Fordham Urban Law Journal

Volume 4 *4*
Number 2

Article 13

1976

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William Kirschner

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Recommended Citation

William Kirschner, *USURY--Attorneys' Fees--Bank's Collection of In-House Legal Department Costs on Default Judgments Constitutes Usury and Illegal Fee-Splitting*, 4 Fordham Urb. L.J. 451 (1976).
Available at: https://ir.lawnet.fordham.edu/ulj/vol4/iss2/13

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USURY—Attorneys' Fees—Bank's Collection of In-House Legal Department Costs on Default Judgments Constitutes Usury and Illegal Fee-Splitting. *Thompson v. Chemical Bank*, 375 N.Y.S.2d 729 (Civ. Ct. 1975).

At the request of the Attorney General, the Administrative Judge of the Civil Court of New York brought an action against Chemical Bank (Chemical) to recover all attorneys' fees collected by the bank in obtaining numerous default judgments during 1973 and 1974. These judgments resulted from unpaid consumer loans[1] and were based on certain notes signed by each borrower. The "consumer notes" included a provision for the recovery of attorneys' fees even though the defaults were not prosecuted by an independent law firm but by the bank's salaried in-house counsel.[2]

The plaintiff in *Thompson v. Chemical Bank*[3] argued that Chemical, by collecting attorneys' fees for the work of in-house counsel, had engaged in the unauthorized practice of law, had misrepresented the true facts to consumer debtors by seeking recovery for the fees, had illegally split fees with its salaried attorneys, and had sought to recover usurious charges from defaulting borrowers.[4]

The bank denied all these assertions. However, its main contention was based upon its interpretation of section 108 of the New York Banking Law.[5] The statute authorizes banks and trust companies to operate personal loan departments.[6] It states that a bank may receive actual expenditures and reasonable attorneys' fees in

1. Section 108 of the New York Banking Law authorizes banks and trust companies to issue different types of consumer loans. Three of these types of loans often used by banks are credit card cash advance loans, checking account overdraft loans, N.Y. BANKING LAW § 108(5)(e) (McKinney 1957) and installment personal cash loans, *id.* § 108(4)(c).

2. Thompson v. Chemical Bank, 375 N.Y.S.2d 729, 733-34 (Civ. Ct. 1975). For each different type of loan there was a different note. A promissory consumer note was signed for the installment personal cash loan; a revolving credit agreement was signed for the checking account overdraft loans; and a retail installment credit agreement was signed for the credit card cash advance loans (in this case Master Charge). The first two types of notes had provisions which called for fifteen percent of the outstanding debt to be the measure of the attorney's fee while the Master Charge agreement called for a fee of twenty percent. *Id.* at 733 n.1.

3. *Id.* at 729 (Civ. Ct. 1975).

4. *Id.* at 735. The bank defended against the charges being usurious by arguing that all the charges had been allocated to its legal collection department. *Id.*

5. *Id.*

6. N.Y. BANKING LAW § 108(4)(a) (McKinney 1957).

collecting default judgments.[7] Chemical argued that the legislature had not intended to distinguish between in-house and outside legal expenses in this provision.

The court rejected the bank's defense, holding that the expenses of in-house counsel are not embraced by the term "attorneys' fees."[8] It therefore concluded that the bank's actions constituted misrepresentation; that the partial, rather than total, allocation of such monies to attorneys' salaries constituted illegal fee-splitting and the unauthorized practice of law; and that the receipt of funds in excess of the amount allowed by state law rendered the transactions usurious.[9]

Crucial to the *Thompson* court's decision is its construction of the term "attorneys' fees" as employed in section 108 of the Banking Law. Because of the dearth of decisional law construing this Banking Law provision, the *Thompson* court considered the term's usage in another New York statute, section 413(5) of the New York Personal Property Law.[10] That law governs retail installment credit agreements and specifically makes the payment of attorneys' fees contingent on the attorney not being a salaried employee.[11] The court in *Thompson* applied section 413's definition of attorneys' fees to section 108 by analogy and thus held that "attorneys" does not encompass salaried attorneys in the bank's legal department.[12] Fur-

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7. *Id.* § 108(4)(c) which provides:

> The maximum rate of interest authorized by this subdivision shall be inclusive of all charges incident to investigating and making any loan. No fee, commission, expense, or other charge whatsoever in addition thereto shall be taken, received, reserved, or contracted for, except . . . (iii) the actual expenditures, including reasonable attorney's fees for necessary court process . . . .

