

1964

Peoples Finance & Thrift Company of Salt Lake City v. Wayne T. Blomquist : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc1

 Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Draper, Sandack & Draper; Attorneys for Respondent;

Ronald C. Barker; Attorney for Appellant;

Recommended Citation

Brief of Appellant, *Peoples Finance & Thrift Co. v. Blomquist*, No. 10106 (Utah Supreme Court, 1964).
https://digitalcommons.law.byu.edu/uofu_sc1/4555

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

OCT 14 1964

LAW LIBRARY

IN THE SUPREME COURT
OF THE STATE OF UTAH

FILED
JUN 23 1964

PEOPLES FINANCE & THRIFT
COMPANY OF SALT LAKE CITY,
a Utah Corporation,

Plaintiff-Respondent,

vs.

WAYNE T. BLOMQUIST,

Defendant-Appellant.

Clerk, Supreme Court, Utah

No 10106

APPELLANT'S BRIEF

Appeal from the Judgment of the Third District Court
for Salt Lake County,
Honorable A. H. Ellett, Judge

Draper, Sandack & Draper
601 El Paso Natural
Gas Building
Salt Lake City, Utah
Attorneys for Respondent.

Ronald C. Barker
2870 South State Street
Salt Lake City, Utah
Attorney for Appellant

UNIVERSITY OF UTAH

APR 29 1965

TABLE OF CONTENTS

	<i>Page No.</i>
Statement of the Kind of Case	1
Disposition in Lower Court	1
Relief Sought on Appeal	2
Statement of Facts	2
Argument	2

POINT I

PROVISION FOR ATTORNEYS FEES IN INDUSTRIAL LOAN RENDERS TRANSACTION USURIOUS	2
Conclusion	9

AUTHORITIES CITED

Nelden v. Clark, 20 U. 382, 59 P. 524, 77 Am St. Rep. 917 50 Am Jur Statutes 238	7
Peterson, In Re, 42 NW (2d) 59, 18 ALR (2d) 910	7
Rospigliosi v. Glenhallen Min. Co., 69 U. 41, 47, 252 P. 276	3
Seaboard Finance Co. v. Wahlen, 123 U. 529, 260, P. (2d) 556, 557	3
Seebold v. Eustermann, 13 NW (2d) 739	3
University of Utah v. Richards, 20 U. 457, 59 P. 96, 77 Am St. Rep 928	7
Zuniga v. Evans, 87 U. 198, 48 P. (2d) 513, 101. ALR 532	7

TEXTS CITED

Greene, "Unlicensed and Licensed Usury in Utah", 4 Utah Law Review 79	3
40 Am Jur Pawnbrokers, etc. 8	3

TEXTS CITED (Cont'd)

	<i>Page No.</i>
50 Am Jur Statutes 238	7
18 ALR (2d) 910	7
77 Am St. Rep 928	7
101 ALR 532	7
50 Am Jur Statutes 238-239	3, 7
55 Am Jur Usury 6	3
69 ALR 5853, 125; ALR 743	3
152 ALR 585	3

RULES CITED

Rule 68(a) URCP	8
-----------------------	---

STATUTES CITED

Title 7, Chapter 8, UCA, 1953	2, 5
7-8-3, UCA, 1953	5, 6, 7, 9
7-8-4, UCA, 1953	7
15-1-2, UCA, 1953	3, 4, 5
15-1-7, UCA, 1953	9
Title 78, Chapter 10, UCA, 1953	4
78-10-13 (c), UCA, 1953	4

IN THE SUPREME COURT OF THE STATE OF UTAH

PEOPLES FINANCE & THRIFT
COMPANY OF SALT LAKE CITY,
A Utah Corporation,

Plaintiff-Respondent.

vs.

WAYNE T. BLOMQUIST,

Defendant-Appellant.

No. 10106

BRIEF OF APPELLANT

STATEMENT OF THE KIND OF CASE

Action by Industrial Loan Corporation on note. Defense of usury because of provision for attorney fees in note.

