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Usury: Case of First Impression

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In Re Report and Recommendation of June 5, 1972 Grand Jury, 370 F.Supp. 1219 (D.D.C. 1974)), the court stressed that here, unlike other reported cases upholding the naming of unindicted co-conspirators, all legal remedies were inadequate, and all forums of redress were closed. 439 F.Supp. at 205, 209.

Clearly then, Judge Young wrote, the indictment and related material naming Jordan as a co-conspirator involved in criminal activity was an improper exercise of the grand jury function. 439 F.Supp at 205.

Jordan's Fifth Amendment argument turned on his alleged deprivation of his due process rights to be permitted the protection of the federal indictment process secured under the Fifth Amendment and the Federal Rules of Criminal Procedure. The Court agreed, noting that whether or not the Supreme Court has effectively eliminated due process protection of reputation claims arising out of state action under 42 U.S.C. 1983, see *Paul v. Davis*, 424 U.S. 693 (1976), where, as here, a federal grand jury fails to establish a finding of probable cause by naming, but not indicting the named co-conspirators, there is an injury transgressing the "guarantee of a right to be free of injury secured by the federal Constitution in the indictment clause of the Fifth Amendment and by other federal laws." 439 F.Supp. at 208.

photo by Ronald Gravitz

Since the "only legitimate means by which the federal grand jury could publicly indicate such a finding of probable cause was by the action of indicting Jordan," and since Jordan lacked totally any form or forum in which to challenge the grand jury's action, the Fifth Amendment's protection was properly invokable. 439 F.Supp. at 208, 209.

Usury: Case of First Impression

by Richard McCormick

The unique facts of *Tri-County Federal Savings and Loan Association v. Lyle*, 280 Md. 69, 371 A.2d 424 (1977), make it one of first impression in Maryland. According to the Maryland Court of Special Appeals, 33 Md.App. 46, 363 A.2d 642, 645, the peculiarities of Maryland law in this case render the holdings of other jurisdictions of little assistance in its interpretation.

In April, 1974, Lyle and his wife executed a note to Tri-County for $60,000 at an interest of 8%,[1] in return for a loan commitment from that financial institution to enable the Lyles to build a home. The note was secured by a deed of trust, with the Savings & Loan as a beneficiary. Tri-County's check for $60,000 was endorsed by the Lyles at settlement, and $15,000 was immediately disbursed to the seller of the lot, upon which the Lyles were to construct their house. The remainder, $45,000, was paid over to the defendant, Tri-County, where it was placed into a non-escrow account. The $45,000, according to the loan agreement, was to be paid in nine installments as work on the house progressed. Tri-County also collected a $60 appraisal fee, $10 for a credit report, and $90 for inspection fees, the first two fees being paid to third parties. *See generally, B.F. Saul Co. v. West End Park*, 250 Md. 707, 246 A.2d 591 (1968). Subsequently, the Lyles abandoned the project, and in September, 1974, repaid the $15,000 plus $573.29 interest which had accrued on the full $60,000.[2] Credit was given for the $45,000 retained by the defendant, and the $90 in inspection fees was returned to the plaintiffs. Because it was paid in accordance with the agreed-upon schedule, interest was computed on the full $60,000.

The Lyles sued, contending that the $60 appraisal fee, the $10 credit report fee, and the 8% interest charged on the $45,000 were usurious. Their claim of $4,911.75 was based on the remedy enunciated by the Maryland statute.[3] The trial court found that the fees were not in excess of that allowed by the law and dismissed the suit.

The Court of Special Appeals reversed the trial judge's disposition of the claim regarding the interest on the $45,000 and remanded the case. 33 Md.App. 46, 363 A.2d 642.

The Court of Appeals, after granting certiorari, affirmed the lower appellate court's holding that the credit appraisal and inspection fees played no role in the alleged usury. Secondly, the court held that the Lyles were required to pay interest only on the unpaid balance of the loan, $15,000, because they did not have control of the remaining $45,000. Requiring the plaintiffs to pay interest on the full $60,000 rendered the agreement usurious. Id. at 76, 371 A.2d at 427.

[1] MD. ANN. CODE, Art. 49, §3 (1972) permits simple interest not in excess of 6% annually to be charged, except where there is a written agreement between lender and borrower, in which case 8% simple interest annually may be charged on the unpaid balance.

