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## Contracts

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## CONTRACTS

By JAMES P. HOULIHAN\*

The year 1974-75 failed to bring forth any unusual developments in the general field of contract law, but there was considerable activity in the somewhat specialized field dealing with extensions of credit. This is particularly true as to loans subject to the terms of the Georgia Industrial Loan Act<sup>1</sup> and the Federal Truth-In-Lending Act.<sup>2</sup> The Financial Institutions Code of Georgia<sup>3</sup> which became effective on April 1, 1975, authorizes state-chartered banks to charge rates of interest permitted to other lenders with respect to designated types of loans, including the rates allowed under the Industrial Loan Act. This privilege was accompanied by many problems. The Federal Truth-In-Lending Act continues to be interpreted by the courts in a manner that imposes increasing burdens on lenders in order to avoid technical violations in seemingly inconsequential matters.

This article will first deal with situations falling in the category of general contract law.

### I. EFFECT OF MISREPRESENTATION OR MISTAKE AS TO MATTERS OF LAW

Several of the decided cases consider the effect on the enforceability of a contract where one of the parties either misrepresents or makes mistaken statements as to matters of law.

The case of *American Security Van Lines, Inc. v. Amoco Oil Co.*<sup>4</sup> involved a claim against American for damage to household goods during a move. During negotiations for settlement of the claim American sent two checks to the owners, Mr. and Mrs. Lamberth. The first check was for \$189.66 and did not contain a release provision. One week later, the Lamberths received a second check for \$660.55 which contained a general release. Both checks were endorsed and cashed. Mrs. Lamberth stated in her deposition and affidavit that the second check was accompanied by a separate written release for the same amount of the check; that she talked with Mr. Brady, an employee of American, before endorsing the check telling him she believed the claim to be worth more than they had received; that Mr. Brady told her the release on the back of the check did not mean anything as long as she did not sign the separate release; and that the two checks could be accepted without releasing the entire claim. The testimony of Mrs. Lamberth was not contradicted by American. American's motion for summary judgment on the ground that the release was binding was

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1. GA. CODE ANN. §25-301 *et seq.* (Rev. 1971).

2. 15 U.S.C.A. §1601 *et seq.* (Rev. 1974).

3. GA. CODE ANN., tit. 41A (Rev. 1974).

4. 133 Ga. App. 368, 210 S.E.2d 832 (1974).

granted by the trial court and the court of appeals affirmed, stating:

"Where one who can read signs a contract without apprising himself of its contents, otherwise than by accepting representations made by the opposite party, with whom there exists no fiduciary or confidential relation, he cannot defend an action based on it, or have it cancelled or reformed, on the ground that it does not contain the contract actually made, unless it should appear that at the time he signed it some such emergency existed as would excuse his failure to read it, or that his failure to read it was brought about by some misleading artifice or device perpetrated by the opposite party, amounting to actual fraud such as would reasonably prevent him from reading it." The statements made by Brady to the Lamberths were not such as would prevent her from reading the release, and, in fact, both Mr. and Mrs. Lamberth read it. Furthermore, the statements were not of a material fact but were legal opinions as to the effect of signing or not signing the release. "The general rule is well settled that fraud cannot be predicated upon misrepresentations of law or misrepresentations as to matters of law. Everyone is presumed to know the law and therefore cannot in legal contemplation be deceived by erroneous statements of law, and such representations are ordinarily regarded as mere expressions of opinion, and this is especially so where there is no confidential relationship between the parties."<sup>5</sup>

Earlier in 1974, the Court of Appeals of Georgia made a similar finding as to a misstatement of the law in the case of *Gignilliat v. Borg*<sup>6</sup> which involved a contract for the sale of land. The purchasers had dealt with a son-in-law of the seller who represented to them that the land was zoned under Gwinnett County ordinances as R-100 for "residential development," when, in fact, about two-thirds of it was zoned F-H or "flood hazard." The court affirmed the grant of a summary judgment in favor of the seller and held:

Zoning is a legislative function of the county. *Barton v. Atkinson*, 228 Ga. 733(3), 187 S.E.2d 835. Thus, whether land has been zoned, and if so, the uses which may be made of the land under the applicable law or ordinance is a matter of law.