8. 375 N.Y.S.2d at 735-36.

9. *Id.* at 740. There have been few cases construing § 108's provision for attorneys' fees. In Jamaica Savings Bank v. Halimi, 76 Misc. 2d 939, 351 N.Y.S.2d 902 (Civ. Ct. 1974) the court held a twenty percent fee to be reasonable, and in Tinker Nat'l Bank v. Grassi, 57 Misc. 2d 886, 293 N.Y.S.2d 847 (Sup. Ct. 1968) a fifteen percent fee was upheld.

10. N.Y. PERS. PROP. LAW § 413(5) (McKinney 1957) which states:

> No fee, expense, delinquency, collection or other charge whatsoever shall be taken . . . by the seller under or holder of a retail instalment credit agreement except as provided in this section and except that the credit agreement . . . may provide for the payment of attorney's fees not exceeding twenty per centum of the amount due and payable under the credit agreement if it is referred to an attorney not a salaried employee of the seller or holder for collection.

11. 375 N.Y.S.2d at 739; *see* note 10 *supra*.

12. 375 N.Y.S.2d at 739; *see* notes 7, 10 *supra*. The court justified applying the definition of "attorneys' fees" in section 413 to section 108 because it felt that banks and retailers were

thermore, the *Thompson* court also interpreted section 108 of the Banking Law by itself as only requiring that attorneys' fees be based on "actual expenditures."[13] In its interpretation, the court in *Thompson* concluded that section 108's provision meant specific sums of money for specific services; not the expenses of an entire legal department or a portion of a staff attorney's salary. Thus, the court held that since Chemical Bank could point to no ascertainable cost for pursuing each action, it could not collect attorneys' fees with the default judgments.[14] This holding flatly rejected Chemical's argument that if the legislature had intended to exclude payments to salaried staff attorneys as attorneys' fees, it would have done so expressly as it did in section 413 of the Personal Property Law.[15]

Because the *Thompson* court had decided that the fees collected with the default judgments were not "attorneys' fees," it next had to determine whether Chemical's collection of the unauthorized monies constituted usury. The defendant-bank had collected these fees without actually paying all of them over to an attorney. The application of the usury statute to this fact pattern raises certain questions as to the meaning of usury.[16]

Usury has been defined as contracting and receiving something in excess of the amount allowed by law for the loan or forebearance of money.[17] The essential elements are a loan or forebearance of money, the receipt of excessive interest, and a wrongful intent.[18]

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engaged in similar consumer credit business and should thus receive the same privileges and restrictions. 375 N.Y.S.2d at 739. It is perhaps questionable, however, that banks and retailers are as similarly situated as the *Thompson* court maintained. Although some of the consumer loans involved in *Thompson* were *retail* credit loans, other loans were not. Thus, the analogy between section 413 and section 108 is not complete.

13. 375 N.Y.S.2d at 735-36. The court, in interpreting section 108, argued that meaning and effect should be given to every word in the statute. Otherwise, some words would be superfluous. Thus, the provision for "actual expenditures" in the collection of attorneys' fees in section 108(4)(c)(iii) was held to mean only nonsalaried attorneys' fees. *See* note 7 *supra*.

14. 375 N.Y.S.2d at 735-37.

15. *Id.* at 738.

16. *Id.* at 737-38.

17. *See, e.g.*, Brown v. American Nat'l Bank, 197 F.2d 911 (10th Cir. 1952); Benton v. Sun Indus., 277 App. Div. 46, 97 N.Y.S.2d 736 (1st Dep't 1950); Thomas v. Knickerbocker Operating Co., 202 Misc. 286, 108 N.Y.S.2d 234 (Sup. Ct. 1951).

