11]

¶16 These arguments are properly placed before the legislature. In crafting the civil remedy for a dishonored check, the legislature was free to pick from nearly limitless choices,[12] each with its own unique result. *See, e.g.*, ALA. CODE § 6-5-285 (2002) ("The plaintiff in [an action to recover damages for a bad check] may recover such damages, both punitive and compensatory, including a reasonable attorney fee, as the jury or court trying the case may assess."); MASS. ANN. LAWS ch. 93, § 40A (Law. Co-op. 2002) (Holder may recover "the face amount of such check, draft or order, and for additional damages, as determined by the court, but in no event shall the amount of such damages be less than one hundred nor more than five hundred dollars."); ME. REV. STAT. ANN. tit. 14 § 6071 (2001) (holder may recover face amount of check, court costs and processing charges, interest at 12% per annum, attorney fees and "a civil penalty not to exceed

[10] Appellees posit that a third court shares this interpretation. In *Penny's Store v. Taisacan*, 3 C.R. 54 (Dist. Ct. App. Div. 1987), the court awarded treble damages, not face value plus treble damages. However, the disputes in *Penny's Store* revolved around the amount of allowable attorney fees and whether a payment made after the notice period should be deducted from the principle prior to determining the statutory damages. In fact, the plaintiff sought only treble damages, not face value plus treble damages. *Id.* at 60 n.2. Consequently, *Penny's Store* does not squarely focus on whether one is entitled to the face value of the check plus treble damages. As such, *Penny's Store* offers little guidance and is not dispositive of the conclusion reached today.

[11] Appellants list a litany of other "startling results" that flow from our interpretation. See Opening Brief at 8-10. For example: "[F]or any check between $0.01 to $16.66, a plaintiff would be entitled to the same damages, $50.00, regardless of the amount of the check." *Id.* at 8. "[F]or any check between $250.00 and $750.00, a plaintiff would be entitled in most cases to the same damages, $750.00, regardless of the amount of the check." *Id.* at 9. "[A] person who knowingly writes a bad check actually has a positive incentive to write a larger check, rather than a smaller one. It would not matter to that person whether the amount of the check were $250.00 or $740.00, if the writer's liability were limited to $750.00 in any case." *Id.*

[12] The legislature is, of course, restrained by Constitutional issues not germane to this appeal.

$50."); N.D. CENT. CODE § 6-08-16 (2002) ("The civil penalty consists of payment to the holder, or its agent or representative, of the instrument of the lesser of two hundred dollars or three times the amount of the instrument."; "The person [who issues a bad check] is also liable for collection fees or costs, not in excess of twenty-five dollars . . ."); VT. STAT. ANN. tit. 9 § 2311 (2001) ("[T]he holder [of a bad check] may recover . . . court costs, costs of service, the amount of the check, . . . bank fees, interest, attorney's fees and damages in the amount of $50.00."). Many of these statutes create the possibility for the same types of "startling results" of which Appellants complain.

¶17 Notwithstanding the situations that may result from its application, a plain reading of the Commonwealth's Bad Checks Act allows a plaintiff to recover either (1) the amount owing on the check plus interest at 12% per year or other damages claimed or (2) damages of treble the face amount of the check. 7 CMC § 2442(a). This holding is consistent with the intent of the legislature as evidenced by the language of the statute and our holding in *Bank of Hawaii. See* 7 CMC § 2442(a) and *Bank of Hawaii v. Sablan*, 1997 MP 9, 5 N.M.I. 75.[13]

¶18 Because we find that a plain reading of the statute sufficiently evidences the legislature's intent, further examination of sources other than the statute itself is neither necessary nor desirable.

CONCLUSION

¶19 Because the Superior Court correctly interpreted 7 CMC § 2442(a), the damages awarded to Appellants below are AFFIRMED.

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[13] Contrary to the Appellants' assertion, this holding is also consistent with the portion of the Uniform Commercial Code of the Northern Mariana Islands, at 5 CMC § 3301. The Bad Checks Act provides for an election of remedies. *See* 7 CMC § 2442(a). Without regard to the amount of the check, a holder is always entitled to recover the face value of the check "plus interest at the rate of 12 percent per annum or other damages claimed," thereby enforcing the check; he may elect to proceed otherwise.