A misrepresentation as to the status of the law, or as to a matter of law, or as to its effect upon the subject matter of a contract is a statement of opinion only and cannot afford a basis for a charge of fraud or deceit in the making of the contract.<sup>7</sup>

The court's holding that the statement of the son-in-law (*i.e.*, that the land was zoned residential) was a statement as to a matter of law, is the subject of a strong dissent by four of the justices. In the dissenting opinion, Judge Pannell says:

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5. *Id.* at 369, 210 S.E.2d at 833-34 (citations omitted).

6. 131 Ga. App. 182, 205 S.E.2d 479 (1974).

7. *Id.* at 183, 205 S.E.2d at 480.

I dissent from the majority opinion which decides, as the controlling principle in the case, that a representation by a seller that land he proposed to sell is zoned residential is an expression of legal opinion, rather than a statement of fact. I grant that zoning by a city or county, or any other governmental body, is a legislative function, and that the determination of whether a particular ordinance does or does not zone, may be a matter involving the construction of a law; but the mere statement that certain land is zoned for a certain use is a statement or representation of fact, not a statement of legal opinion.<sup>8</sup>

In *Sachs v. Swartz*<sup>9</sup> another case involving zoning, the Georgia Supreme Court held that the non-performance by the sellers of the special stipulation in the contract of sale, warranting that the property was zoned for apartments, authorized the rescission of the contract by the purchaser, under the evidence presented. In the course of its opinion the court said:

Both the sellers and the purchaser would be presumed to know the zoning regulations of the City of Marietta. However, when the sellers by a special stipulation in the contract warranted that the property was zoned for apartments, this was, in effect, a covenant that the property was already zoned for apartments, or would be thus zoned at the time for closing the sale.<sup>10</sup>

While there are some distinguishing features in the two cases, it is hard to conceive that the supreme court in *Sachs* would have reached the same result the court of appeals majority reached in the *Gignilliat* case.

## II. COVENANTS NOT TO COMPETE

In three of four cases on the subject of covenants not to compete, heard by the Georgia Supreme Court in the past year, the court clearly demonstrated that it is not inclined to enforce such contracts.

In *Worley & Associates, Inc. v. Bull*,<sup>11</sup> the contract provided that

“the employee would not during the period of his employment and for one year thereafter engage in verbatim court reporting, directly or indirectly, except as an employee of the Company, within fifty (50) miles of the DeKalb County Court House, Decatur, Georgia.”<sup>12</sup>

The record showed that the employee was conducting a court reporting office within the fifty (50) mile radius. The company sought to enjoin the defendant from operating the court reporting office in violation of the contract and sought damages against him.

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8. *Id.* at 187, 205 S.E.2d at 482.

9. 233 Ga. 99, 209 S.E.2d 642 (1974).

10. *Id.* at 102, 209 S.E.2d at 645 (citations omitted).

11. 233 Ga. 276, 210 S.E.2d 807 (1974).

12. *Id.* at 276, 210 S.E.2d at 807-08.

The trial judge denied an interlocutory injunction because he found that the evidence was conflicting as to whether the company was doing business in all of the prohibited territory. The testimony in dispute was as to whether the employer did business in all the forty-one counties within the fifty mile radius. The testimony of the employee was that he knew, of his own personal knowledge, that the employer did no business in eighteen of the forty-one counties. The court held that since the evidence was in conflict as to whether the company did business in all of the territory embraced within the contract, the trial court did not err in refusing to grant an interlocutory injunction.

There is no discussion in the opinion as to whether the area was reasonable in size and the decision seems to be based on the theory that the employer must be able to show that it does business in every one of the counties in the described area. This theory drew a strong dissent from Justice Jordan who said:

This opinion is another in a long line of cases from this court which make it practically impossible for an employer to protect his interests against a former employee who violates restrictive covenants in a contract. The facts here clearly show that the restrictive covenants as to time and territory are reasonable for the protection of the business interests of the employer. The facts show a clear violation of these covenants by the former employee. Yet we in effect sweep the contract under the table simply because the employer might not have had a customer in every remote area of the described territory.<sup>13</sup>

In *Southeastern Beverage & Ice Equipment Co. v. Dillard*,<sup>14</sup> the employer sought a temporary and permanent injunction, damages, and general relief. The trial court dismissed the complaint on the ground that the employment contract was void because it was vague and contrary to public policy.