18. *See, e.g.*, London v. Toney, 263 N.Y. 439, 189 N.E. 485 (1934); Halsey v. Winant, 258 N.Y. 512, 180 N.E. 253 (1932); Carrington Bros. v. Gadsby, 237 App. Div. 195, 260 N.Y.S. 485 (2d Dep't 1932); Thomas v. Knickerbocker Operating Co., 202 Misc. 286, 108 N.Y.S.2d 234 (Sup. Ct. 1951); Hennessey v. Personal Finance Corp., 176 Misc. 201, 26 N.Y.S.2d 1012

Most usury statutes define interest as the compensation received by the lender, directly or indirectly, for the use of the monies loaned.[19] The question, in dealing with additional charges such as the charge for "attorneys' fees" in *Thompson*, is whether these amounts are paid, either directly or indirectly, for the loan of money.[20]

The *Thompson* court found its answer in the explicit language of section 108(4)(c) of the Banking Law. This section states that "all charges incident to investigating and making any loan" are to be included in determining the rate of interest and that with four limited exceptions, no other charge "whatsoever" is to be levied.[21]

One of the exceptions is attorneys' fees. As previously discussed, the court did not find that the charges fell under this exception.[22] Only one other exception was arguably relevant. That exception, which is severely limited by law, involves a fine imposed by the lender in case of default.[23] Even if the amount received as attorneys' fees in *Thompson* were to be included in such a fine, however, that fine would exceed the statutory limitations.[24] Thus, the *Thompson* court did not apply this exception and instead added Chemical's charges to the specified interest rate on the loans, reasoning that the interest rate comprehended all charges not exempted by the statute. This, in turn, raised the interest rate above the statutory limit, making the bank guilty of usury.

Other courts have avoided this interpretation. Payments by the borrower after his default on a loan have often not been included as interest in determining whether there has been usury.[25] This view

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(Sup. Ct. 1941). *See also* Kafes, *Usury and its Progeny: A Survey of Interest Rate Regulation in Connecticut*, 43 CONN. B.J. 220, 232 (1969); Lowell, *A Current Analysis of the Usury Laws*, 8 SAN DIEGO L. REV. 193, 195 (1971).

19. *See, e.g.*, CAL. CIV. CODE § 916 (West 1954); CONN. GEN. STAT. ANN. § 37-3 (1939); FLA. STAT. ANN. § 687.03 (1974); ILL. ANN. STAT. ch. 74, § 65 (Smith-Hurd Supp. 1975); N.J. STAT. ANN. § 31:1-1 (Supp. 1975).

20. *See* Shanks, *Practical Problems in the Application of Archaic Usury Statutes*, 53 VA. L. REV. 327, 334 (1967).

21. N.Y. BANKING LAW § 108(4)(c) (McKinney 1957). The four exceptions are: fees to perfect a security interest on a loan, *id.* § 108(4)(c)(i); a fine for lateness, *id.* § 108(4)(c)(ii); attorneys' fees, *id.* § 108(4)(c)(iii); life insurance on the borrower, *id.* § 108(4)(c)(iv).

22. *See* text accompanying notes 10-15 *supra*.

23. N.Y. BANKING LAW § 108(4)(c)(ii) (McKinney 1957).

24. *Id.* The fine allowed by this section is five cents per dollar, not to exceed five dollars. In *Thompson* Chemical's judgment for attorneys' fees were either fifteen or twenty percent. 375 N.Y.S.2d at 733.

