

100% INTEREST MAY NOT ALWAYS BE USURIOUS



COUNSEL'S CORNER

PLEASE BE CAREFUL WITH THIS INFORMATION AS THIS CASE WAS DECIDED ON A VERY NARROW, SPECIFIC SET OF UNIQUE FACTS. USURY IS A SERIOUS MATTER AND THE PENALTIES CAN BE SEVERE. ALL PROMISSORY NOTES SHOULD BE PREPARED BY ATTORNEYS.

In October 2002 Roy Threlkeld borrowed \$200,000 from Gregory Urech. The promissory note that Threlkeld signed provided for interest at the rate of 100% per annum. Yes you read that correctly – 100%.

Threlkeld defaulted, so Urech contacted an attorney. In December 2003, based on instructions from his lawyer, Urech sent Threlkeld a “correction letter,” basically reducing the interest rate to 18%. In October 2007 Urech filed a lawsuit to collect the outstanding balance of principal and interest.

Threlkeld defended by asserting that the maximum rate of interest should have been 18%, and that a note with a stated interest rate in excess of 18% was usurious. In some circumstances a successful claim of usury under Texas law can result in the forfeiture of both principal and interest. It was Threlkeld’s position that Urech should have reformed the usurious interest rate of 100% within 60 days after the date that Urech learned that the interest rate was excessive, and that Urech knew of the usury issue at the time the note was signed in 2002.

Therefore, Threlkeld argued, the interest rate was not timely corrected.

Urech responded by claiming he is not an attorney, was 23 years old when the funds were loaned in 2002, first learned of the usury issue when he hired his lawyer in 2003, and delivered the “correction letter” 53 days later which is within the 60-day statutory period. Urech further stated he timely sent the correction letter and was entitled to recover interest at 18% from the inception of the loan, and that the loan was not usurious.

The trial court determined that, although in 2002 Urech was a recent college graduate with a degree in international banking, there was not substantial evidence concluding that Urech knew of the usury matter before he was so-advised by his lawyer in 2003. Once he was advised, he took prompt corrective action as required by Texas law to reduce the interest rate so it was not usurious.

On November 17, 2010, the Texas Court of Appeals agreed with Urech, and approved his “correction letter” and collection of 18% interest – the maximum in Texas law. See Threlkeld v. Urech; 05-09-00631-CV.

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