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**IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

JOETEN DEVELOPMENT, INC. d/b/a)
PRICE COSTCO,)
Plaintiff,)
vs.)
JACINTA F. CLEMON,)
Defendant.)

Civil Action No. 00-0126

**ORDER DENYING MOTION
FOR DECLARATORY
JUDGMENT AND GRANTING
MOTION FOR SUMMARY
JUDGMENT**

I. INTRODUCTION

In this case under the Bad Checks Act of 1984, Plaintiff Joeten Development, Inc. seeks to recover three times the face amount of each check plus the face amount of each check. Defendant Jacinta F. Clemon, however, claims that the amount sought by Plaintiff exceeds the amount to which it is entitled by statute. The court, having reviewed the record in this proceeding, including the memoranda, declarations, and exhibits, now issues its written decision granting Defendant’s motion for declaratory judgment and denying Plaintiff’s motion for summary judgment.

II. FACTUAL BACKGROUND

The underlying facts material to the motion are undisputed. Between October 3 and October 18, 1999, Defendant issued six checks to the Plaintiff. *See* Complaint, Exs. A-F. Plaintiff claims to have taken each of the checks for value, in good faith, and without notice that any one of them had been or would be dishonored. Thereafter, Plaintiff deposited each of the checks into its bank account. Each of the checks was returned to Plaintiff unpaid, marked “insufficient funds.”

1 In compliance with the Bad Checks Act of 1984, 7 CMC § 2442(a), Plaintiff timely
2 demanded payment of the checks by certified mail. Complaint, Ex. "G-J." Each letter warned
3 Defendant that the failure to pay "may result in court judgment against you for three times the
4 amount of the check." Although Defendant does not dispute that she issued the checks, that they
5 were returned for insufficient funds, and that she failed to pay the amount of the checks plus lawful
6 charges to Defendant within the thirty day period provided by statute, Defendant contends that the
7 maximum amount Plaintiff may recover under the statute is three times the face amount of each
8 check (not to exceed \$750 on each check) as well as attorney's fees as provided for by statute, 7
9 CMC § 2442(b).

10 III. QUESTION PRESENTED

11 Whether a plaintiff who elects to recover treble damages under the Bad Checks Act of 1984
12 may also recover the face amount of the dishonored check.

13 IV. ANALYSIS

14 The Bad Checks Act of 1984, codified at 7 CMC §§ 2441-2442, provides in pertinent part:

15 Any person, who makes, utters, draws or delivers any
16 check, payment of which is refused or dishonored due to
17 lack of funds or credit to pay, ... and who fails to pay to the
18 payee the amount thereof together with such charges as may
19 be lawfully imposed by the bank within 30 days following
20 a written demand ... shall be liable to the payee for the
21 amount owing upon such check plus interest at the rate of
22 12 percent per annum or other damages claimed or, at the
23 election of the payee, damages of treble the face amount of
24 the check; provided that in no case such damages be less
25 than \$50 nor more than \$750 in respect of any such
26 instrument.

21 7 CMC § 2442(a). Should the payee or holder of the dishonored check elect to recover treble
22 damages, moreover, he must make a written demand which "conspicuously" notifies the maker that
23 his "failure to pay the check amount together with any lawful charges within 30 days following the
24 delivery or mailing of this notice may result in a court judgment... for three times the amount of [the]
25 check." 7 CMC § 2442(a).

1 Defendant reads the Bad Check Act to restrict a claimant to one of two remedies: (a)
2 recovery of the face amount of the check plus interest at the rate of twelve percent per annum or
3 other damages claimed, or (b) three times the amount of the check, but not less than \$50 and not
4 more than \$750. According to Defendant, a claimant cannot recover treble damages as well as the
5 face amount of the check. Defendant concedes that under her scenario, the victim of a bad check
6 could, depending upon the amount of the check, recover far more than three times the amount of the
7 check,^{1/} while under other circumstances, be precluded from treble damage recovery.^{2/} Nevertheless,
8 Defendant argues that reading the Act to permit recovery of the face amount of a check in addition
9 to treble damages would construe treble damages to mean quadruple damages and render
10 meaningless the statutory notice language, warning an issuer of a possible judgment for three times
11 the face amount of the check.