DISPOSITION IN LOWER COURT

Court ruled note was not usurious and granted judgment in favor of plaintiff.

RELIEF SOUGHT ON APPEAL

Defendant seeks reversal of the judgment and judgment in his favor as a matter of law, or failing that, a new trial.

STATEMENT OF FACTS

Plaintiff, a Utah Industrial Loan Corporation, brought this action to collect the unpaid balance of a loan plus interest, costs and attorney fees. The parties stipulated that the sole issues raised by the pleadings which are material herein is whether or not an industrial loan company may contract for and recover reasonable attorneys fees in the event of default in payment by borrower, (R. 13-14)

ARGUMENT

POINT I

PROVISION FOR ATTORNEY FEES IN INDUSTRIAL LOAN RENDERS TRANSACTION USURIOUS.

The loan in issue in this matter was made by Plaintiff, a Utah Industrial Loan Corporation which is licensed under the provisions of Title 7, Chapter 8, UCA, 1953. The loan provides for payment by defendant of a reasonable attorneys fees in the event of default. (R. 3). The parties have stipulated that the sole issue before the Court is "whether an industrial loan corporation may contract for and recover reasonable attorneys fees in the event of default upon a note and chattel mortgage by borrower". (R. 13, Par 1(a)).

The Industrial Loan Law of the State of Utah is, in effect, a Usury law designed and enacted to protect those whom necessity compels to borrow from outrageous demands oftentimes made and required by those who have money to loan. That Industrial Loan Law is an exception to regular interest rates and that law permits plaintiff to charge interest at the rate of 1 per cent per month on the original balance of the loan, to add the interest to the loan and to require repayment of the loan in installments, *Seaboard Finance Co., v. Wahlen*, 123 U. 529, 260 P. 2d 553, 557, thus yielding an effective rate of interest to plaintiff of in excess of 30 per cent per annum. See Greene, "Unlicensed and Licensed Usury in Utah, 4 Utah Law Review 79; 55 Am Jur Usury, 6. Since this type of legislation was designed as a shield to the borrower the Court should not permit the usury statutes to be so construed as to permit the lender to use the statute as a sword. *Rospigliosi v. Glenallen Min. Co.*, 69 U. 41, 47, 252 P. 276; *Seebold V. Eustermann*, 13 NW(2d) 739, 152 ALR 585; 40 Am Jur Pawnbrokers, etc. 8.

The question of whether the addition of attorney fees to a loan renders the loan usurious has been litigated throughout the United States, however the Utah Legislature has seen fit to expressly provide that in certain instances a provision for reasonable attorney fees may be included in the contract. 15-1-2(b), UCA, 1953. That statute reads in part as follows:

"15-1-2. MAXIMUM RATES.—The parties to any contract may agree in writing for the payment of interest for the loan or forbearance of any money, goods or things in action, not to exceed ten per cent per annum; provided:

(a)

(b) That a loan may provide for reasonable collection costs and for a reasonable attorney's fee in the event of default or delinquency."

Sub-paragraph (d) pertaining to small loan companies, (e) pertaining to credit unions and (f) pertaining to industrial loan companies all provide that those organizations may contract for and receive interest and charge at the rates specified in and subject to the limitations contained in the statutes regulating each type of organization. The wording used in sub-paragraphs (d), (e), and (f) clearly indicates that reference in that statute to loans made by such organizations were included in that statute as exceptions to the rules pertaining to other loans, particularly with respect to rates of interest to be charged and the addition of attorney fees, collection costs or other charges.