In affirming, the supreme court noted that

[t]he contract prohibited the employee's activities in any area which was competitive with the company. A business or undertaking competitive with the company [was defined in the contract] . . . "as any engaged in the activity of the operation or management of a business selling or distributing ice making equipment, soda dispensers, liquor control equipment, or other enterprise conducted by the company during the employee's tenure."<sup>15</sup>

The supreme court affirmed the judgment of the trial court without any discussion of the fact that the contract restrictions on competition were limited to the time of the employee's employment. To support its decision,

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13. *Id.* at 278, 210 S.E.2d 808-09.

14. 233 Ga. 346, 211 S.E.2d 299 (1974).

15. *Id.* at 346, 211 S.E.2d at 300 (emphasis in the original).

the court cited two cases<sup>16</sup> in which contracts were not enforced where the violations occurred after termination of employment. In these cases, as well as in *Southeastern Beverage*, the decision against the employer was based on the theory that the contract was too indefinite to be enforced.

A distinction between competitive activities taking place during employment, as opposed to such activities occurring after employment has been terminated, would seem to be indicated but the court does not make this distinction. The imposition of broader restrictions during the time of employment does not seem unreasonable.

*Preferred Risk Mutual Insurance Co. v. Jones*<sup>17</sup> was before the Georgia Supreme Court on appeal from the trial court order sustaining the employee's motion to dismiss. In reversing the judgment of the trial court, the supreme court said:

This case being before this court on a Motion to Dismiss for failure to state a claim, the complaint must be construed in the light most favorable to the appellant, and we cannot affirm the trial court's grant of the motion unless the allegations of the complaint disclose with certainty that the appellant would not be entitled to relief under any state of provable facts. We cannot say that the covenant in question is unreasonable as a matter of law, there being no facts or circumstances present in the record upon which such a completion could be based.<sup>18</sup>

There was no evidence before the court in the *Preferred Risk* case, but it seems likely that when testimony is heard, the decision may very well turn, as in the *Worley* case, on whether the employer is doing business in all parts of the territory within the twenty-five mile radius.

In *Federated Mutual Insurance Co. v. Whitaker*,<sup>19</sup> the Georgia Supreme Court refused to apply the "blue-pencil theory of severability" to uphold certain restrictions which, standing by themselves, would have been enforceable where the contract contained other provisions which were too broad and therefore not enforceable. It is interesting to note that there was no contention on the part of the employee that the restrictions contained in the contract were unreasonable as to duration or territory.

The *Federated Mutual* case and the other cases discussed herein seem to indicate that the Georgia Supreme Court has a rather cool attitude toward the concept of employment contracts containing provisions limiting the employee's right to compete. Thus it is incumbent on the practitioner who represents an employer to be extremely careful to limit the restrictions in such contracts to the minimum required to give the employer needed protection. The concept of limiting the competitive activities of an employee while employed and for a limited time thereafter is a

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16. *Friedman v. Friedman*, 209 Ga. 653, 74 S.E.2d 860 (1953); *Mason, Au & Magenheimer Confectionery Mfg. Co. v. Jabin*, 220 Ga. 344, 138 S.E.2d 660 (1964).

17. 233 Ga. 423, 211 S.E.2d 720 (1975).

18. *Id.* at 423, 211 S.E.2d at 723 (citations omitted).

19. 232 Ga. 811, 209 S.E.2d 161 (1974).

reasonable one but seems not to have been looked upon with favor by the Georgia courts.

### III. THE GEORGIA INDUSTRIAL LOAN ACT

The Financial Institutions Code of Georgia<sup>20</sup> extended to state-chartered banks the right to make loans under the provisions of the Georgia Industrial Loan Act<sup>21</sup> and to charge the interest rates and fees permitted under that Act.<sup>22</sup> These rights became effective on April 1, 1975. The Georgia Industrial Loan Act was amended effective June 1, 1975 to increase the maximum amount that may be loaned under that Act to \$3,000 and the term of the loan to 36 months and 15 days.<sup>23</sup> National Banks already enjoyed the right to make loans under the terms of the Industrial Loan Act<sup>24</sup> so the Financial Institutions Code restored competitive equality to State Banks in this respect.

