

1972

## **Western States Thrift, A Corporation v. Charles Ray Jensen And Lida C. Jensen : Brief of Appellants**

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc2](https://digitalcommons.law.byu.edu/uofu_sc2)

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. Lorin N. Pace ; Attorneys for Appellants

---

### **Recommended Citation**

Brief of Appellant, *Western States Thrift v. Jensen*, No. 12296 (1972).  
[https://digitalcommons.law.byu.edu/uofu\\_sc2/6652](https://digitalcommons.law.byu.edu/uofu_sc2/6652)

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 (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

---

---

# In The Supreme Court of the State of Utah

---

**WESTERN STATES THRIFT**

a corporation,

**Plaintiff and Respondent**

**vs.**

**CHARLES RAY JENSEN and**

**LIDA C. JENSEN, his wife,**

**Defendants and Appellants**

---

## **BRIEF OF APPEAL**

---

Appeal from the judgment of the  
Third District Court of Salt Lake County,  
Honorable James S. [unclear]

---

**LORIN N. [unclear]**

481 South [unclear]

Salt Lake City, Utah

Attorney for [unclear]

and Appellant

**EPHRAIM FRANKHAUS**

430 Judge Building

Salt Lake City, Utah, 84111

Attorney for Plaintiff and

Respondent

---

---

## TABLE OF CONTENTS

	Page
STATEMENT OF NATURE OF CASE ..	1
STATEMENT OF FACTS .....	1
DISPOSITION OF LOWER COURT .....	4
RELIEF SOUGHT ON APPEAL .....	5
ARGUMENT .....	5
POINT I .....	5
POINT II .....	5
SUMMARY .....	11

## AUTHORITIES CITED

American Law Reports, Vol. 63 p. 823 .....	10
--	----

## STATUTES CITED

Utah Code Annotated, 1953, Title 7-8-3 .....	8
Utah Code Annotated, 1953, Title 15-1-7 .....	9

## CASES CITED

National American Life Insurance Company vs. Bayou Country Club 16 Utah 2nd 417, 403 P. 2d 26 .....	9
Cheney vs. Overmeyer 129 P.2d 978, 64 Idaho 213 .....	10
Reeves vs. First State Bank, 463 P.2d 340 ....	11

# In The Supreme Court of the State of Utah

WESTERN STATES THRIFT,  
a corporation,  
Plaintiff and Respondent  
vs.

CHARLES RAY JENSEN and  
LIDA C. JENSEN, his wife,  
Defendants and Appellants

Case No.  
12296

## BRIEF OF APPELLANTS

### STATEMENT OF NATURE OF CASE

This case arose out of an action to obtain judgment on a promissory note and to foreclose a Chattel Mortgage. Defendants claim usury as a defense by reason of an unauthorized loan investigation fee. Defendants also claim credits by reason of the usury and that the credits should be an offset against the indebtedness.

Plaintiff denies usury on grounds that loans were made by two separate companies.

### STATEMENT OF FACTS

On August 19, 1966, Plaintiff did extend a loan in the amount of \$600.00 to the Defendants.

On September 7, 1966, the Plaintiff made a further loan of \$3,096.00 to Defendants.

On September 17, 1967, the Plaintiff extended a third loan to Defendants in the amount of \$357.40.

For convenience of understanding these loans will be referred to as First, Second and Third Loans.

Loan number One was paid in full prior to the commencement of this action. Loan number Two was paid in full under protest after the commencement of the action. Loan number Three remains unpaid at this time.

Loan number One was granted on August 19, 1966, and in connection with that loan the Plaintiff charged a loan investigation fee of \$10.53.

On September 17, 1966, the second loan was executed and Plaintiff charged a loan investigation fee of \$20.00. (See loan closing sheets Exhibits P-2 and P-3.)

During the period of the existing note the Defendants had made payments in the amount of \$3,398.62 on the second note.

This amount was broken down as follows:

Additional interest (charged because of late payment	\$ 117.80
Interest or discount on Contract	
<b>TOTAL</b>	<b>795.00</b>

The total interest charged	\$ 912.80
Credit for Interest paid by	
usury statute	\$912.80 x 3 equal \$2,737.40
Interest to be waived by Statute	\$ 795.68
Amount actually paid on principal	\$2,027.64
Total Credit to which Defendants are entitled	\$5,560.72

The total principal of the note was \$3,096.00. The Defendants have, therefore, overpaid the account by \$2,464.72, and after deducting \$663.24 on that third note, are entitled to judgment in the amount of \$1,801.48.

