

PENNY'S STORE
vs.
Jesus TAISACAN

Appellate Nos. 86-9026
and 86-9028
District Court NMI
Appellate Division

Decided June 15, 1987

1. Appeal & Error - Standard of Review - Legal Conclusions
The Appellate Division reviews questions of law under the non-deferential de novo standard.

2. Attorneys' Fees - Bad Checks Act
Where statute provides that the court shall award not less than \$125 nor more than \$250 for each check written without sufficient funds, trial court's interpretation of the Bad Checks Act where the court awarded attorney's fees of \$250 where defendant wrote 14 bad checks was in error; proper award was \$1,750 computed under the statute at \$125 per check. 7 CMC §2442(b).

3. Damages - Bad Checks Act
Under the CNMI Bad Checks Act, any payments made after the 30-day statutory notice period should be applied against the statutory treble damages and not against the face value of the check before trebling the balance. 7 CMC §2442(a).

FILED
Clerk
District Court

JUN 15 1987

For The Northern Mariana Islands

[Signature]

1
2 IN THE DISTRICT COURT
3 FOR THE NORTHERN MARIANA ISLANDS
4 APPELLATE DIVISION

5 PENNY'S STORE,)
6 Plaintiff,)
7 vs.)
8 JESUS TAISACAN,)
9 Defendant.)

CONSOLIDATED APPEALS
NOS. 86-9026
86-9028

10 J.C. TENORIO ENTERPRISES)
11 Plaintiff,)
12 vs.)
13 ANA A. CAMACHO)
14 Defendant.)
15

OPINION

16 On appeal from the Commonwealth of the
17 Northern Mariana Islands Trial Court

18
19 BEFORE: LAURETA, DUENAS, FITZGERALD*, District Judges

20 DUENAS, District Judge:

21 FOR PLAINTIFFS-APPELLANTS:

22 WHITE, NOVO-GRADAC and THOMPSON, P.C.
23 P. O. Box 222 CHRB
24 Saipan, CM 96950
BY: MR. MICHAEL A. WHITE
Attorney at Law

25
26 *The Honorable James M. Fitzgerald, District Judge, U.S. District
Court, District of Alaska, sitting by designation.

These appeals are consolidated as both raise the identical issue, did the trial court err, as a matter of law, in computing statutory damages under the Bad Checks Act of 1984, 7 CMC Div. 1 Ch. 4, Art. 4 (hereinafter the "Bad Checks Act"). Penny's Store v. Taisacan, No. 86-9026, raises the additional issue whether the trial court erred, as a matter of law, in the manner of computing statutory attorney's fees under Section 2442(a) of the Bad Checks Act.¹

FACTS

Penny's Store v. Taisacan, No. 86-9026

Between December 22, 1984 and January 18, 1985, defendant Jesus Taisacan (hereinafter "Taisacan") drew a series of 12 checks, payable to Penny's; all were returned unpaid, marked "not sufficient funds." In accordance with 6 CMC §1704(c) and 7 CMC §2442 Penny's made demand by certified letter that payment on the checks be made within thirty days. On April 28, 1986, more than 30 days from the mailing and receipt of the certified letters, Taisacan paid \$500.00.

Penny' filed a complaint seeking statutory treble damages and attorneys fees in the respective sums of \$2101.69 and \$1,500.00. Taisacan having failed to appear, Penny's moved the trial court for the entry of default and a default judgment. Without a hearing on the issue of damages and attorney's fees the court rendered a default judgment awarding damages in the amount of \$1,775.09 and \$250.00 in attorney's fees. The court found:

///

1 The attorney's fee is awarded not on the basis of
2 how many checks were contained in the case but on
3 the basis of what is reasonable in the case. The
4 court interprets the Bad Checks Act to mean that
5 the plaintiff is entitled to attorney's fees if an
6 attorney files an action for a particular check.
7 Where several checks are included in one action,
8 the plaintiff is entitled to only one attorney's
9 fee for that action.

10 J.C. Tenorio Enterprises v. Camacho, No. 86-9028

11 Between September 21 and 25, 1985, J.C. Tenorio cashed or
12 accepted 14 checks drawn by Camacho. Each of the checks were
13 returned unpaid marked "insufficient funds."