While these changes open an area of competition for state banks, the making of loans under the Industrial Loan Act requires extreme caution because of the severity of the penalties involved for violations of the Act. In most cases where a contract involves usurious interest the only penalty is the forfeiture of interest, but in *Hodges v. Community Loan & Investment Corp.*,<sup>25</sup> the Georgia Supreme Court held that a contract made in violation of the Industrial Loan Act is null and void and no recovery can be had of principal or interest in a suit for money had and received.

The *Hodges* case was first heard on appeal by the Court of Appeals of Georgia.<sup>26</sup> Two questions were involved. The first question was posed by the court as:

Can an Industrial Loan Act lender recover from a borrower [the] balance of principal owing from a loan pursuant to a theory of assumpsit, or money had and received, when the loan contract between the lender and borrower is null and void because its terms violate the provisions of the Industrial Loan Act?<sup>27</sup>

The second question involved the statute of limitations embodied in the Federal Truth-In-Lending Act but is not pertinent to our discussion here.

In its complaint, filed to recover money had and received, the lender recited that

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20. GA. CODE ANN., tit. 41A (Rev. 1974).

21. GA. CODE ANN. §25-301 *et seq.* (Rev. 1971).

22. GA. CODE ANN. §41A-1313 (Rev. 1971).

23. Ga. Laws, 1975, pp. 393-94 *amending* GA. CODE ANN. §25-315 (Rev. 1971).

24. *See Northway Lanes v. Hackley Union Nat'l Bank & Trust Co.*, 334 F. Supp. 723 (W.D. Mich. 1971) *construing* 12 U.S.C.A. §85 (Rev. 1945).

25. 234 Ga. 427, 216 S.E.2d 274 (1975).

26. *Hodges v. Community Loan & Investment Corp. of North Georgia*, 133 Ga. App. 336, 210 S.E.2d 826 (1974).

27. *Id.* at 336, 210 S.E.2d at 827.

"[o]n June 15, 1972, plaintiff loaned to defendants the sum of \$1,164.41 cash and thereafter defendants paid to plaintiff a total of \$480.67 leaving a principal balance of \$683.74 on which interest has accrued in the sum of \$54.01 at the rate of 7% per annum."<sup>28</sup>

After discovery, both parties moved for summary judgment and the court resolved the motion for recovery for money had and received in favor of the plaintiff-lender. The borrowers appealed from this decision.

The opinion in the case does not disclose the nature of the violation of the Act but the fact that there was a violation is not in dispute. It is to be noted that the award of summary judgment to the lender covers not only the principal sought but also interest at the rate of 7 percent per annum.

In reaching its decision in favor of the lender, the court relied on the theory that

the Legislature did not make the transaction illegal nor did it say "the licensee shall have no right to collect or receive any principal, interest or charges whatsoever" but expressly limited its declaration of nullification to the "loan contract."<sup>29</sup>

However, in permitting recovery of interest the court injected an element that goes beyond the mere recovery of principal and to this extent reduces the penalty imposed by the Act. While the contract was declared null and void because of a violation of the Act so that interest and charges were forfeited, the court nevertheless would have allowed recovery of a portion of the interest.

In any event, on certiorari<sup>30</sup> the Georgia Supreme Court reversed the court of appeals. In holding that both principal and interest are forfeited the court said:

It might be argued that it is inequitable that in one class of loans the lender violating the laws governing such loans will lose only its interest, whereas in another class of loans the lender, for violation of the laws governing those loans, will forfeit principal, interest, and charges. This is a matter that addresses itself to the wisdom of the General Assembly. This court has no right to substitute its judgment for the judgment of the General Assembly in regard to the penalty to be imposed for the violation of the Industrial Loan Act.

There is no logic in holding that where the General Assembly has declared that a loan contract made in violation of the Industrial Loan Act is that a loan contract made in violation of the Industrial Loan Act is void, this means that only the interest and other charges created by the contract are forfeited. The contract requires the payment of the principal amount of the loan just as much as it required the payment of interest and other charges. If the General Assembly declares a *contract* void, then the entire

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28. *Id.* at 336, 210 S.E.2d at 828.

29. *Id.* at 339, 210 S.E.2d at 829.

30. *Hodges v. Community Loan & Investment Corp.*, 234 Ga. 427, 216 S.E.2d 274 (1975).



*obligation* is void unless specific language in the statute allows partial recovery.