The Defendants admit that they are indebted to the Plaintiffs in the amount of the Third note. The Third note was in the principal amount of \$357.40. At the time of the Trial, the First and Second notes had been paid in full; the Third note was still due and owing and should be offset against credits in the amount of \$663.24.

The Defendants claim that by reason of the usury they were entitled to the following credits:

- a. A discharge of all interest;
- b. Recovery of three times interest paid.

The above credits should apply as an offset against other indebtedness on the Second and Third notes.

The first loan was made by Industrial Credit, Inc. at a time when it was not known whether Blair Lund

was working with Industrial Credit, Inc. or the Plaintiff. The same employee (Blair Lund negotiated loan number One, Industrial Credit, Inc. and loan number Two, Western States Thrift. (R-13)

Western States Thrift took to their new address all the accounts of Industrial Credit, Inc. and they (the accounts receivable) became accounts receivable of Western States Thrift. The corporations were operated by the same officers as separate entities at the same time. (R-13. R-14)

The employees of Industrial Credit, Inc. became the employees of the Plaintiff. (R-14. R-15)

## DISPOSITION IN LOWER COURT

The Lower Court held:

1. That the charging of the two investigation fees—one on September 7, 1966; the other on August 19, 1966, was not contrary to law and did not constitute usury. The Court further found that the notes were issued by separate entities and that there was no usury.

2. That the Defendants were delinquent in their payments on a Promissory Note of \$3,096.00 and also the small loan.

3. The Court failed to make the Conclusions of Law that the actions of the Plaintiff constituted usury and that as such, the interest on the second note should be

dismissed. The interest paid should constitute a credit back to the Defendants and an offset against the sums due and owing on the notes.

## RELIEF SOUGHT ON APPEAL

The Defendants seek a reversal of the Court's decision and a remanding of the same to the District for further determination as follows:

1. That the Plaintiff corporation did in fact charge double investigation fees within a period of time contrary to law.

2. That said action constitutes usury.

3. That the Defendants should be discharged from the payment of any interest; that they should receive a credit of three times any interest paid plus attorney's fees; and that these credits should be applied to indebtedness on that note and otherwise.

4. That a finding should be made as to credit in excess of the indebtedness and judgment entered against Plaintiff in favor of the Defendants for that amount.

## ARGUMENT

### Point I

**THE EVIDENCE DOES NOT SUSTAIN THE FINDING OF THE COURT THAT THE**



## LOANS WERE MADE BY TWO SEPARATE DISTINCT CORPORATIONS.

Plaintiff relies for defense upon the testimony of the President, A. Blair Lund, that the original loan was made by Industrial Credit, Inc., a consumer finance company, and that the second loan, made nineteen days later, was made by Plaintiff Western States Thrift. Nevertheless, A Blair Lund was a principal in Industrial Credit, Inc., and Western States Thrift had purchased the assets and receivables of Industrial Credit, Inc., and employees of Industrial Credit, Inc., immediately became employees of Western States Thrift. They took with them all of the accounts receivable with Western States Thrift. (R-13)

Defendants arranged their second loan with A. Blair Lund, personally. (R-13)

A. Blair Lund stated in his testimony as follows:  
(R-17-18)

Mr. Pace — Question. “On the 19th of August, 1966, and on the 17th of September, 1966, you were with Western States Thrift and Loan. Would that be correct?”

Answer. “To my mind, we ran both companies were operating, and I was.”

Question. “Is it possible that you were functioning in both companies on both of these dates.”

Answer. "It could be possible. I don't know."

Question. "At any rate, you were exclusively in the Industrial Credit, Inc. on August 19, and if you were exclusively in Western States Thrift on September 17, your transfer would have to be between August 19 and September 17, 1966, wouldn't it?"

Answer. "I really couldn't put it down that close. I don't know because we were separate entities and we were working around and back and forth."

It is respectfully submitted that the same persons negotiated and executed the loan of August 19, 1966, as negotiated and executed the loan on September 7, 1966. The Plaintiff corporation acquired the loan account of Industrial Credit, Inc. and was the responsible owner when the second loan was made.

