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Contracts--Usury--Commission for Securing Loans

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CONTRACTS—USURY—COMMISSIONS FOR SECURING LOANS.
In a recent case the plaintiff sued the defendant for a commission of three hundred dollars for securing a loan of $7500, the terms of the loan to be secured and the amount of the commission being set out in a written contract signed by the defendant. The court held the agreement in the application was fraudulent and denied recovery of the commission, but did not express any opinion as to whether a broker could legally charge a commission for procuring a loan at the highest legal rate of interest permitted by the usury statutes. Furthermore no case in this state seems to have decided the question as to how far and when such a commission is unlawful as making the loan usurious. Yet loans are made, and commissions paid, while the parties only wonder whether their transaction is sanctioned by law. Below is briefly set out the law in other states. Williams v. Irvin, 140 S. E. 145 (W. Va. 1927).

The question for our purposes here resolves itself into three sub-divisions: (1) Can the lender charge anything besides the legal rate of six percent for his money, (a) by way of a commission or bonus, or (b) to pay attorney fees, and other necessary and incidental services in making the loan? (2) Can the agent or representative of the lender exact a bonus or commission in excess to the maximum legal rate of interest? (3) Can an agent or other representative of the borrower, or a third party not acting for the lender, exact an amount over the legal rate? As to (1) (a)—it is almost uniformly held that any payment to the lender in addition to legal interest whether called by name of “bonus” or “commission,” or any other subterfuge, is usurious. Doster v. English, 152 N. C. 339, 67 S. E. 754; Bowdoin v. Hammond, 79 Md. 173, 28 Atl. 769. However, as to (1) (b)—attorney fees and other expenses incident to the loan, West Virginia in accord with the weight of authority holds: “Reasonable expenses by the lender in making a loan, such as those incident to inspection of the land offered as security, and examination of the title there-to incurred at the instance and request of the borrower and upon his promise and undertaking to pay the same, may under full and clear proof be allowed him, and will not render the debt usurious.” Lisky v. Snyder, 56 W. Va. 610,
49 S. E. 515; Bennett v. Ginsburg, 141 N. Y. App. D. 66, 125 N. Y. S. 650; Morton v. Thurber, 85 N. Y. 550; Gannon v. Scottish-American Mortgage Co., 106 Ga. 510, 32 S. E. 591; McCall v. Herring, 118 Ga. 522, 45 S. E. 442. But where the fee to an attorney who negotiated the loan for his work in preparing an abstract for the property to secure the loan is unreasonable, and the unreasonable portion carries the interest on the whole loan over eight per cent, it was held to be usurious. Mayfield v. British American Mortgage Co., 104 S. C. 152, 88 S. E. 370. As to (2) where the agent or representative of the lender exacts a "commission or bonus, in excess to the legal rate, the transaction is usurious, where the lender authorized, ratified, knew, or should have known of such commission. Banks v. Flint, 54 Ark. 40, 14 S. W. 769; Vahlberg v. Keaton, 51 Ark. 534, 11 S. W. 874; Manchester National Bank v. Herndon, 181 Ky. 117, 203 S. W. 1155; Bliven v. Lydecker, 130 N. Y. 102, 28 N. E. 625; McLean v. Camak, 97 Ga. 804, 25 S. E. 493; McCall v. Herring, 118 Ga. 522, 45 S. E. 422. Apropos to (3) it is settled that an agent of the borrower, a third party or broker may exact a commission though the loan provides for the maximum legal rate of interest, without rendering the loan usurious. The cases so holding go on the ground that if the person exacting the extra money by "commission" or "bonus" is not the lender, the amount so paid is not for the use or detention of the money, and therefore not interest so as to be usurious. Saving Loan and Trust Co. v. Yokley, 174 N. C. 573, 94 S. E. 102; English Lumber Co. v. Wachovia Bank and Trust Co., 179 N. C. 211, 102 S. E. 205; Vahlberg v. Keaton, 51 Ark. 534, 11 S. W. 874; Weems v. Jones, 86 Ga. 760, 13 S. E. 89; Williams v. Forman, 158 Ga. 89, 123 S. E. 20.

In the principal case, therefore, were there not fraud, the defendant, according to the decided cases, would be bound by her promise to pay the plaintiff, the third party, the service fee of $300 for the expense of the borrower incurred in procuring loans through a third-party does not infest the loan with usury unless such third party acted as the agent of the lender.

—Anne Slifkin.