25. *See, e.g.*, Camilla Cotton Oil Co. v. Spencer Kellogg & Sons, Inc., 257 F.2d 162 (5th

is based on one of two theories. The first is that late charges are compensation to the lender for his extra trouble and expense in collecting the debt, rather than a charge for the use of the money.[26] The other is that the borrower can avoid these expenses by paying the loan when it is due.[27]

These theories have been applied frequently in prior case law. The cases have held that various types of default charges rarely make a note usurious which was valid on its face. For example, in *Bloom v. Trepmal Construction Company*[28] involving a note providing for a higher interest rate *after default*, the court held that this interest charge was valid because it arose after the note matured. The original note which provided for a lesser interest payment before default was legal. Thus, subsequent charges because of the borrower's failure to pay on time could not invalidate the original agreement as usurious.[29] This same holding was applied in *Flynn v. Dick*[30] which also involved increased interest charges upon default.

The *Thompson* court did not apply this common law doctrine to the note in question. Instead, the court applied the literal language of section 108 which calls for adding all charges incident to the loan to the interest in the *original note*, except if the charges fall within

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Cir. 1958); Sanders v. Federal Nat'l Mortgage Ass'n, 393 F. Supp. 739 (E.D. La. 1975); American Express v. Brown Co., 392 F. Supp. 235 (S.D.N.Y. 1975); Ferguson v. Electric Power Bd., 378 F. Supp. 787 (E.D. Tenn. 1974), *aff'd*, 511 F.2d 1403 (5th Cir. 1975). *See also* Prather, *Mortgage Loans and the Usury Laws*, 16 BUS. LAW. 181, 192 (1960).

26. Kafes, *supra* note 18, at 241.

27. *Id.* This rationale was adopted in two New York cases, where promissory notes requiring the payment of interest greater than the legal maximum after the borrower defaulted were found valid and enforceable: H.D.S. Trading Co. v. Redisch, 19 Misc. 2d 716, 186 N.Y.S.2d 696 (Sup. Ct. 1959); Heelan v. Security Nat'l Bank, 73 Misc. 2d 1004, 343 N.Y.S.2d 417 (Dist. Ct. 1973).

28. 29 App. Div. 2d 951, 289 N.Y.S.2d 447 (2d Dep't 1968).

29. *Id.*, 289 N.Y.S.2d at 448.

30. 13 App. Div. 2d 756, 215 N.Y.S.2d 382 (1st Dep't 1961). The court found that the note involved was not invalid by reason of a provision calling for payment of a usurious interest rate after maturity. *Id.* at 757, 215 N.Y.S.2d at 384. Other states have made similar findings. For example, in First Am. Title Ins. & Trust Co. v. Cook, 12 Cal. App. 3d 592, 90 Cal. Rptr. 645 (1970), there was a provision in a promissory note imposing penalties for late payment which, the defendant argued, made the note usurious. The court stated that the test for possible usury in a note is whether the note was usurious at the time of the transaction. An agreement legal at its inception could not be deemed usurious by reason of the debtor's subsequent default. *Id.* at 596, 90 Cal. Rptr. at 647. Since the penalty was incurred for the nonperformance of a legitimate agreement, it was not interest and therefore did not render the note usurious. *Id.* at 597, 90 Cal. Rptr. at 647.

the statute's four limited exceptions.[31] Because section 108 does not define precisely what constitutes attorneys' fees, the court could have applied common law theory and avoided the usury issue by calling the attorneys' fees illegal penalties incurred for the nonperformance of a legitimate agreement. Under this rationale, the charges would not render the entire agreement usurious from its inception.[32] Rather, the obligations themselves would be valid, and the attorneys' fees charges would be modified as being excessive[33] default charges and as constituting illegal fee-splitting.[34]

If these charges were properly held to be interest, the next inquiry is whether Chemical Bank possessed the intent requisite to label the transaction usurious.[35] *Thompson* relied heavily on *Vee Bee Service Company v. Household Finance Corporation*[36] where the lender, through a surety collateral plan, received monies indirectly from the borrower in addition to the maximum legal rate of interest. The court found the requisite intent present even though the usurious acts resulted from a mistake of law.[37]

An early test laid down by the New York Court of Appeals for proof of usury required a showing that the additional interest was paid in pursuance of a mutual agreement between the parties.[38] Fraud or false pretenses on the part of a party negated any agreement to pay, thus precluding a finding of usury.[39] As it became increasingly difficult to find usurious intent, courts began to pre-

31. See note 21 *supra* and accompanying text.

32. 375 N.Y.S.2d at 735-36.