The effect of the opinion of the Court of Appeals is to impose an inconsequential penalty for the violation of the Industrial Loan Act. Under that view the lender who violates the Act is permitted to recover its principal, with interest thereon at 7%. This surely was not what was intended by the unequivocal language declaring contracts made in violation of the statute to be null and void. .

We conclude that the unambiguous language of Code Ann. Sec. 25-9903 requires a holding that a contract made in violation of the Industrial Loan Act is null and void and that no recovery can be had of the principal in a suit for money had and received.<sup>31</sup>

There was a strong dissent by Justice Ingram which is joined in by Justices Undercofler and Gunter. Justice Ingram said:

It is quite clear to me that the General Assembly intended by the new statute that if a loan is made in violation of the law, the lender shall forfeit all interest and other charges, but not any of the principal sum advanced to the borrower.<sup>32</sup>

Without a definite statement from the legislature there is no way of knowing with certainty what it did intend, but it is interesting to note that in other situations involving usurious interest the legislature has specifically stated that there shall be no further penalty or forfeiture other than forfeiture of the entire interest.<sup>33</sup> In any event, it is clear that lenders should exercise particular care in making loans under the Industrial Loan Act to be certain the Act is not violated. This is particularly true when the trivial nature of some of the violations is considered.

The case of *Georgia Investment Co. v. Norman*,<sup>34</sup> is discussed at some length in the *Hodges* case in both the court of appeals and the supreme court. In *Georgia Investment Co.* the violation was a charge of \$1.00 paid as a notary fee to an employee of the lender. On the basis of this charge the lender was ordered to return to the borrower all monies paid by him to the lender and, in addition, the lender was required to pay the costs of suit. The lender had failed to bring an action for money had and received in the trial court, so on appeal this question was not before the supreme court. In his concurring opinion in the *Georgia Investment Co.* case, Justice Ingram concurred in the judgment because he believed that the lender can recover the principal amount of the cash loaned to the borrower in "an appropriate *assumpsit* claim."<sup>35</sup> It is difficult to understand Justice Ingram's optimistic view of the lender's right to recover in view of the fact that the majority opinion required the lender to return to borrower all sums paid by borrower to lender under the terms of the loan contract.

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31. *Id.* at 431, 216 S.E.2d at 277 (emphasis in the original).

32. *Id.* at 434, 216 S.E.2d at 278-79.

33. *See, e.g.*, GA. CODE ANN. §57-112 (Rev. 1971).

34. 231 Ga. 821, 204 S.E.2d 740 (1974).

35. *Id.* at 827, 204 S.E.2d at 744.

In two other cases involving Industrial Act loans, *Hinsley v. Liberty Loan Corp.*<sup>36</sup> and *Beneficial Finance Co. of Atlanta v. Treff*,<sup>37</sup> the Georgia Court of Appeals ruled that the acceleration clauses in the respective loan contracts were in violation of the Industrial Loan Act because they did not make provision for a full refund of all unearned interest. These cases are interesting because both involve licensees under the Industrial Loan Act who presumably had long experience in making industrial loans and yet the contract forms used by them were such that all loans made by them violated the Act.

It seems reasonable to assume that in the future we will see many additional suits brought for violations of the Act and the chances are the courts will find that a violation, however trivial, will result in a forfeiture of both principal and interest. The philosophy behind this is well stated by Justice Jordan in his dissenting opinion in *Georgia Investment Co.* wherein he says:

It has always been recognized that since the Industrial Loan Act allows charges far in excess of that allowed under general statutes that the Act will be strictly construed and all penalties strictly enforced. Such a desirable legislative policy would be completely eviscerated if a lender, after imposing a null and void contract upon the borrower, were to be allowed to recover the principal amount of the loan under the theory of money had and received or under any other theory.<sup>38</sup>

The Georgia Industrial Loan Act has no direct bearing on the Federal Truth-In-Lending Act<sup>39</sup> because the Industrial Loan Act deals with problems involving usury while the Truth-In-Lending Act does not concern itself with the amount of interest charged but deals solely with whether the consumer-borrower is given full disclosure of all interest and other charges made against him. However, the two Acts are related in the sense that both impose severe penalties on lenders for any violation and because of the proliferation of recent suits particularly in the Truth-In-Lending area.

