REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2016-03786

BETWEEN

EVA SEETAL-KONG

Claimant

AND

HER WORSHIP MAGISTRATE MARISSA GOMEZ

Defendant

Before the Honourable Mr. Justice Robin Mohammed

Date of Delivery: **Tuesday 9 June 2020**

Appearances:

Mr. David Hannays for the Claimant

Ms. Sasha Sukhram instructed by Ms. Svetlana E. Dass for the Defendant

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JUDGMENT ON THE CLAIMANT'S APPLICATION FOR JUDICIAL REVIEW OF THE DEFENDANT'S DECISION MADE ON 3 AUGUST 2016

I. Introduction

[1] On 18 November 2011, the Claimant was charged by Police Constable Lawrence Joefield Regimental No. 16904 with the offence of obtaining property by use of dishonoured cheques. The charge was laid in accordance with **section 3(1)** of the **Negotiable Instruments (Dishonoured Cheques) Act, Chap 79:52**. The Claimant appeared before the Defendant at the Tunapuna Magistrates' Court on several occasions.

[2] On 15 June 2016, at the close of the Prosecution's case, Counsel for the Claimant, Mr. David Hannays, made a no-case submission on her behalf. Mr. Hannays specifically referred the Defendant to **section 7 sub-sections (1) and (2) of the Negotiable Instruments (Dishonoured Cheques) Act** which deal with the timeframe within which a prosecution must be commenced. On 5 July 2016, the Prosecution responded to the Claimant's no-case submission.

[3] The Defendant, upon considering the Claimant and the Prosecution's submissions, rejected the no-case submission made on behalf of the Claimant. The Defendant gave her decision on 3 August 2016 and called upon the Claimant to answer the case made against her.

[4] The Claimant, in response, sought leave of the High Court to apply for judicial review of the Defendant's decision made on 3 August 2016 in dismissing the no-case submission. This Court granted leave by Order dated 15 February 2017. The Court also granted as an interim relief a stay of all proceedings in relation to complaint #7067/2011 before Her Worship Magistrate Marissa Gomez pending the outcome of the application for judicial review. The Court further ordered that leave was granted conditional upon the Claimant making a claim for judicial review within 14 days from date of the said order pursuant to **Part 56.4(11) of the Civil Proceedings Rules 1998**.

[5] Accordingly, by Fixed Date Claim Form supported by an affidavit of the Claimant, both filed on 1 March 2017, the Claimant sought, *inter alia*, the following relief:

a) A Declaration that the decision of the Respondent that the charge laid by the Complainant on the 18th day of November 2011 as set out in complaint number 7067/2011 and dismissing the Intended Applicant's no case submission which was based on a proposition that the Respondent was without jurisdiction to proceed to hear the complaint is contrary to section 7(1) and (2) of the Negotiable Instruments (Dishonoured Cheques) Act Chap 79:52, ultra vires, illegal, null and void and of no legal effect;

b) An Order of Certiorari removing into the High Court and quashing the said decision of the Respondent;

c) An Order of Mandamus compelling the Respondent to dismiss the charge against the Intended Applicant dated the 18th day of November 2011 as set out in complaint number 7067/2011;
d) Costs; and
e) Such further other orders, directions or writs as the Court considers just and as the circumstances of this case warrant pursuant to section 8(1)(d) of the Judicial Review Act 2000.

[6] The grounds in the Fixed Date Claim Form upon which the application is based are as follows:

a) Failure to satisfy or observe conditions or procedures required by law;
b) Conflict with the policy of the Act namely the **Negotiable Instruments (Dishonoured Cheques) Act, Chap 79:52**;
c) Excess of jurisdiction;
d) Error of law; and
e) Unauthorized or contrary to law.

[7] Attorney-at-law for the Claimant, Mr. Hannays, filed a supplemental affidavit to the Claimant's affidavit to attach the Notes of Evidence of the Defendant's decision made on 3 August 2016.

[8] The Defendant filed and served an affidavit in response on 19 January 2018 and a supplement affidavit on 28 March 2018 which contained the Notes of Evidence of the relevant proceedings against the Claimant before the Tunapuna Magistrates' Court.

[9] The Court, thereafter, gave directions for the filing and exchange of written submissions by the parties to be complied with on or before 14 June 2018. On 12 June 2018, the Defendant filed her written submissions in accordance with the directions of the Court. The Claimant, however, failed to comply and to date, has not filed any written submissions in support of her application for judicial review. Notwithstanding the Claimant's failure to file written submissions, the Claimant's case will still be given the full effect of the law.