14 Pursuant to 6 CMC §1704(c) and 7 CMC §2442, certified
15 letters were sent to Camacho demanding payment of the checks
16 within the statutory 30-day period. No payments were made on the
17 checks.

18 Thereafter suit was filed and process served on Camacho who
19 neither answered nor otherwise plead. J.C. Tenorio moved for the
20 entry of default and for a default judgment as prayed for in the
21 complaint. The trial court entered the default and granted a
22 default judgment for the principal amount prayed for in the
23 complaint together with statutory damages, but reduced J.C.
24 Tenorio's attorney's fees from \$1,750.00, as demanded, to \$250.00
25 finding that:

26 The counsel for Plaintiff is requesting attorney's
fees in the sum of \$1,750.00. Taking into
consideration the fact that the Defendant has been
defaulted and the only work the attorney has done
in this case is to file the complaint and the
motion for entry of default and default judgment.

1 the court is of the opinion that attorney's fees
2 in the sum of \$1,750.00 in this case is grossly
3 unfair, unreasonable and unconscionable. The
4 purpose of the Bad Checks Act of 1984 is to
5 compensate the payee for the amount of the bounced
6 check, expenses related thereto, and reasonable
7 attorney's fees. The purpose of the statute is
8 not to punish the maker nor to overpay the
9 attorney in a case.

6 ANALYSIS

7 Standard of Review

8 [] Questions of law are reviewed under the non-deferential de
9 novo standard. United States v. McConney, 728 F.2d 1195 (9th
10 Cir.), cert. denied, 105 S.Ct. 101 (1984).

11 Attorney's Fees Under the Bad Checks Act

12 Both Plaintiffs-Appellants brought suit, after the requisite
13 notice period, to collect damages pursuant to Section 2442 (a).
14 J.C. Tenorio sought the minimum attorneys fees to which it was
15 entitled by statute, \$125.00 per check for a total of \$1,750.00.
16 Instead, the trial court awarded attorney's fees in the amount of
17 \$250.00. Penny's also sought the minimum attorneys fees to which
18 it was entitled by statute, \$125.00 per for for a total of
19 \$1,500.00.

20 The Bad Checks Act of 1984, codified at 7 CMC Div. 2,
21 Chapter 4, Article 4, Section 2442(b), provides in pertinent
22 part:

23 In any action brought by the payee after the
24 notice period required to collect any sum pursuant
25 to subsection (a) of this section..., the payee
26 shall be entitled to reasonable attorneys fees as
the court may deem satisfactory; provided that
attorneys fees awarded in respect of each check

1 shall be not less than \$125.00 nor more than
2 \$250.00 with respect to each instrument.

3 A fundamental principle of statutory construction is:

4 A] statute, clear and unambiguous on its face,
5 need not and cannot be interpreted by a court and
6 that only statutes which are of doubtful meaning
7 are subject to the process of statutory
8 interpretation. 2A Singer, Sutherland Statutory
9 Construction, 645.02 (4th Ed.).

8 The CNMI legislature twice commented that a plaintiff under
9 the Bad Checks Act is entitled to attorney's fees for each check
10 and is entitled to a minimum and restricted to a maximum
11 attorney's fees for each such instrument.

12 The trial court's reasoning that the Bad Checks Act is no
13 compensate the payee not to punish the maker controvenes the
14 intent of the legislature which is to discourage and penalize
15 makers of bad checks.

16 [T]he imposition of treble damages and mandatory
17 award of attorneys' fees will discourage check
18 writers from uttering fraudulent check or checks
19 without sufficient funds. Standing Committee
20 Report No. 4-56 at 2.

19 [2] The language of the statute is clear. "In respect to each
20 ... check" courts shall award "not less than \$125.00 nor more
21 than \$250.00 with respect to each instrument." The trial court's
22 interpretation of the statute is clearly erroneous. Both cases
23 are reversed with instructions to enter judgment for attorney's
24 fees in Penny's Store v. Taisacan, No. 86-9026, in the sum of
25 \$1,500.00 and in J.C. Tenorio v. Camacho, No. 86-9028, in the sum
26 of \$1,750.00.