SO ORDERED THIS 14TH DAY OF JANUARY 2003.

/s/_____
ALEXANDRO C. CASTRO, ASSOCIATE JUSTICE

/s/_____
STEVEN S. UNPINGCO, JUSTICE PRO TEMPORE

MANGLONA, Associate Justice, dissenting:

¶20 I respectfully dissent. A plain reading of 7 CMC § 2442(a) entitles a plaintiff to the face value of the check plus interest on the check at 12 percent per annum, other damages claimed, or damages of three times the amount of the check. *See* 7 CMC § 2442(a). As such, the legislature has enacted a scheme whereby a plaintiff is able to recover the face value of the check plus one of three sets of damages.

¶21 The interpretation of the language in question, "shall be liable to the payee for the amount owing upon such check plus interest at the rate of 12 percent per annum or other damages claimed or, at the election of the payee, damages of treble the face amount of the check," centers on the word "damages." *Id.* If, as is my belief, the first "damages" clause, "or other damages claimed" provides an alternative to the "interest at the rate of 12 percent per annum," then it logically follows that the "damages of treble the face amount of the check" clause does as well, thereby allowing a plaintiff to receive the face value of the check plus treble the amount of the check. 7 CMC § 2442(a).

¶22 The phrase, "at the election of the payee," does not signal a second, discrete remedy, but merely evidences the legislature's desire that the holder, and not the trial court, is to choose from the three available remedies. This language is telling; many "bad check" statutes offer holders no choice, *see, e.g.*, ARK. CODE ANN. § 4-60-103 (Michie 2001); GA. CODE ANN. § 13-6-15 (2002); IND. CODE ANN. § 26-2-7-6 (Michie 2002); ME. REV. STAT. ANN. tit. 14, § 6071 (2001); MISS. CODE ANN. § 11-7-12 (2001); N.H. REV. STAT. ANN. § 544-B:1 (2002); VT. STAT. ANN. tit. 9, § 2311 (2001), or even mandate the *lesser* of two or more choices, *see, e.g.*, N.D. CENT. CODE § 6-08-16 (2002); S.C. CODE ANN. § 34-11-75 (Law. Co-op. 2001); WASH. REV. CODE § 62A.3-515 (2002); W. VA. CODE § 55-16-1 (2001).[14]

¶23 Reading the statute as a whole, I, unlike the majority, am not convinced that the mere mention of "treble damages" in the notice and other sections of the Bad Checks Act sheds any light on the issue. I am mindful of the fact that, as Appellants argue, a person who wrote a dishonored check "for one cent would be liable for the minimum statutory damages of $50 - - five thousand times the amount of the check,"[15] and would add that, with the addition of statutorily permissible attorney fees, *see*, *supra* ¶6 n.6, the defendant could be liable for $300 or *thirty thousand times* the amount of the check.[16] I do not see

[14] Many states allow the plaintiff to recover the face amount of the check plus treble damages. *See* CAL. CIV. CODE § 1719 (Deering 2001); COLO. REV. STAT. § 13-21-109 (2001); FLA. STAT. ch. 68.065 (2002); IDAHO CODE § 1-2301A (Michie 2002); 720 ILL. COMP. STAT. 5/17-1a (2002); KAN. STAT. ANN. § 60-2610 (2001); MO. REV. STAT. § 570.123 (2001); NEV. REV. STAT. 41.620 (2001); N.J. STAT. ANN. § 2A:32A-1 (West 2002); N.C. GEN. STAT. § 6-21.3 (2002); OR. REV. STAT. § 30.701 (2001); R.I. GEN. LAWS § 6-42-3 (2001); S.C. CODE ANN. § 34-11-75 (Law Co-op 2001); UTAH CODE ANN. § 7-15-1 (2002); VA. CODE ANN. §§ 8.01-27.1, 8.01-27.2 (Michie 2002); WIS. STAT. § 943.245 (2001).

[15] Appellant's Br. at 10-11.

[16] Admittedly, this situation is less probable than possible. However, for a ten-dollar check, a far more likely scenario, the required notice is still woefully inadequate. A defendant would be liable in damages and attorneys fees for anywhere between $175 and $300, seventeen and a half to thirty times the amount of the check. *See* 7 CMC § 2442(a).

how the majority can use the misleading statutory notice to interpret a statute which they admit "is hardly a model of lucidity." *See, supra*, ¶12.