12 Plaintiff, on the other hand, reads the Bad Check Act essentially as a penalty statute that
13 permits a claimant to recover the face amount of the check as well as damages of treble the face
14 amount of the check. According to Plaintiff, the only reading of section 2442(a) that makes any
15 sense is to hold a person issuing a bad check liable to the payee for the amount owing upon the
16 check plus a penalty of either (a) interest at the rate of 12% per annum, or (b) three times the amount
17 of the check, but not less than \$50 or more than \$750 on each dishonored and unpaid check. Any
18 other construction of the statute, Plaintiff contends, would lead to the unreasonable and illogical
19 result of allowing only one class of victims to recover treble damages: those who happened to hold
20 instruments of less than \$250.00. Defendant further argues that precluding a claimant from
21 recovering the face amount of the check itself flies in the face of the CNMI Uniform Commercial
22 Code which permits the holder of a check to recover payment. See 5 CMC § 3413(1) and 3301.

23 ^{1/} Under Defendant's version of the Act, victims of checks from \$.01 to \$16.66 will actually be able to recover more
24 than treble damages, but only because of the minimum penalty of \$50.00.

25 ^{2/} Under Defendant's construction of the Act, the victim of a bad check written for more than \$250 would only be
26 able to recover treble damages up to the statutory maximum of \$750.00. Thus, victims of bad checks written for \$251
27 or more would never be able to recover treble damages. At the same time, the victim of a bad check written for more
28 than \$750.00 would, at most, be able to recover the face value of the check and twelve percent interest only if the check
remained delinquent for at least one full year.

1 When presented with a question of statutory construction, the court begins with the language
2 of the statute, and when a statute, construed according to ordinary rules of grammar, is
3 unambiguous, the court should apply its plain meaning. *See Commonwealth Ports Auth. v.*
4 *Hakubotan Saipan Enter., Inc.*, 2 N.M.I. 214, 221 (1991). At the same time, the court should avoid
5 interpretations of a statutory provision which would defy common sense [or] lead to absurd results
6” *Id.* at 224. Where, as here, reasonable minds differ regarding the meaning of a statute and
7 insist that the plain meaning signifies diametrically opposite results, judicial construction is
8 appropriate. *See De George v. Cent. Dist. of California*, 219 F.3d 930 (9th Cir. 2000); *Yaldo v. North*
9 *Pointe Ins. Co.*, 217 Mich.App. 617, 620-621, 552 N.W.2d 657 (1996).

10 Plaintiff focuses on the word “plus” to interpret the statute. It argues that the issuer of a bad
11 check must be liable for the amount owing on the instrument “plus” interest or other damages
12 claimed or treble damages. Ironically, Defendant’s interpretation of the Act hinges upon the exact
13 same word, although Defendant argues that the word “plus” applies only to the recovery of interest
14 and “other damages.” Defendant maintains that in light of the statutory notice language, plainly
15 limiting the recovery of a claimant electing to recover treble damages to three times the amount of
16 the check, no other reading of the statute makes sense.

17 As an initial matter, the court finds that the Bad Checks Act was enacted to deter and
18 penalize those who issue fraudulent checks. Contrary to Plaintiff’s reading of the Act, however, the
19 court reads the statute to provide for only two remedies: (1) recovery of the face amount of the check
20 “plus” interest or other damages claimed, or, at the holder’s option, (2) treble damages up to a
21 maximum of \$750.00. *See Penny’s Store v. Taisacan*, App. No. 86-9028 (N.M.I. Dist. Ct., App.
22 Div. June 15, 1987) (excluding face amount of check from computation of statutory treble damages).
23 Consistent with the Appellate Division’s application of the statute, this court concludes that there
24 is no other way to read the statute in light of the statutory notice provision placing a ceiling of three
25 times the face amount of the check on any possible judgment.

