PERAGALLO v. SKLAT

39 Conn. Sup. 510 (1983) | Cited 0 times | Connecticut Appellate Court | September 30, 1983

The issue in this case is whether the usury lawsof Connecticut or those of Vermont apply to twopromissory notes executed in Vermont and madepayable in Connecticut. If Connecticut law applies,the notes are not enforceable. If Vermont lawapplies, the notes are enforceable.

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The relevant facts are as follows: The plaintiffsand the defendants were residents of the state ofConnecticut. The plaintiffs, however, were engagedin the business of buying and selling real estateand building homes in the state of Vermont.

On October 10, 1975, the defendant traveled toVermont and bought from the plaintiffs a buildinglot for a seasonal home located in Vermont. Whilein the state of Vermont, the defendants executedand delivered to the plaintiffs two promissorynotes in the respective amounts of $3500 and$2500. Although each promissory note was entitled"mortgage note" and was clearly executed for thepurpose of partially financing the purchase ofthe Vermont lot, no mortgage deed was in factexecuted. Both notes called for interest at therate of 10.25 percent payable in advance.[1]The notes provided for payment at "96 Quarry Rd.Glastonbury, Connecticut 06033, or at such otherplace as the holders hereof may direct inwriting." At the time of closing, the defendantspaid to the plaintiffs the sums of $538.13 and$384.38, respectively, as prepaid interest on thenotes.

When the present suit was instituted, no additionalinterest or any principal had been paid, nor was thedesignated place of payment, Glastonbury, Connecticut,

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ever changed. Despite the express language in thenote providing for payment in Connecticut, thetrial court concluded that an inference could bedrawn that the notes were payable in Vermont.Accordingly, the court held that the notes werenot usurious.

While we agree with the court's ultimateconclusion that Vermont's usury laws apply, we doso for a different reason. The language containedin the notes concerning the place of payment isclear. That is, unless otherwise designated, thenotes were payable in Glastonbury, Connecticut.Since there was no evidence that the place ofpayment was changed, the trial court was in errorin concluding inferentially that the notes werepayable in Vermont. Where the language of acontract is clear and unambiguous, the contract isto be given effect according to its terms. LeonardConcrete Pipe Co. v.

C. W. Blakeslee & Sons, Inc.,178 Conn. 594, 599, 424 A.2d 277 (1979).

The issue thus presented is: When a promissorynote is executed in one state and made payable inanother state, which state's usury laws apply?

In Santoro v. Osman, 149 Conn. 9, 174 A.2d 800(1961), our Supreme Court held that when a note isexecuted and made payable in one state then thatstate's usury laws apply. In Pioneer CreditCorporation v. Radding, 149 Conn. 157,176 A.2d 560 (1961), the court, holding that since a notedoes not become effective until delivery and anexchange of money the place of delivery was theplace of execution. Therefore, since Massachusettswas the place of delivery and of payment, thatstate's usury laws applied. The court, however,has never addressed the issue of which state'susury law applies when execution takes place inone state and payment is provided for inanother.[2]

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Section 203 of the Restatement (Second), Conflictof Laws provides that a contract will be upheldagainst a claim of usury under the following twoconditions: "if it provides for a rate of interestthat is permissible in a state to which the contracthas a substantial relationship and is not greatlyin excess of the rate permitted by the generalusury law of the state of the otherwise applicablelaw . . . ." Comment b to that section providesthat "[o]rdinarily, the permissible rate ofinterest will vary only slightly from stateto state. Upholding a contract against thecharge of usury by the application of thelocal law of one state, which has a substantialrelationship to the transaction and the parties,can hardly affect adversely the interests ofanother state when the stipulated interest isonly a few percentage points higher than wouldbe permitted by the local law of the other state.Under these circumstances, the courts> deem it moreimportant to sustain the validity of a contractand thus to protect the expectations of the parties,than to apply the usury law of any particular state." Id.

We adopt the rationale of Restatement 203 andhold that where there is only a few percentagepoints difference in the usury laws of the stateof Connecticut in relation to the usury laws ofanother state, and both states have a substantialrelationship to the transaction, we will apply theusury laws of that state which gives validity tothe contract.

There are several factors to consider indetermining whether or not a state has asubstantial relationship to a contact. Forexample, the principal place of business of thelender or the place where the loan was negotiatedand made may be deemed sufficient to make thestate one of substantial relationship.

In the present case, the loan was negotiated andmade in Vermont, the plaintiffs principal place of

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business was in Vermont and the property was locatedin Vermont. Thus, due to the aggregate of thesecontacts, we conclude that Vermont has a substantialrelationship to the contract.

Moreover, the additional requirement of 203 ofthe Restatement requiring an interest rate notgreatly in excess of the rate permitted by thegeneral usury statutes of the otherwise applicablestate is also satisfied. The interest chargedexceeded the maximum legal rate of Connecticut bythe sum of $8.57.

Accordingly, we hold that the usury laws ofVermont apply to this transaction and, thus,the interest charged was not usurious.

There is no error.

In this opinion BIELUCH and COVELLO, Js., concurred.

1. On their face, the notes were notusurious under Connecticut law which prohibitsloans at a rate of interest greater than 12percent. General Statutes 37-4. Because thenotes called for prepaid interest of $538.13and $384.38, respectively, however, the amountsactually loaned were $2961.87 and $2115.62.Therefore, the effective rate of interestcharged was actually 12.11 percent and theprepaid interest exceeded the maximum amountlegally chargeable by $5 and $3.57, respectively,or a total of $8.57. See Wesley v. DeFonceContracting Corporation, 153 Conn. 400, 405-406,216 A.2d 811 (1966). Under Vermont law, on the other hand, whileloans calling for interest at greater than 12percent are generally usurious; vt. Stat. Ann.tit. 9, 41(a); there is an exception provided for"obligations to finance the purchase, constructionor improvement of property for seasonal or part-timeoccupancy and not as a place of legal residence."Vt. Stat. Ann. tit. 9, 46(3).

2. It should be noted that in Santoro v.Osman, 149 Conn. 9, 174 A.2d 800 (1961), whichwas decided in 1961, the