Sub-paragraph (d) of 15-1-2, UCA, 1953, pertaining to small loan companies refers to the small loan act Title 78, Chapter 10, UCA, 1953 which provides in part in 78-10-13 (c), UCA, 1953, that:

"(c) In addition to the charges herein provided for, *no further or other amount whatsoever shall be directly or indirectly charged, contracted for, or received* except as provided hereinafter . . ." (Emphasis added)

If sub-paragraph (b) pertaining to attorneys fees were construed to permit a charge for attorney fees by the organizations mentioned in sub-paragraphs (d), (e)

and (f) it would be in direct conflict with the above quoted section. The conclusion is inescapable that subsection (b) of 15-1-2, UCA, 1953, does not confer the power to charge attorneys fees upon the organizations described in sub-paragraph (d), (e) or (f) thereof.

Sub-paragraph (f) of 15-1-2, UCA, 1953, pertaining to industrial loan corporations reads as follows:

“(f) That *industrial loan corporations may contract for and receive interest and charges at the rates and subject to the limitations* contained in chapter 8, Title 7, Utah Code Annotated 1953; . . . ” (Emphasis added)

The express wording of said sub-paragraph (f) is that the “charges” which “*industrial loan corporations may contract for and receive*” is limited to those specified in the industrial loan law, Title 7, Chapter 8, UCA, 1953. This wording expressly excludes the power of an industrial loan corporation to contract to “charge” attorney fees under the provisions of 15-1-2, UCA, 1953.

The powers of an industrial loan corporation to contract for and receive the “interest” and “charges” referred to in 15-1-2(f), UCA, 1953, are enumerated in 7-8-3, UCA, 1953, which provides in part as follows:

7-8-3. GENERAL POWERS.—Every industrial loan corporation shall have power:

- (1) (a) To lend money and *contract for and receive charges not exceeding the charges authorized by paragraphs b, c, and d of this subsection*, subject to compliance with all applicable pro-

visions of this chapter. Every loan contract made under this section may provide for repayment in a single payment or in installment payments. Charges may be added to the principal of the loan and included in the face of the loan contract.

Sub-paragraphs (b), (c) and (d) mentioned above provide in part as follows:

(b) To *charge interest* . . . at the rate of one per cent per month . . .

(c) To *charge a fee* of \$2.00 . . . or \$20.00 . . . in examining and investigating the character and circumstances of the borrower.

(d) To *refund* unearned interest or discount . . .

As indicated above, an industrial loan corporation cannot “*contract for*” or “*receive charges*” in excess of those authorized by sub-paragraphs (b) pertaining to the rate of interest to be charged, and (c) pertaining to an investigation fee which may be charged and are required in paragraph (d) to refund unearned interest in the event of pre-payment of the loan. Clearly the inclusion of a provision in the note for payment of attorney fees in the event of default is to “*contract for*” “*charges*” which are not authorized by any of said sub-paragraphs of 7-8-3, UCA, 1953, and to permit the plaintiff to collect attorney fees is to permit it to “*receive charges*” in excess of those authorized and which are not authorized by said sub-paragraphs. If the legislature had intended to permit industrial loan corporations to collect attorney fees they

would have listed attorney fees with the other detailed and itemized charges which are permitted.

In addition to the foregoing powers 7-8-4, UCA, 1953, confers upon industrial loan corporations "the general powers conferred upon corporations by the Utah Business Corporation act, . . . *except as otherwise provided herein.*" The general powers of corporations conferred upon plaintiff by this section does not entitle plaintiff to collect attorney fees on its loans. To the contrary, that statute expressly makes an exception and does not confer general corporation powers upon plaintiff which are in conflict with the provisions of the industrial loan act. The only "charges" which can be contracted for or received by an industrial loan corporation are spelled out in 7-8-3, UCA, 1953, and accordingly any general corporation power which might tend to confer upon plaintiff the right to collect attorney fees on its loans would be excluded by the exception contained in 7-8-4, UCA, 1953.

