

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

95 JUL 3 A 9 : 42

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

BANK OF HAWAII)	Small Claim Case No. 95-133
Plaintiff,)	
v.)	DECISION
NICK C. SABLAN and LUCY T. SABLAN,)	AND ORDER
Defendant.)	

This matter was heard before the Court on April 7, 1995. Defendant Nick C. Sablan argues that since he paid the amount owed on a returned check within thirty days from receipt of the demand letter as requested by Plaintiff Bank of Hawaii (BOH), he is not liable for penalties under 7 CMC § 2442.

I. ISSUE

Whether, under the Bad Checks Act of 1984 (Act), the thirty day period in which a payee must tender payment runs from the date a maker of a returned check receives the certified demand letter from the Postal Office.

FOR PUBLICATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II. FACTS

The Sablans received notice from BOH that a check drawn by Lucy T. Sablan on their joint account was refused because of insufficient funds. The letter demanded that payment of the check be made within thirty days from the date of the letter. The letter also contained a written demand, required to be included in all demand letters under the Act, which stated that under 7 CMC § 2442 if the Sablans failed to pay the check amount within thirty days of "delivery or mailing" of the letter, BOH could file suit against them to collect the amount owing as well as attorney's fees. The letter is dated December 13, 1994. The U.S. Postal receipt for the certified mail slip indicates that the letter was sent on December 14, 1994. The U.S. Postal certified card indicates that the Sablans received the demand letter on December 21, 1994. The Sablans tendered a check to BOH on January 20, 1995, thirty days after the date the letter was received.

m. ANALYSIS

The Sablans argue that the language contained in the demand letter provides them with thirty days from the date of "delivery or mailing" of the letter in order to pay the amount owed without being subject to suit, interest or treble damages. Conversely, BOH claims that although the language required to be contained in the demand letter is misleading, the statute in its entirety is clear: when sending a demand letter via certified mail the thirty day period runs from the date the demand letter is "mailed". What is clear is that if the thirty day period runs from the date the Sablans received the letter, December 21, 1994, the payment tendered on January 20, 1995 was timely. However, if the thirty day period runs from the date the letter was given to the Post Office, December 14, 1994, the payment was late. Thus, in order to determine the time period the Sablans could have tendered payment, this Court must apply the rules of statutory construction.

A statute is considered ambiguous when it is capable of more than one meaning. *Wisconsin Dept. of Revenue v. Nagle-Hart Inc.*, 234 N.W.2d 350, 352 (Wisc. 1975); *Sphere Drake Ins. Co. v. Litchfield*, 438 S.E.2d 275 (S.C.App. 1993). The standard for testing for an ambiguity is whether the language of the statute is confusing to a well-informed person. *Id.* Thus, when interpreting a statute, courts must

1 first analyze the language. *CPA v. Hakubotan Saipan Enter.*, 2 N.M.I. 212, 221 (1991); *Blue Cross &*
2 *Blue Shield of Alabama v. Weitz*, 913 F.2d 1544, 1548 (11th Cir. 1990). Unless the statute provides
3 otherwise, courts should adhere to the rule that words be given their plain meaning. *Id.*

4 The thirty day period is referred to in the Act in four places. First, the Act states that:

5 . . . one who fails to pay the payee the amount thereof together with such charges as may be
6 lawfully imposed by the bank within 30 days following a written demand delivered personally to
7 the maker, or **mailed to the maker by certified mail to the maker's address shown on the**
8 **check**, or mailed to such other address of the maker as may be actually known by the payee . .

8 7 CMC § 2442 (a) (emphasis added). Thus, when a demand letter is conveyed via certified mail, the
9 statute indicates that the thirty day period runs from the date the demand is “mailed” to the maker.
10 Second, Section (a) requires the following language to be contained in a demand letter as a condition for
11 the payee to be eligible to collect treble damages:

12 YOUR FAILURE TO PAY THE CHECK AMOUNT TOGETHER WITH ANY LAWFUL
13 CHARGES WITHIN 30 DAYS FOLLOWING DELIVERY OR MAILING OF THIS
14 NOTICE MAY RESULT IN A COURT JUDGMENT AGAINST YOU FOR THREE TIMES
15 THE AMOUNT OF THIS CHECK.

15 7 CMC § 2442 (a) (emphasis added). This paragraph is intended to give the maker conspicuous notice
16 in the demand letter that the thirty day period runs from “delivery or mailing.”

17 Third, Section (a) states:

18 The right to treble damages shall not accrue, and no action shall be brought therefore, until 30
19 days have passed from the **mailing or personal delivery** of the **written** demand of the payee
20 containing the notice.