¶24 Furthermore, our statute, enacted in 1985, bears a very striking similarity to California's Civil Code section 1719. Prior to its amendment in 1985 and 1986, California's statute read, in pertinent part:

> Notwithstanding any penal sanctions which may apply, any person who makes, utters, draws, or delivers any check, or draft, or order upon any bank or depository, or person, or firm, or corporation, for the payment of money, which refuses to honor the same for lack of funds or credit to pay, or because the maker has no account with the drawee, and who fails to pay the same amount in cash to the payee within 30 days following a written demand therefor delivered to the maker by certified mail, shall be liable to the payee, in addition to the amount owing upon such check or draft or order damages of treble the amount so owing, but in no case less than one hundred dollars ($100), and in no case more than five hundred dollars ($500).

Mughrabi v. Suzuki, 243 Cal. Rptr. 438, 439 n.2 (Cal. Ct. App. 1988) (emphasis omitted). Thus, California's statute allows for the recovery of the face value of the check, plus three times the face value of the check, but only mentions "treble damages."

¶25 An examination of California's current statute[17] is also revealing. Sections (a)(2) and (a)(3) sometimes makes mention of "treble damages" without noting the recovery of the value of the check itself.[18] Yet, it is clear that a check holder is able to recover both the amount of the check and treble damages.[19] *See* CAL. CIV. CODE § 1719.

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[17] It reads, in pertinent part:

> (a) (1) Notwithstanding any penal sanctions that may apply, any person who passes a check on insufficient funds shall be liable to the payee for the amount of the check and a service charge payable to the payee for an amount not to exceed twenty-five dollars ($ 25) for the first check passed on insufficient funds and an amount not to exceed thirty-five dollars ($ 35) for each subsequent check to that payee passed on insufficient funds.
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> (2) Notwithstanding any penal sanctions that may apply, any person who passes a check on insufficient funds shall be liable to the payee for damages equal to treble the amount of the check if a written demand for payment is mailed by certified mail to the person who had passed a check on insufficient funds and the written demand informs this person of (A) the provisions of this section, (B) the amount of the check, and (C) the amount of the service charge payable to the payee. The person who had passed a check on insufficient funds shall have 30 days from the date the written demand was mailed to pay the amount of the check, the amount of the service charge payable to the payee, and the costs to mail the written demand for payment. If this person fails to pay in full the amount of the check, the service charge payable to the payee, and the costs to mail the written demand within this period, this person shall then be liable instead for the amount of the check, minus any partial payments made toward the amount of the check or the service charge within 30 days of the written demand, and damages equal to treble that amount, which shall not be less than one hundred dollars ($ 100) nor more than one thousand five hundred dollars ($ 1,500). When a person becomes liable for treble damages for a check that is the subject of a written demand, that person shall no longer be liable for any service charge for that check and any costs to mail the written demand.
>
> (3) Notwithstanding paragraphs (1) and (2), a person shall not be liable for the service charge, costs to mail the written demand, or treble damages if he or she stops payment in order to resolve a good faith dispute with the payee. The payee is entitled to the service charge, costs to mail the written demand, or treble damages only upon proving by clear and convincing evidence that there was no good faith dispute, as defined in subdivision (b).

CAL. CIV. CODE § 1719 (Deering 2003).

[18] *See* CAL. CIV. CODE § 1719(a)(2) (Deering 2003) ("any person who passes a check on insufficient funds *shall be liable to the payee for damages equal to treble the amount of the check* if a written demand for payment is mailed by certified mail to the person;" "When a person *becomes liable for treble damages* for a check that is the subject of a written demand."); CAL. CIV. CODE § 1719(a)(3) (Deering 2003) ("a person shall not be liable for …*treble damages* if he or she stops payment in order to resolve a good faith dispute with the payee. The payee is entitled to . . . *treble damages* only upon proving") (emphasis added).

[19] The recovery of treble damages is mandatory. *See Mughrabi v. Suzuki*, 243 Cal. Rptr. 438, 440 (Cal. Ct. App. 1988).

¶26 I would reverse the decisions of the trial court and remand the case for proceedings consistent with this dissent.

/s/
JOHN A. MANGLONA, ASSOCIATE JUSTICE