## Point II

**THE INVESTIGATION FEE CHARGED IN CONNECTION WITH THE LOAN ON AUGUST 19, 1966, AND A SUBSEQUENT INVESTIGATION FEE CHARGED ON SEPTEMBER 7, 1966, FOR THE SECOND LOAN WAS CONTRARY TO LAW AND CONSTITUTED USURY.**

Exhibit P-2 shows a loan closing date of August 19, 1966, and a loan investigation fee of \$10.53.

Exhibit P-3 shows a loan of September 7, 1966, and an investigation fee of \$20.00. The dates of these two loans are exactly nineteen days apart.

Title 7-8-3, 1953, as Amended, Utah Code Annotated, at the time of the loan stated as follows:

Every industrial loan corporation shall have the power:

“1. To loan money on personal undertaking of the borrower and other persons, or on personal security, or otherwise and to deduct interest thereon in advance at the rate of one per cent or less of the face of such loan per month and, in addition, to require payments in uniform weekly, semi-monthly or monthly installments, with or without an allowance of interest on such installments, and to charge a fee of \$2 or less on loans of \$100 or less and a maximum fee of two per cent on loans in excess of \$100 for expense in examining and investigating the character and circumstances of the borrower; provided, that such examining and investigating fee shall not be assessed to any borrower more often than once in each six month period, and provided further that no charge can be collected unless a loan shall have been made.”

Title 15-1-7, Utah Code Annotated, 1953, as amended, states:

“The taking, receiving, reserving, or charging of a rate of interest greater than is allowed by section 15-1-2, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. In case the greater rate of interest has been paid the person by whom it has been paid, or his legal representatives, may recover back three times the amount of the interest thus paid from the receiver or taker thereof and reasonable attorney fees, provided that such action is commenced within two years from the time the usurious transaction occurred.”

Interpreting the foregoing statute, where a party took a commission in excess of agreement (analogous to charging an unauthorized loan investigation fee) the Court said:

“For purpose of computing penalty for usury, the sum which lender took from proceeds of loan as consideration for making loan could only be considered as interest, where sum was never credited to borrower as principal and full amount of loan sought was claimed by lender at all times.”

National American Life Insurance Company versus Bayou Country Club. 16 Utah 2d 417, 403 P. 2d 26.

In the instant case, the Plaintiff withheld the additional loan investigation fee in the same manner and such withholding was contrary to law.

Also see

“Expenses or charges, incident to the loan of money.”  
63 ALR 823.

### Point III

**DEFENDANTS ARE ENTITLED TO (a) A WAIVER OF INTEREST: (b) A RECOVERY OF THREE TIMES THE INTEREST PAID. THE CREDIT SHOULD BE APPLIED TO THE SMALL LOAN AND THE AMOUNT OF ANW CREDIT IN EXCESS OF INDEBTEDNESS SHOULD CONSTITUTE A JUDGMENT IN FAVOR OF DEFENDANTS.**

The interest charged on the note amounted to \$912.80. The Defendant are entitled to a credit of this amount. (Exhibit P-5)

Defendants had actually paid \$912.80 on interest and by law are entitled to a credit of three times this amount or \$2,737.40.

Defendants paid \$2,027.64 in cash.

Cheney versus Overmeyer 129 P2d 978, 64 Idaho 213. The Court stated:

“Under statute authorizing recovery of usurious interest and two times the amount of such interest from the lender, three times the amount of such usurious interest is forfeited by the lender to the borrower and the forfeiture is clearly affirmative and may be offset against both principal and interest, and if more than the balance due, judgment therefor should be entered in favor of the borrower.”

Also see Peterson versus Philco Finance Corporation 428 P2d 961, 91 Idaho 644.

“Amount improperly added on automobile loan note for collision insurance without borrowers consent would, together with penalty for usury, be deducted from balance due by defaulting maker.”

Oklahoma — Reeves versus First State Bank, 463 P2d 340.

## SUMMARY

The series of loan transactions were conducted in such a way as to constitute usury. The law provides for

- (a) cancellation of interest, and
- (b) tripple damages for any interest paid.

The case should be remanded to the Trial Court for this determination.

Respectfully submitted,

**LORIN N. PACE**

Attorney at Law

431 South Third East

Salt Lake City, Utah 84111