26 Had the legislature in its wisdom intended for a victim of a dishonored check to recover the
27 face amount of the check along with treble damages, moreover, it would have expressly said so. A
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1 review of similar legislation, enacted by other jurisdictions to address civil penalties for the recovery
2 of dishonored checks, bears this out. *See, e.g.*, CAL. CIVIL CODE § 1719 (any person failing to pay
3 in full the amount of the check, lawful service charges, and costs of mailing the written demand
4 “shall then be liable instead for the amount of the check ... *and* damages equal to treble that amount,
5 which shall not be less than one hundred dollars ... nor more than one thousand five hundred dollars
6 ...”) (emphasis added); ILL. REV. COMP. STAT. ch. 720 § 5/17-1a (issuer of bad check liable for, “*in*
7 *addition to* the amount owing upon such check or order, damages of treble the amount owing...”)
8 (emphasis added); N.J. ST. ANN.2A:32A-1 (person issuing dishonored check “shall be liable to the
9 payee, *in addition to the amount owing upon the check...* for attorneys' fees, court costs and the costs
10 of mailing the written demand for payment and for damages in an amount equal to \$100 or triple the
11 amount for which the check...whichever is greater”) (emphasis added).^{3/} In contrast to those
12 jurisdictions enacting legislation expressly providing for recovery of the face amount of the check
13 as well as treble damages, the CNMI legislature enacted a statute requiring the victim of a
14 dishonored check to elect between remedies.^{4/} Permitting Plaintiff to recover quadruple the face
15 amount of the check thus not only runs contrary to what appears to the court to be two separate and
16 distinct options, but would disregard and render meaningless the maximum recovery provision, as
17 well.

20 ^{3/} *See also* GA. STAT. ANN. § 13-6-15 (person issuing bad or worthless check “shall be liable to the payee, *in addition*
21 *to the amount owing upon such check ...* for damages of double the amount so owing, but in no case more than \$500.00”)
22 (emphasis added); N.C. GEN. STAT. ANN. § 621.3 (maker of dishonored check “shall be liable to the payee (i) for the
23 amount owing on the check, the service charges, and processing fees and (ii) for additional damages of three times the
amount owing on the check, not to exceed five hundred dollars (\$500.00) or to be less than one hundred dollars
(\$100.00)”); S.C. CODE ANN. § 34-11-75 (maker will be “liable to the payee for the amount owing on the check *and* for
damages of the lesser of five hundred dollars or three times the amount owing on the check”).

24 ^{4/} *Compare, e.g.*, 7 CMC §§ 2441-2442 (any person failing to make good on dishonored check “shall be liable to the
25 payee for the amount owing upon such check plus interest at the rate of 12 percent per annum or other damages claimed
26 or, at the election of the payee, damages of treble the face amount of the check...) *with* COLO. REV. STAT. ANN. § 13-21-
109 (any person failing to make good on a dishonored check faces liability for: (a) the face amount of the check plus
27 damages determined under the U.C.C., or (b) the face amount of the check plus reasonable posted charges and an
additional twenty percent of the face amount, if the check has been assigned to a licensed collection agency, or (c) upon
proper notice, three times the face amount of the check, but not less than one hundred dollars).

1 With regard to Plaintiff's concern with disparate penalties, it is true that under the court's
2 interpretation of the statute, a person writing a bad check for \$250 would potentially be liable for
3 the amount of the check plus a \$500 penalty, while a person issuing a worthless check for \$1500
4 would likely face a maximum penalty of only \$180, provided that the check remained unpaid for at
5 least one year. Given the principal objectives of the statute, however, the limitation on damages
6 makes some sense. Even without the Bad Checks Act, the victim of a dishonored check written for
7 a large amount has every incentive to recover his loss by pursuing a civil action, while the victim
8 of a worthless check written for a small amount would, in all likelihood, be inclined simply to forget
9 the matter entirely. Restricting the option of treble damages to holders of worthless checks written
10 for smaller amounts thus provides these victims with an additional incentive to undertake collection.
11 At the same time, it furthers the statutory objective of deterring and penalizing those who issue
12 fraudulent checks.

13 **ORDER**

14 On the basis of the foregoing, the court makes the following ORDER GRANTING
15 Defendant's motion for declaratory judgment and limiting Plaintiff's recovery in this case to either
16 the face amount of the check plus interest at the rate of twelve percent per annum and other damages
17 as may be shown, or, alternatively, three times the face amount of each check (not to exceed \$750
18 on any one check) and attorney's fees as provided by statute. Plaintiff's motion for summary
19 judgment is DENIED.

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21 So ORDERED this 18th day of October, 2001.

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23 /s/ Timothy H. Bellas
24 TIMOTHY H. BELLAS, Associate Judge
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