33. The *Thompson* court emphasized the fact that the attorneys' fees charges seemed excessive. The promissory notes in question involved provisions for 15 percent and 20 percent fees out of the amount due. These percentages would amount to $1,500 and $2,000 on a $10,000 loan. The court felt that many competent lawyers would be willing to undertake such a business for much less. *Id.* at 738.

34. *See* text accompanying notes 44-50 *infra*.

35. *See* text accompanying note 18 *supra*.

36. 51 N.Y.S.2d 590 (Sup. Ct. 1944), *aff'd*, 269 App. Div. 772, 55 N.Y.S.2d 570 (1st Dep't 1945).

37. *Id.* at 611. In Hennessey v. Personal Finance Co., 176 Misc. 201, 26 N.Y.S.2d 1012 (Sup. Ct. 1941) and Hinman v. Brundage, 13 N.Y.S.2d 363 (Sup. Ct. 1939) the courts found a non-intentional mistake in the calculation was insufficient to support a charge of usury without corrupt intent on the part of the lender. *See also* Jefferson Title & Mortgage Corp. v. Dempsey, 153 Misc. 32, 274 N.Y.S. 807 (Sup. Ct.), *aff'd*, 42 App. Div. 626, 271 N.Y.S. 1105 (1st Dep't 1934), *modified*, 266 N.Y. 190, 194 N.E. 405 (1935).

38. Morton v. Thurber, 85 N.Y. 551, 556 (1881).

39. Guggenheimer v. Geiszler, 81 N.Y. 293, 296 (1880).

sume intent from the deliberate acts of the defendant.[40] In *Feldman v. Kings Highway Savings Bank*,[41] the plaintiff relied on section 108 of the Banking Law in charging that the defendant bank's prepayment charge of $2,000 made his loan usurious. The court agreed. It read section 108 strictly and deemed a contract to lend money usurious when the interest plus the difference between the amount borrowed and the sum actually received exceeds the permissible rate of interest on the monies received.[42] Because it adopted a more objective, mathematical formula for determining usury, the *Feldman* court easily wrote out of the law all questions of subjective intent. In subsequent cases, however, some courts have found that an intent to overcharge by the lender was a necessary element of usury.[43]

Usury aside, the *Thompson* court also found that Chemical Bank and its attorneys had violated section 491 of the Judiciary Law, and Canon 3 and Disciplinary Rule 3-102 of the Code of Professional Responsibility which make it unlawful for an attorney to split his fee with anyone except another attorney.[44] Since the court did not define Chemical's charges as "attorneys' fees" which would have invoked one of section 108's exceptions, it is perhaps questionable that the *Thompson* court had to address the fee-splitting issue. After all, there can be no fee-splitting if there are no attorneys' fees to begin with.[45] Nevertheless, the court held that where lawyers receive a flat salary and not a fee for a specific service, the bank cannot collect any attorneys' fees without engaging itself in fee-splitting.[46]

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40. *See, e.g.*, Vee Bee Service Co. v. Household Finance Corp., 51 N.Y.S.2d 590 (Sup. Ct. 1944), *aff'd*, 269 App. Div. 772, 55 N.Y.S.2d 570 (1st Dep't 1945).

41. 102 N.Y.S.2d 600 (Sup. Ct. 1950), *rev'd on other grounds*, 278 App. Div. 589, 102 N.Y.S.2d 306 (2d Dep't), *aff'd*, 303 N.Y. 675, 102 N.E.2d 835 (1951).

42. *Id.* at 604.

43. *See, e.g.*, Heelan v. Security Nat'l Bank, 73 Misc. 2d 1004, 343 N.Y.S.2d 417 (Dist. Ct. 1973); Leibovici v. Rawicki, 57 Misc. 2d 141, 290 N.Y.S.2d 997 (Civ. Ct. 1968), *aff'd*, 64 Misc. 2d 858, 316 N.Y.S.2d 181 (Sup. Ct. 1969).