II. Factual Background

[10] The Claimant was charged by PC Joefield on 18 November 2011 in accordance with the **Negotiable Instruments (Dishonoured Cheques) Act, Chap 79:52** (hereinafter "**the Act**"). The particulars of the charge are set out in complaint #7067/2011 as follows: the Claimant, during the period 19 November 2010 and 30 November 2010 at St. Joseph, being the Director of Kong's Family Supermarket Ltd situate at #1 Acono Junction, Maracas Royal Road, St. Joseph and acting as an agent for and on behalf of Kong's Family Supermarket Ltd, obtained from Ramdeo Rampersad of LP 525 Chase Village, Chaguanas, a quantity of hardware material together valued at $11,947.00 by use of 2 dishonoured cheques namely, Scotiabank Trinidad and Tobago Limited, Trincity Mall, Trincity Branch cheque number "000001" dated 9 September 2010 in the sum of $6,000.00 and cheque number "000002" dated 17 September 2010 in the sum of $5,947.00 both made payable to R. Rampersad and both drawn on account number 1201088 held in the name of Kong's Family Supermarket Ltd contrary to **section 3(1) of the Act**.

[11] The Prosecution led evidence from four witnesses namely: (1) Police Constable Lawrence Joefield, the Complainant; (2) Police Constable Vinelle Bassarath Regimental No. 16136, the arresting officer; (3) George Fuller, Assistant Manager of Scotiabank, St James Branch; and (4) Ramdeo Rampersad, the Virtual Complainant.

[12] According to the Claimant, the evidence led by the Prosecution was as follows: the Virtual Complainant testified that he approached the Claimant at her place of business for the first time at #1 Acono Junction, Maracas, Royal Road, St. Joseph and sold her various hardware material valued at $11,947.00 for her business. The Virtual Complainant received 2 post-dated cheques one dated 9 September 2010 in the sum of $6,000.00 and one dated 17 September 2010 in the sum of $5,947.00 both payable to "R. Rampersad". The Virtual Complainant delivered the goods on 3 September 2010 and received the 2 cheques on that day. The Virtual Complainant testified that he never saw the Claimant again; she would not take his calls and she hid from him. Mr. Fuller testified that on the date the said cheques were presented for payment, the Claimant's company's account did not have sufficient funds for the said cheques issued and there was no overdraft facility granted to the Kong's.

[13] At the close of the Prosecution's case, Mr. Hannays submitted that the case against the Claimant was out of time and therefore the Magistrates' Court had no jurisdiction. In support of his submission, Mr. Hannays quoted **section 7(1) and (2) of the Act**. He pointed out that all persons who were charged under the Act fall into one of two categories. Category one refers to when a person who sought to settle the matter in one way or another after having issued the said dishonoured cheques; that person cannot be prosecuted until 10 days after he/she receives a notice or a protest. Category two refers to a person who knows that he/she had no funds in his/her account at the time of the utterance and was incapable of paying the debt; that person cannot get the benefit of the relief provided in subsection (1).

[14] Mr. Hannays advanced that the evidence led by the Prosecution fell into subsection (2) and therefore, the right to prosecute arose from the date of the utterance of the said cheques and if this argument was correct, the charge will fail as it will be out of time under **section 8 of the Act**. As a result, the Magistrate had no jurisdiction in this matter. The Magistrate, however, rejected Mr. Hannays' argument and relied on **section 3(3) of the Act**. The Claimant stated that she was informed and verily believed that this section is only to be used if any doubt arises from the evidence when or if an offence is committed. There is no such doubt arising in this case and **section 3(3) of the Act** does not come into effect.

[15] According to the Defendant, the Prosecution made submissions in response pointing out that **section 3(3) of the Act** was the governing provision as to when an offence was committed. This was at the time when the cheque is presented for payment and is dishonoured and that "*presented for payment*" meant when the cheque was deposited at the bank. The Prosecution's submission was that the cheque was dishonoured on 19 November 2010 and as a result, the Claimant was prosecuted within the stipulated time period.

[16] The Defendant gave her decision on the no-case submission on 3 August 2016 overruling the no case submission. The Defendant agreed that the limitation period for prosecuting the offence was one year under **section 8 of the Act**. She indicated that she was guided by **section 3(3) of the Act** which is clear as to the time when an offence is committed under the Act.