20 7 CMC § 2442 (a) (emphasis added). Finally, Section (b) requires the following conspicuous language
21 to be contained in a demand letter in order for a court to award a payee attorney’s fees:

22 IF YOU FAIL TO PAY THE CHECK AMOUNT TOGETHER WITH ANY LAWFUL
23 CHARGES WITHIN THIRTY (30) DAYS OF DELIVERY **OR** MAILING OF THIS
24 WRITTEN DEMAND. . . .

24 7 CMC § 2442 (b) (emphasis added).

25 This Court finds that a well-informed person reading the Act would conclude that it is ambiguous
26 because it is capable of more than one meaning. The Act refers to a thirty day period which runs from:

27 1) the date the demand letter was “mailed;” 2) the “delivery or mailing” of the demand letter; and 3)

1 "mailing or personal delively" of the demand Moreover, by placing an "or" between the terms
2 "delivery" and "mailing" in the paragraphs required to be in the demand letter, the legislature created an
3 option: the maker could make the payment either thirty days after "delively" or thirty days after "mailing"
4 of the letter.' Moreover, when a maker receives a demand letter containing the citation to 7 CMC § 2442
5 as well as the language indicating he has thirty days from date of "delively or mailing" in which to pay
6 the amount owed, he is also under a duty to read that language in context of the entire Act. After doing
7 so, this Court concludes that a well-informed person would still be confused as to which standard to
8 follow. Thus, by solely examining the language of the Act, it is not clear to a maker the time in which
9 the thirty day period commences.

10 Other than the language of the Act, courts should take into consideration the intent of the
11 legislature and the effect the statute has on those it sought to effect.² *CPA v. Hakubotan*, 2 N.M.I. at
12 221; *Office of the Attorney General v. Cubol*, 3 C.R. 64, 73 (D.C.N.M.I. 1987); *Esta Later Charters,*
13 *Inc. v. Ignacio*, 875 F.2d 234, 239 (9th Cir. 1989). Ambiguities should be resolved in favor of a "just,
14 equitable, and beneficial operation of the law." *Bennett v. Sullivan's Island Board of Adjustment*, 438
15 S.E.2d 273,274 (S.C. App. 1993). Moreover, "a departure from the text is justified where language is
16 unclear or an apparent clarity leads to an absurd result." *Blue Cross & Blue Shield v. Weitz*, 913 F.D.
17 1544 (11th Cir. 1990).

18 The purpose of the statute is to "assist in protecting local citizens and businesses from individuals
19 who are in the habit of passing bad checks." Letter from Pedro P. Tenorio, Governor. to the Legislature
20 (Mar. 28, 1985) (on file with the Commonwealth Law Library). Unless the payee first provides the
21 maker with conspicuous notice in the demand letter indicating what actions the maker must take. and by

22
23 ¹ The terms "mailing" and "delivery" are not defined in the Act. However, mail is defined in
24 Black's Law Dictionary as "a letter, package or other mailable matter is 'mailed' when it is properly
25 addressed, stamped with the proper postage and deposited in a proper place for receipt of mail." Black's
Law Dictionary 858 (5th ed. 1979). Delivery is defined as "the act by which the res or substance therefor
is placed within the actual or constructive possession or control of another." Black's Law Dictionary 385
(5th ed. 1979).

26 ² Although the legislative history is useful when construing legislation, *Commonwealth v.*
27 *Hasinto*, 1 N.M.I. 377 (1990), there is no documented legislative history regarding the Bad Checks Act
of 1984.

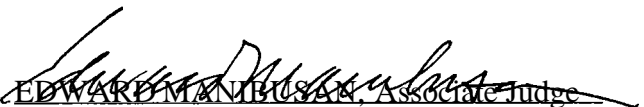
1 when, a court cannot award treble damages to the payee. Thus, although the legislation seeks to protect
2 citizens from those who pass bad checks, it also desires to provide makers with an second opportunity
3 in which to pay the amount owed before suit is filed or a penalty is awarded. Since this second chance
4 is for the benefit of the maker, it is imperative that the notice provide a clear understanding of when
5 payment must be made. It would be unjust to hold the maker to one standard when the Act expresses
6 three separate standards.

7 Thus, the Court finds that since the Act is ambiguous, the just and equitable result is to provide
8 the maker with thirty days from either the delivery or mailing of the demand letter in which to pay the
9 amount owed on the returned check. Therefore, since Mr. Sablan tendered the amount owed to BOH
10 on January 20, 1995, thirty days from the date the demand letter was received by him, this Court finds
11 that he did so within the time required by the Act.³

12 13 **III. CONCLUSION**

14 For the foregoing reasons this Court finds that since the Sablans paid the amount owed on the
15 returned check within thirty days, as required by Act, they are not liable for any other damages under the
16 Act.

17
18 So ORDERED this 3 day of July, 1995.

19
20 
21
22
23
24
25

26
27 _____
28 Until the legislature decides to more clearly define the time in which a maker can respond to
a demand letter, this Court will continue to issue rulings consistent with the present decision.