44. 375 N.Y.S.2d at 740. This conduct also violated various court rules and professional ethics. *See, e.g.*, N.Y. App. Div. 1st Dep't R. 603.5; ABA Comm. on Professional Ethics, Opinions No. 294 (1958); N.Y. Co. Bar Ass'n Comm. on Professional Ethics No. 353 (1956) where it has been held improper for an attorney to divide court awarded attorneys' fees with his client. The policy behind these decisions is one of assuring to the public the integrity and competence that can only come from independent legal counsel. ABA Canons of Professional Ethics, E.C. 3-1.

45. 375 N.Y.S.2d at 735.

46. *Id.* at 736-37.

S. Stern, Henry and Company v. McDermott[47] illustrates the theory of fee-splitting. The case involved a fee-splitting agreement between a customhouse broker and an outside attorney. The plaintiff-broker referred a problem involving a customer of the broker to the defendant under an agreement by which the defendant would split any fee collected from the customer with the plaintiff.[48] When the broker sued to enforce the fee sharing arrangement, the court held that to allow fee-splitting would lead to control of attorneys by brokers, a breakdown in the attorney-client relationship, and the use of power by unscrupulous brokers to get a larger percentage of the fee.[49] In short, any third party involvement with an attorney's case threatens the attorney-client relationship. It is that threat which is meant to be prevented by prohibiting the splitting of fees.[50] In *Thompson*, awards of attorneys' fees served partially to pay the salaries of in-house counsel and partially to pay the operating expenses of the legal department.[51] The bank analogized its use of attorneys' fees to that of any law firm, reasoning that the cost of an attorney would normally include the cost of his staff and other office expenses. This, it argued, precluded a finding of fee-splitting.[52] Critical of this argument, the court pointed out that the bank had actually collected only a percentage of the attorneys' fees awarded to it in the default judgments, and suggested that if all of the awarded fees had been collected, they would have exceeded the cost of maintaining a legal department and would undoubtedly have

47. 38 Misc. 2d 50, 236 N.Y.S.2d 778 (Sup. Ct. 1962), *aff'd*, 245 N.Y.S.2d 348 (1st Dep't 1963).

48. *Id.* at 52, 236 N.Y.S.2d at 780.

49. *Id.* at 56-57, 236 N.Y.S.2d 784-85.

50. In *In re* Newman, 172 App. Div. 173, 158 N.Y.S. 375 (1st Dep't 1916) the court found illegal fee-splitting between an attorney and a lay collection agency. In Baldwin v. Lev, 163 Misc. 929, 297 N.Y.S. 963 (N.Y.C. Mun. Ct. 1937) the court denied enforcement to a claim for ten percent of an attorneys' fee for work in "adjusting and negotiating a claim," determining that the purpose of the statute was to protect the general public from exploitation and to prevent the subversion of justice from allowing unathorized persons to practice law. In *In re* Martins Estate, 178 Misc. 43, 33 N.Y.S.2d 81 (Sur. Ct. 1941) the court invalidated an agreement between an administratix and her decedent husband's employer, who was an attorney, which provided that the administratix, sole distributee under the will, would give to the attorney certain of her late husband's briefs, computations, and lists of potential clients, in exchange for a percentage of the attorneys' fees in settling the estate.

51. 375 N.Y.S.2d at 734.

52. *Id.* at 735.

been retained by the bank for other uses.[53]