[17] Accordingly, the Defendant disagreed with Mr. Hannays that she should look solely at **section 7 of the Act** and disregard **section 3 of the Act**. She stated that she was asked to consider the limitation of time for prosecution in summary cases under **section 8 of the Act** and that it is inextricably linked to **section 3(3) of the Act**.

[18] The Defendant stated that she pointed out that she was guided by **section 3(3) of the Act** and that the literal interpretation of the legislation was clear and unambiguous. She further pointed out that **section 3(3) of the Act** was an amendment to the legislation brought about in 2005 by ***Act No 19 of 2005***. She quoted an extract from the *Hansard for debate in the House of Senate on the Administration of Justice Bill (Miscellaneous Provisions), 2005* to amend certain parts of *the Negotiable Instruments (Dishonoured Cheques) Act* by the then Attorney General, John Jeremie cited at paragraph [32](iv) below. Accordingly, the Defendant was convinced that the offence is committed when the cheque is presented for payment and dishonoured.

[19] The Defendant further set out why she thought that **section 7 of the Act** was not relevant. She clearly stated that **section 7 of the Act** bore no relevance to the limitation of time to bring the charge to the Court. All that it stipulates is that no charge can be laid until the 10-day period after serving the notice or proof of dishonour has passed and that a person cannot avoid prosecution if he has the requisite *mens rea*.

[20] In that regard, the Defendant overruled the no-case submission made by Mr. Hannays. She indicated that she did not agree that her decision was without jurisdiction. She believed that she acted in accordance with the clear provisions of the **Negotiable Instruments (Dishonoured Cheques) Act** and that it would have been improper to act contrary to what is clearly formulated therein.

III. Issue

[21] The sole issue which arises for determination is as follows:

Whether there is evidence to show that the Defendant, when giving her decision on the no case submission, misapprehended the facts and/or law or that she gave no weight to material considerations and/or was influenced by matters that should not have been considered.

IV. Law and Analysis

[22] It is well established that in an application for judicial review, the Court does not exercise an appellate function but directs its attention to the decision making process. This means that judicial review is normally directed solely to that material which was before the decision-maker. The Court is concerned with the process by which a decision has been made and not the substance or merits of the decision: **R v Manchester Crown Court ex parte McDonald**[1].

[23] The Court finds it useful to distinguish the Court's decision-making process when ruling on a judicial review application as opposed to an appeal. Lord Brightman in **Chief Constable of The North Wales Police v Evans**[2], described judicial review as follows:

> "*Judicial review is concerned, not with the decision, but with the decision making process…Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made*."

[24] Morris P in **Bailey v Flood Tribunal**[3] expounded on the distinguishing feature of judicial review as follows:

> *"The function of the High Court in an application for judicial review is limited to determining whether or not the impugned decision was legal, not whether it was correct. The freedom to exercise discretion necessarily entails the freedom to get it wrong, this does not make the decision unlawful."*

[25] It must therefore be determined whether there is evidence to show that the Defendant, when giving her decision on the no-case submission, misapprehended the facts and/or law, or that she gave no weight to material considerations and/or was influenced by matters that should not have been considered.

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[1] [1999] 1 WLR 841
[2] [1982] 3 All ER 141 at 154
[3] 2000 unreported

[26] Relevant considerations are provisions to which the legislation expressly or implicitly requires the Magistrate to have regard[4]. Lord Greene in **Associated Provincial Picture Houses Ltd v Wednesbury Corporation**[5] stated as follows:

> *"If, in the statute conferring the discretion, there is to be found expressly or by implication matters which the authority exercising the discretion ought to have regard to, then in exercising the discretion, it must have regard to those matters."*

[27] Whether something is a relevant consideration is a matter for this Court to decide. Lord Keith in the House of Lords case of **Tesco Stores Ltd v Secretary of State of the Environment**[6] stated that -

> *"…it is for the courts, if the matter is brought before them, to decide what a relevant consideration is. If the decision maker wrongly takes the view that some consideration is not relevant and therefore has no regard for it, his decision cannot stand and he must be required to think again. But it is entirely for the decision maker to attribute to the relevant considerations such weight as he thinks fit, and the courts will not interfere unless he has acted unreasonably in the Wednesbury sense."*