[2] In order to obtain relief in equity against a usurious contract, ancient doctrine holds that the plaintiff must tender moth the principal and the legal interest which has accrued. *Wilson v. Hardesty*, 1 Md.Ch. 44 (1847).

[3] MD. ANN. CODE, Art. 49, §8 (1972) articulates the current usury law which might have allowed Tri-county to charge an interest rate of 10% because the loan here was secured by residential real property. In this case, however, this section was inapplicable because the loan was executed before May 31, 1974, the statute's effective date.

This section also allows a forfeiture of three times the amount of interest and charges collected on any loan in excess of the authorized interest and charges, or the sum of $500.00, whichever is greater.

See MD. COMM. LAW CODE ANN. §§12-114(a), 12-103(b) (1975).

The long-standing doctrine of usury has been defined by the Maryland courts as the taking of more interest for the use of money or forbearance than the law allows. *Scott v. Leary*, 34 Md. 389 (1871). To constitute usury, there must be: one, a lending of money or forbearance to collect money due; two, an agreement that the money shall be returned; and three, more than legal interest must be paid. *Williams v. Reynolds*, 10 Md. 57 (1856). It is a question of the lender's intention to exact more than the allowable legal rate of interest, *Curozza v. Federal Finance & Credit Co.*, 149 Md. 223, 131 A. 332 (1925); however, nothing in the law of usury prevents a borrower from paying usurious interest, if he so desires. *Kirsner v. Sun Mortgage Co.*, 154 Md. 682, 141 A. 398 (1928). Intent to take excessive interest is an essential element to establish usury. *Beneficial Finance Co. v. Administrator of Loan Laws*, 260 Md. 430, 272 A.2d 644 (1971).

The court here, in reaching its decision on whether interest should be charged on the $45,000, emphasized the fact that this amount was never under the Lyles' control. In qualifying the issue of control, the court indicated that had Tri-county placed the money in an escrow account there would have been no question as to control, even if the escrow was subject to restrictions. *Id.* at 73,371 A.2d at 426.

In its appeal, Tri-County contended that where a loan agreement contemplates that the entire amount of the loan is available to the borrower immediately, the fact that he leaves it with the lender for some time period does not make the transaction usurious, absent a showing of intent to evade the law against usury. Judge Singley, writing for the court, discounted this rule by considering: one, that the laws against usury ought to be stricly enforced; and, two, that no subterfuge of a lender will be permitted to shield a usurious loan. *Id.* at 74-75,371 A.2d at 427. Although the heart of the rule is the lender's intent to evade the usury laws, the court does not base its holding on that point; in fact, nowhere in the opinion does the court attempt to determine appellant's actual intent in retaining the $45,000. As to the concept of unpaid balance, the court reasoned that this balance was the $15,000 and not the $45,000. The $45,000, by being in Tri-County's business account, was totally within its control. When the Lyles repaid Tri-County, they needed only to pay the sum due, i.e. $15,000 plus interest.

The court does not mention any benefits which the appellant may have received by keeping the loan in its acount and under its control. Maryland case and statutory law indicates that the intent of the Maryland usury statute is to prevent a lender from obtaining an unjust bonus or commission. *See e.g., Brenner v. Plitt*, 182 Md. 348, 34 A.2d 853 (1943); Maryland Ann. Code, Art. 49 (1972).

A final point not discussed by the court is custom and usage in the trade. The question is whether it is customary for Maryland loan companies, when retaining a portion of the proceeds, to place such proceeds in a general business account with a record of outstanding loans. Such a custom would seem to be contrary to the proscriptions of the Maryland usury statute. While some states have ruled that custom and usage cannot legalize usury, the question of whether the practice is usurious has often been influenced by commercial custom.

The court's failure to address the element of the lender's intent may have been a serious oversight; the case could have been remanded to determine if a usurious intent on the part of the appellant existed. It seems clear, however, that the decision in *Tri-County* is in line with previous decisions of the court. The appellant lender, having attempted to exact an amount in excess of the legal interest rate by a rather ingenious method, was held to be in violation of the Maryland usury statute and the case law through which it had been interpreted.

Pennsylvania Upholds Parental Rights

by Lawrence Dominic*

Of all the law's intrusions into the lives of individuals, few seem more disruptive than the one that severs the legal bond between parent and child—the termination of parental rights.

There is substantial confusion regarding the exact nature of parental rights. Attempts at clarification run from considering them as a trust relationship, a compact balancing the parent's rights against obligations, to a cluster of "rights to"—to have custody, to visit, to choose a name,

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