The court concluded that because Chemical Bank was splitting fees with its attorneys, it was practicing law in violation of section 495 of the Judiciary Law.[54] The general rule in New York is that a corporation cannot hire attorneys to perform legal services for third parties. For example, the Appellate Division in 1911 found that a contract pursuant to which a corporation was to furnish legal and other expert services in a condemnation proceeding for a percentage of the award constituted the unauthorized practice of law by that corporation.[55] In *People ex. rel. Floersheimer v. Purdy*[56] the same court prohibited another corporation from "practicing law." Here, the corporation was hired by a realtor to represent him in a tax assessment case. It then hired an attorney to represent the realtor. The corporation's compensation was to come from the monies procured by the attorney for the realtor.[57] The court concluded that the corporation was being hired in violation of the law as an attorney to render legal services.[58] Just a year after *Purdy*, in *People v. Peoples Trust Co.*,[59] the court found that practicing law included the giving of legal advice and the preparation of legal instruments by which legal rights were secured.[60] *In re Tuthill*[61] involved a corporation formed to handle litigation for various relatives of intestates. The corporation was to provide this service in exchange for a share of the decedant's estate. The corporation employed an attorney to render necessary services.[62] The court found the corporation's business of furnishing legal advice to be the practice of law.[63]

In *Thompson*, unlike in the previous cases, the bank was hiring

53. Even conceding the validity of the bank's argument, a percentage of the awarded attorneys' fees would still go to the bank in violation of N.Y. JUDICIARY LAW 491 (McKinney 1965) and ABA CANONS OF PROFESSIONAL ETHICS, D.R. 3-102.

54. 375 N.Y.S.2d at 740.

55. *In re* Certain Lands in the City of N.Y., 144 App. Div. 107, 128 N.Y.S. 999 (1st Dep't 1911).

56. 174 App. Div. 694, 162 N.Y.S. 70 (1st Dep't 1916), *rev'd on other grounds*, 221 N.Y. 481, 116 N.E. 390 (1917).

57. *Id.* at 696, 162 N.Y.S. at 71.

58. *Id.* at 698-700, 162 N.Y.S. at 72-73.

59. 180 App. Div. 494, 167 N.Y.S. 767 (2d Dep't 1917).

60. *Id.* at 496, 167 N.Y.S. at 769.

61. 256 App. Div. 539, 10 N.Y.S.2d 643 (1st Dep't 1939).

62. *Id.* at 540-41, 10 N.Y.S.2d at 645.

63. *Id.* at 545, 10 N.Y.S.2d at 648.

an attorney to work for itself rather than a third party.[64] The bank provided neither attorneys' services nor legal advice to third persons.[65] However, the *Thompson* court did finally hold the bank to be involved in the practice of law.[66] The court found support for this view in a treatise on legal ethics stating: "[T]he trust company which collects for its lawyer's services a different sum from what it pays him is guilty of selling his professional services . . . ."[67] In *Thompson* the court reasoned that the bank, by taking a portion of the attorneys' fees, was selling legal services and therefore practicing law.[68] But to whom the bank was selling legal services is unclear. In *Pan-American Securities Corporation v. Fried. Knupp Aktiengesellschaft*[69] the court found that the purpose of the statute prohibiting corporations from practicing law was to keep them from enforcing other parties' claims. Since Chemical was enforcing only its own claims, and appearing in the only manner it could, it is difficult to see how the court could find it to be practicing law. There was no purchaser for its "sale of legal services."

The court in *Thompson* was faced with several issues. The most significant ones were the meaning of the attorneys' fees provision in the notes involved and the usury question. *Thompson* found that the attorneys' fees paid were not what they purported to be in the consumer loan notes and were thus illegal. Because of this finding, the court added these monies to the notes' original interest rate and found the entire transaction usurious. While the court's narrow reading of the provision for attorneys' fees in the statute is consistent with the prior law and with the intent of the legislature to prevent consumer-debtors from paying excessive extra charges, its finding on the usury question is doubtful. The court did not need to resort to the usury statute since the notes were arguably valid at their inception. The *Thompson* court could have invalidated the bank's practice without involving itself with the usury issue by striking only the attorneys' fees provisions as being excessive and illegal fee-splitting.

William Kirschner

64. 375 N.Y.S.2d at 732.
65. *Id.* at 732-34.
66. *Id.* at 736.
67. H. DRINKER, LEGAL ETHICS 182 (1953).
68. 375 N.Y.S.2d at 736-37.
69. 169 Misc. 445, 6 N.Y.S.2d 993 (Sup. Ct. 1938).