[28] The relevant provisions of the **Negotiable Instruments (Dishonoured Cheques) Act** to be considered in the determination of this application are as follows:

> **Section 3(1)**
>
> ***Notwithstanding any other written law, a person commits an offence when he obtains property or services by use of or in contemplation of a dishonoured cheque.***
>
> **Section 3(3)**
>
> ***For the avoidance of doubt, an offence under this Act is committed at the time when a cheque is presented for payment and it is dishonoured.***

[4] Jonathan Auburn et al. Oxford University Press (2013). Judicial Review Principles and Procedure. Para. 14.10
[5] [1947] 2 All ER 680
[6] (1995) 1 WLR 759 HL

Section 7(1)

Where a person obtains property or services by uttering or passing a cheque and the uttering or passing is not accompanied by the bona fide belief that there are sufficient funds to his credit with the drawee to cover the cheque and the cheque is dishonoured, he shall not be liable to be prosecuted if—

(a) he pays to the payee in cash the amount of the cheque; or

(b) he makes arrangements with and satisfactory to the drawee or payee to satisfy the amount represented by the cheque,

within a period of ten days after he receives notice or protest of the dishonour from the drawee, and no prosecution under this Act shall be commenced until the expiration of that period.

Section 7(2)

Subsection (1) does not apply to a person who obtains property or services by uttering a dishonoured cheque if at the date of the utterance he—

(a) knew he did not have sufficient funds in his account and was incapable of funding the account within ten days from the date of the utterance; or

(b) did not have an account with the drawee.

Section 8

Notwithstanding any law to the contrary, an offence committed under this Act and charged summarily may be prosecuted at any time within one year after the commission of the offence.

[29] Mr. Hannays's no-case submission made at the magisterial proceedings was very brief and can be cited hereunder:

"Ma'am, in my first application, it was confirmed by you – which I agree with – that the date of prosecution is 18th November 2011. That has been settled. We now want to refer you to when it should have begun – the date of prosecution. For that I draw your attention to paragraph 7 of the Act (the Negotiable Instruments (Dishonoured Cheques) Act). And I draw

<u>your attention to 7.(1) and 7.(2) which deal with prosecution</u> [cited section 7 of the Act thereafter] ….

Now, "utterance" as described here, is when the cheque is delivered to the person; in this case, delivered to the Virtual Complainant. Then this Act sets out in each dishonoured cheque, two categories: one you are genuinely trying to pay back and one where you have no intentions of paying back at all.

The one where you genuinely want to pay back, they give that person time – ten days after a notice is served on them. On the second one, however, it says that no such allowance is given, and after ten days of the utterance – which is when the Virtual Complainant received the cheque – then is when the prosecution begins. Then if that is so, the evidence is that the cheque was uttered on 3 September 2010 – September 2010, yes. On that date if you add 10 days to it, is 19 September 2010. So from 20 September, the case of the prosecution could have been brought.

Now, my client falls into the second category, because the only evidence you have in this case is that of the Virtual Complainant who, no doubt, shows that she is dishonest – that she cannot fall under the first paragraph, 7(1). She cannot. Therefore, it must be fall into subsection (2) and therefore, the right to prosecute would have started on 19th or 20th September 2010.

As we have already agreed, the date of the information laid was 18th November, which is 2 months out of that. Therefore, if that is the case, the charge against my client cannot be pursued as there would be no jurisdiction in this matter. The Magistrate would have no jurisdiction in this matter…

So my position is that my client, therefore, has not been properly charged. It is out of time and therefore, the case should be dismissed."

[30] As stated above, Mr. Hannays did not file any written submissions on behalf of the Claimant. Nevertheless, from the Fixed Date Claim Form and the Claimant's affidavit in support, the Claimant's contentions can be summarized as follows:

(i) Based on the evidence before the Magistrates' Court, the Claimant could only fall within **section 7(2) of the Act** which directs that the prosecution of a

defendant can start ten days from the utterance of the cheques. At the time that the charge was filed, one year had elapsed and therefore, the charge was statue-barred.

(ii) The interpretation of "*utter*" in **section 2(4) of the Act** is the date when a drawer… delivers a cheque or causes it to be delivered to a person who thereby acquires a right against the drawer with respect to cheque so uttered. The Magistrate rejected this argument and preferred to rely on **section 3(3) of the Act**.