It is a general principal of law concerning construction of statutes that where the statute mentions one or a series of things, that the menion of those specific items implies the exclusion of other things not mentioned. The Latin term "*Expressio unius est exclusio alterius*" is applied to this general principal of law. *Zuniga v. Evans*, 87 U. 198, 48 P. (2d) 513, 101 ALR 532; *University of Utah v. Richards*, 20 U. 457, 59 P. 96, 77 Am St. Rep. 928; *Nelden v. Clark*, 20 U. 382, 59 P. 524, 77 Am St. Rep 917, 50 Am Jur Statutes 238. This rule applies even though there are no negative words excluding the things not mentioned. In *Re Peterson*, 42 NW2d 59, 18 ALR 2d 910; 50 Am Jur Statutes 238-239.

The legislature has seen fit to permit plaintiff to charge a rate of interest vastly in excess of that which may be charged by others. To read into the statute a right to make charges for attorney fees when the legislature has meticulously defined what may be charged by plaintiff and has stated that no other charges can be contracted for or received would be to read into the statute something which is not there. The state owes a duty to protect the unfortunate victim of rapacity so far as it is practicable, just as clearly as it does to protect the ignorant and the unwary from the machinations of the confidence man or the extortion of the highwayman. See 69 ALR 585, s. 125 ALR 743.

After the answer and counterclaim (R. 7-9) had been filed the parties entered into a stipulation (R. 13-14) wherein they agreed the only issue before the court was the question of whether attorney fees could be charged by an industrial loan corporation, plaintiff filed a motion for summary judgment (R. 11-12) which came on for hearing before the Honorable Joseph G. Jeppson, District Judge, who denied plaintiff's motion (R. 16) after hearing oral argument by the respective counsel and considering the written memorandum submitted by plaintiff in support thereof. This order (R. 16) was a holding by Judge Jeppson that plaintiff could not legally charge attorney fees on an industrial loan. Defendant then made a motion for summary judgment (R. 19-20) based upon that ruling, however Judge Jeppson declined to consider that motion (R. 27-30) because plaintiff had filed a notice of readiness for trial (R. 36) before that motion was heard, and accordingly defendant's motion was referred to the pre-trial

judge, the Honorable A. H. Ellett, who in effect reversed the decision of the Honorable Joseph G. Jeppson concerning the right of the plaintiff to collect attorney fees and awarded judgment in favor of plaintiff. Since two judges of the same district have ruled exactly opposite on the same question it is obvious that some confusion exists as to the status of the law and that this question should be clarified. We feel that Judge Jeppson ruled properly on this question and that the ruling of Judge Ellett should be reversed. Defendant has paid the loan in full including the interest claimed by plaintiff (R. 13-14) and should be entitled to recover back the excess interest paid plus triple damages and attorneys fees in accordance with the provisions of 15-1-7, UCA, 1953, in the event that the Court determines that the note is usurious, or in the alternative, should be entitled to an order adjudging that defendant is not liable to plaintiff for attorney fees or costs by reason of his tender (R. 10) and payment (R. 13) as provided by Rule 68(a) and related rules.

CONCLUSION

Judge Jeppson properly rules that the plaintiff as an industrial loan corporation was not entitled to recover attorney fees since the statute enumerating the "charges" which could be made by an industrial loan corporation excludes the right to make or receive any other additional charges and no provision is made therein for charging the defendant with attorney fees. Judge Ellett erred when he reversed the decision of Judge Jeppson and held by granting judgment for plaintiff at the pre-trial that an industrial loan corporation can charge and collect attorney fees. The wording of 7-8-3, UCA, 1953, which gives an

industrial loan corporation power: "To lend money and *contract and receive charges not exceeding the charges authorized by paragraphs b, c, and of this subsection . . .*" is controlling as to the "charges" which may be "contracted" for or "received" by the plaintiff. Since those sub-sections do not permit plaintiff to "charge" an attorney fee it is clear that plaintiff has no power to either "contract" for or to "receive" an attorney fee from plaintiff, and the inclusion of an attorney fee provision in the note renders the note usurious.

Respectfully submitted,

RONALD C. BARKER

Attorney for Defendant and Appellant.