1 Statutory Damages

2 Penny's raises the additional issue on appeal of the
3 application of the \$500.00 payment by Taisacan. The trial court
4 applied the \$500.00 to the principal. Penny's urges that the
5 \$500.00 payment made after the running of the 30-day period
6 should be deducted from the treble damages to which the payee is
7 entitled and not against the face value of the checks
8 themselves.²

9 The trial court found:

10 IT IS HEREBY ADJUDGED that plaintiff shall
11 have and take judgment over and against the
12 defendant for the principle sum of \$1,775.09, plus
13 \$250 of attorney's fees, plus \$45.00 of court cost
and interest on the total judgment at the rate of
9% per year commencing on the date of this
judgment.

14 Section 2442(a):

15 Any person who makes, utters, draws or delivers
16 any check, payment of which is refused or dishonored
17 due to lack of funds or credit to pay,...and who
18 fails to pay to the payee the amount thereof within
thirty days following a written demand...mailed to
the maker by certified mail...shall be liable to the
payee...

19 In computing the above judgment, the court first deducted
20 the \$500.00 by eliminating the checks marked Exhibits A, B, C, D.
21 and \$2.00 of the check marked Exhibit E. The court's
22 interpretation of the Bad Checks Act of 1984 is that any partial
23 payment on the check shall be deducted first before the unpaid
24 balance is tripled to determine the treble damages. The
25 principle amount in the judgment is arrived at by deducting the
26 \$500.00 and then multiplying the unpaid balance times three.

1 The Bad Checks Act was enacted to deter and penalize these
2 who issue fraudulent checks. The language of the act is clear.
3 If a payor issues a bad check and the payee makes the requisite
4 demand the payor of the check must pay the full amount of the
5 check within 30 days or be liable to the payee for statutory
6 damages as specified therein.

7 Instead of awarding \$2,101.69 the trial court awarded
8 Penny's \$1,775.09. As noted earlier the court computed Penny's
9 damages by eliminating exhibits A through D, inclusive and \$2.00
10 of Exhibit E, then calculated the treble damages based on
11 Exhibits F through L and Exhibit D less \$2.00.

12 [5] The Bad Checks Act is not ambiguous. Any payments made
13 after the 30-day statutory notice period should be applied
14 against the statutory damages.

15 If the payee does not make this payment within the
16 allotted time, the amount owing shall accrue
17 interest at the rate of 12% or in the alternative
the payee may recover treble damages. House
Standing Committee Report No. 4-56 at 2.

18 The trial court's interpretation of the Bad Checks Act that
19 partial payment on the check after the thirty day statutory
20 period shall be deducted first before the unpaid balance is
21 trebled contraverts the letter and spirit of the Act. Penny's is
22 entitled to \$2,603.39.³

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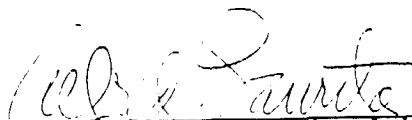
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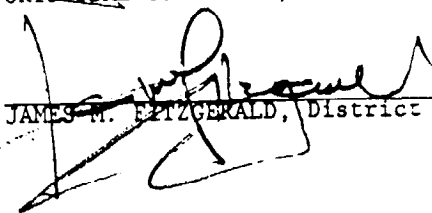
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1 Both Penny's Store v. Taisacan, D.C.A. 86-9026, and J.C.
2 Tenorio v. Camacho, D.C.A. 86-9028 are reversed and remanded with
3 instructions to enter judgment in favor of plaintiffs-appellants
4 in the amounts demanded.

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ALFRED LAURETA, District Judge


CRISTOBAL C. DUENAS, District Judge


JAMES M. FITZGERALD, District Judge

FOOTNOTES

^{1/}Default Judgments were rendered in both cases. Neither defendants appeared on appeal.

^{2/}Penny's calculates its damages as follows:

<u>Exhibit No.</u>	<u>Amount of Check</u>	<u>Statutory Damages Claimed</u>
A	\$125.00	\$375.00
B	33.00	99.00
C	299.00	750.00
D	15.00	50.00
E	30.00	90.00
F	17.15	51.45
G	38.00	114.00
H	45.00	135.00
I	17.00	51.00
J	30.98	92.94
K	16.10	48.30*
L	399.00	750.00

Subtotal	\$2,601.69
Partial Payment	- <u>500.00</u>
	\$2,101.69

^{3/}The difference of \$1.30 is based on the statutory minimum of \$50.00 which was not applied to Exhibit K.