(iii) **Section 8 of the Act** requires the offence to be prosecuted at any time within one year after the commission of the offence, which says the offence, to avoid doubt, is deemed to have been done by the person when the said cheques were dishonoured. No doubt arises as to the facts and when the said cheques were uttered and therefore, it is clear that the time the prosecution was filed is 18 November 2011. This charge was laid outside the statutory time limit. Consequently, the Magistrate had no jurisdiction to continue with the proceedings and ought to have dismissed the charge against the Claimant.

(iv) The Magistrate acted contrary to law more particularly **sections 7(1) and (2) of the Act** and therefore, the decision to dismiss the no-case to answer submission of the Claimant and to continue the proceedings is ultra vires, null, void and of no legal effect and in excess of jurisdiction of the Defendant.

[31] On the other hand, it is the Defendant's case that the argument that the time period for prosecuting the offence had expired was an argument to be made at the beginning of the trial since it did not form the basis of a no-case submission. Nevertheless, the Defendant considered the submission and agreed that the limitation period for commencing prosecution was one year under **section 8 of the Act** and that she was guided by **section 3(3) of the Act** as to when the commission of the offence was deemed to have taken place. Furthermore, the argument that **section 3(3) of the Act** was to be disregarded and that the Defendant should solely have considered **section 7 of the Act** was not accepted. The Defendant concluded that the Claimant was charged within the statutory period.

[32] The Defendant's decision on rejecting the no-case submission can be summarized as follows:

(i) The Defendant considered **section 8 of the Act** which states that an offence committed under the Act and charged summarily, which was done in this matter, may be prosecuted at any time within one year after the commission of the offence. As it relates to when the Claimant committed the offence, the Defendant stated that she was unsure as to where Mr. Hannays got the date of 3rd September 2010 since that date was not reflected in her notes of evidence from the Virtual Complainant.

(ii) The Defendant drew Mr. Hannays' attention to **section 3 of the Act** (which the Prosecutor made reference to in his response submissions), in particular to subsection (3) which states that for the avoidance of doubt, an offence under this Act is committed at the time when a cheque is presented for payment and is dishonoured.

(iii) The Defendant disagreed that she must look solely at **section 7 of the Act** and that **section 3 of the Act** bore no relevance to this issue and deals solely with how the Act was committed and does not deal with when you can issue a warrant.

(iv) The Defendant stated that the literal interpretation of the legislation is clear and unambiguous. Nonetheless, for the interpretation of **section 3(3) of the Act**, the Defendant referred to the *Hansard for debate in the House of Senate on the Administration of Justice Bill (Miscellaneous Provisions), 2005* to amend certain parts of *the Negotiable Instruments (Dishonoured Cheques) Act*. The then Attorney General, John Jeremie, stated that there was some ambiguity in the original legislation as to when an offence was precisely committed. Mr Jeremie stated that -

> "*A new subsection (3) is also added to section 3 to clearly spell out the date when an offence is committed under this Act; that is the time when it is presented for payment and dishonoured. The Fraud Squad has pointed out that the Act is not clear whether an offence is committed on the date the cheque is issued, the date when it is presented for payment, or the date of the notice of dishonour sent by the bank to the drawer; that too is a loophole. To avoid this ambiguity, the date of the commission of an offence under the Act is set out in clause 15d. That is another loophole which we seek to cure this afternoon.*"

(v) The Defendant considered the evidence before her: Cheque No. 1 dated 9 September 2010 was presented to Inter-Commercial Bank Limited by Mr. Rampersad on 18 November 2010. Cheque No. 2 dated 17 September 2010 was presented to Inter-Commercial Bank Limited by Mr. Rampersad on 29 November 2010. Mr Fuller testified that both of these cheques would have arrived at Scotiabank, on 19 November and 30 November 2010 respectively. On these respective dates, the account belonging to the Claimant had insufficient funds and hence, they were both stamped "*Refer to Drawer*" and were respectively dated 19 November and 30 November 2010. According to the Defendant, these were the crucial dates which she had to bear in mind and this is when the prosecution begins; not as Counsel suggested – the date when the cheques were delivered, uttered or presented to the Virtual Complainant.

(vi) According to the Defendant, the offence was committed on 19 November 2010, when the cheque was dishonoured. To that end, the charge was laid just in time.

(vii) The Defendant, during her decision, stated that as a result of her findings, she did not think it necessary for her to address in detail Mr. Hannays' submissions regarding the relevance of **section 7 of the Act**. Nevertheless, the Defendant still considered section 7 and stated as follows:

> "*section 7(1) creates a sort of -- I shall use the parlance "bly" – to an individual whereby he shall not be liable to prosecution for an offence under the Act if he pays to the payee, in cash, the amount of the cheque, or he makes satisfactory arrangements with the drawee or payee to satisfy the amount of the cheque within ten days of receiving notice or protest of the dishonour, and no prosecution shall be commenced until the expiration of that period. In other words, no charges shall be laid in the intervening ten-day period, as a way of giving the individual time to pay back the amount on the cheque. Section 7(2) says that this notion of a "bly" does not apply to a person who obtains property or services by uttering a dishonoured cheque if, at the date of the utterance he: (a) knew he did not have sufficient funds in his account and was incapable of funding the account within ten days from the date of the utterance; or (b) did not have an account with the drawee. That is all section*

7(2) states. The person cannot avoid prosecution under these circumstances. Section 7 bears no relevance, per se, to the limitation of time to bring the charge to the Court. All it stipulates is that no prosecution or charge can be laid until the ten-day after serving a notice has passed and that a person cannot avoid prosecution if he had the requisite mens rea."

[33] The Court finds that on a literal interpretation of **section 3(3) of the Act,** there is no ambiguity or absurdity. **Section 3(3) of the Act** is explicit and unequivocal as to when an offence is committed under the Act, that is, when the cheque is presented for payment and is dishonoured and not when the cheque is uttered or delivered to the payee. This is confirmed in the *Hansard for debate in the House of Senate on the Administration of Justice Bill (Miscellaneous Provisions), 2005* quoted above at paragraph [32] (iv). Further, the limitation of time for prosecuting an offence under the Act in summary cases is one year after the commission of offence, that is, the date when the cheque is presented for payment and is dishonoured. In this matter, the evidence before the Magistrates' Court was that Mr. Rampersad received the two cheques on 3 September 2010 which were dated 9 September 2010 and 17 September 2010. He attempted to deposit one cheque on 19 November 2010 and the other on 29 November 2010, however, they were both dishonoured and returned on 19 November 2010 and 30 November 2010 respectively with the words "*Refer to drawer*" written thereon.

[34] The Defendant considered this evidence before her and concluded that the offence as committed by the Claimant was on 19 November 2010 and 30 November 2010 when the cheques were presented to Inter-Commercial Bank Ltd for payment and were dishonoured. Accordingly, prosecution of the offence ought to have been within a year of 19 November 2010 and 30 November 2010. Thereafter, the charge was laid on 18 November 2011. In this regard, the Court is of the opinion that there was no misapprehension of the facts and the law on the part of the Defendant when she found that the charge against the Claimant was laid within the statutory period though in the nick of time.

[35] The Court is of the view that the Defendant, in considering the no-case submission, did in fact take into account **section 7 of the Act**. She, however, concluded that it was irrelevant in the proceedings before her. The Court agrees with the Defendant's submission that **section 7 of the Act** speaks to instances where charges are to be laid/when prosecution can commence. **Section 7(1)** specifies the instances as (i) where the drawer pays to the payee the amount of the cheque in cash; or (ii) where the drawer makes satisfactory arrangements to the bank or payee to satisfy the amount represented by the cheque. In these instances, prosecution under the Act ought not to commence until the expiration period of ten days from the date that the drawer receives notice or protest of dishonour from the drawee. However, the uttering or passing of a cheque must be accompanied by *bona fide* belief that there are sufficient funds to the drawer's credit with the drawee to cover the cheque. **Section 7(2)**, however, states that the grace period of ten days does not apply where the drawer did not have sufficient funds in his account or if he did not have an account with the drawee at the date of utterance of the cheque.

[36] However, in the matter at bar, the Claimant and the Defendant have both attached two separate interpretations of **section 7 of the Act** as it relates to prosecution. The Court of Appeal in **Nadine Nabie & Michelle Mayers v The Law Association of Trinidad and Tobago and The Attorney General of Trinidad and Tobago**[7] held that in construing particular provisions of a statute, the court may employ internal aids, such as other provisions in the same statute. The court may also employ external aids, such as the historical background, reports of advisory committees, or records of parliamentary debates. The Court of Appeal referred to and applied with approval the House of Lords case **Pepper v Hart**[8], where it was held by the House of Lords that where legislation was ambiguous or obscure or led to absurdity, Parliamentary material consisting of one or more statements of a Minister or other promoter of a Bill, could be used as an aid in construction, provided that the statements relied upon are clear.

[7] Civil Appeal No 72 of 2012
[8] (1993) AC 593

[37] In that regard, in identifying the mischief at which the legislation was directed and its objective setting, the Court finds it necessary to look at the *Hansard for debate in the House of Representatives on the Negotiable Instruments (Dishonoured Cheques) Bill, 1998.* On 16 January 1998, the Bill was read for a second time. The then Attorney General, Mr. Ramesh L. Maharaj stated that the object of this Bill was as follows:

> *"The object of this Bill is to remedy some deficiencies which exist in the law, insofar as dishonoured cheques are concerned. It is intended by this Bill to prosecute on a summary basis, any person who utters or passes a cheque on a non-existing account, an account with no funds, or an account with insufficient funds, or a person who has no credit facilities to cover the cheque, person or business institution.*
>
> *The Bill attempts to provide a mechanism for compensation by an order of restitution in favour of any person who has been adversely affected by the presentment of the dishonoured cheque."*

[38] Mr. Maharaj stated that as a result of increased incidences of the issue of cheques which are dishonoured upon presentment, the business sector made representations that the issue of bounced cheques should be made a criminal offence. However, there should also be some sort of provision for restitution and for there to be a balance in order to give people the opportunity to pay the amount of money of the cheque within a particular time. In relation to **section 7 of the Act**, he said that:

> *"The Bill will amend the law by making the presentment of a cheque which is dishonoured a criminal offence, unless the presenter of the cheque can establish a reasonable belief that at the time he wrote the cheque there were sufficient funds in the account which would enable the cheque to be honoured…*
>
> *What this Bill attempts to do is provide some mechanism whereby there would be criminal sanctions in respect of any such act, but there would also be some avenue wherein if cheques are so written the persons who write the cheques, if for some reason the moneys were not there to pay the amount, there would be some period of time to pay, in order to show that there was this good intention. One knows that a prosecution cannot be completed in 10 days, therefore, although it makes it an offence, it does*

provide a defence if it is shown that the person had the intention. That is to say, he did some other thing which shows that he had the intention, perhaps he thought the money was there, but as soon as he found out it was not, he actually paid within 10 days or made arrangement for it to be paid."

[39] It is explicit that the purpose of **section 7 of the Act** is to permit a drawer to show that he had a good intention of paying the amount of the cheque by allowing the drawer to repay the amount within a ten-day period without being prosecuted until the expiration of that period.

[40] Having regard to the Hansard above, the Court agrees with the Defendant that **section 7 of the Act** is only applicable in circumstances where an attempt is made by the person who uttered or passed the cheque to repay the amount of cheque. Furthermore, there was no evidence placed before the Defendant that the Claimant attempted to repay or make arrangements to repay the amount of the cheque to Mr. Rampersad. Accordingly, the Defendant did not act contrary to **section 7 of the Act** when she ruled that **section 7** was irrelevant in the proceedings before her.

[41] In that regard, the Court finds that the Defendant acted within the parameters of the law when she overruled the Claimant's no-case submission on 3 August 2016.

V. Disposition

[42] **In light of the above analyses and findings, the Claimant's claim for judicial review must fail with the attendant order for costs. Accordingly, the order of the Court is as follows:**

ORDER:

1. **The interim relief granted on 15 February 2017 staying all proceedings at the Magistrates' Court before the Defendant touching upon the proceedings at bar be and is hereby recalled and discharged.**

2. **The Claimant's application for judicial review by way of Fixed Date Claim filed on 1 March 2017 be and is hereby dismissed.**

3. **The Claimant shall pay to the Defendant costs of the Claim to be assessed in accordance with Part 56.14(5) of the Civil Proceedings Rules 1998, in default of agreement.**

4. **In the event that there is no agreement on the quantum of costs, then the Defendant shall file and serve a Statement of Costs on or before 10 July 2020.**

5. **Thereafter, the Claimant to file and serve objections to items on the Statement of Costs, if any, on or before 31 July 2020.**

6. **The assessment of costs shall be dealt with without a hearing and the decision on quantum delivered on a date to be notified.**

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Robin N. Mohammed
Judge