One feature of the Industrial Loan Act is that a borrower has the right to prepay the loan at any time.<sup>40</sup> The courts have made a distinction between voluntary prepayment by the borrower and forced prepayment required by the lender in the event of default. Where the borrower voluntarily prepays the courts have held that refund of interest may be based on the "Rule of 78s" but that in the case of acceleration by the lender this method of refund cannot be used because it does not result in a refund of all unearned interest. In *Garrett v. GAC Finance Corp.*<sup>41</sup> the court said:

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36. 133 Ga. App. 344, 211 S.E.2d 3 (1974).

37. 134 Ga. App. 17, 213 S.E.2d 126 (1975).

38. 231 Ga. at 828, 204 S.E.2d at 745.

39. 15 U.S.C. §1601 *et seq.* (Supp. 1972).

40. See GA. CODE ANN. §25-317 (Rev. 1971).

41. 129 Ga. App. 96, 198 S.E.2d 717 (1973).

The enumeration that the plaintiff violated the 8 percent interest ceiling of the Industrial Loan Act causing the note to become usurious and void has merit. Plaintiff's loan manager testified that the interest refund of \$32.75 was computed according to the "Rule of 78s," or the sum-of-the-digits method. Code Ann. §25-317 permits a refund of prepaid interest computed by the Rule of 78s in case where the borrower *pays the time balance in full before maturity*. Application of this rule where a loan has been prepaid permits a refund of only a portion of the prepaid unearned interest. But here we do not have a case of prepayment and the Rule of 78s cannot be used to compute the interest refund. The acceleration was made at the half-way point in the contract but less than 50 percent (approximately \$49) of the total interest charged was refunded. Nothing less than a refund of all unearned interest where the creditor accelerates can be permitted under the Act. It is obvious, therefore, that the permissible interest charge of 8 percent per annum under the Industrial Loan Act was exceeded and therefore the note is usurious. The obligation as thus accelerated is void and unenforceable.<sup>42</sup>

This case has been followed by later cases and the same rule is followed in cases falling under the Motor Vehicle Sales Finance Act.

A borrower's prepayment privileges under the Industrial Loan Act are stated in GA. CODE ANN. §25-317:

Notwithstanding the provisions of any contract to the contrary, a borrower may at any time prepay all or any part of the unpaid balance to become payable under any installment contract. If the borrower pays the time balance in full before maturity, the licensee shall refund to him a portion of the prepaid interest, calculated in complete even months (odd days omitted), as follows: The amount of the refund shall represent at least as great a proportion of the total interest as the sum of the periodical time balance after the date of prepayment bears to the sum of all periodical time balances under the schedule of payments in the original contract.

This language seems obscure but the court of appeals in *Garrett*, has construed it to permit refunds under "the Rule of 78s" where the borrower prepays.

#### IV. STATUTORY CHANGES

Effective April 10, 1975 the legislature added new code section 67-1301(1),<sup>43</sup> which prescribes and limits the transfer fees that may be charged by the holder of a deed to secure debt where the original grantor transfers the real property securing the loan to a third party. Where the grantor is relieved from liability following the transfer, the transfer fee shall not exceed 1 percent of the outstanding loan balance and where the grantor is not relieved from liability the fee may not exceed \$75.00 or one-half of 1

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42. *Id.* at 96, 198 S.E.2d at 718 (emphasis in the original).

43. Ga. Laws, 1975, p. 371.

percent of the outstanding loan balance, whichever amount is greater.

Section 57-101 was amended to change the legal interest rate limit prescribed therein from 8 percent to 9 percent.<sup>44</sup>

As of October 29, 1974 the Federal Deposit Insurance Act<sup>45</sup> was amended to permit state banks to charge a rate of interest on business and agricultural loans in the amount of \$25,000 or more of not more than 5 percent in excess of the discount rate on 90 day commercial paper in effect at the federal reserve bank in the federal reserve district in which the bank is located.<sup>46</sup> The purpose of the Amendment is to prevent discrimination against state-chartered insured banks with respect to interest rates. If the rate prescribed in the amendment exceeds the rate a state bank would be permitted to charge in the absence of the amendment such state-fixed rate is preempted by the Amendment.<sup>47</sup>

## V. CONCLUSION

The material in the foregoing resume, as far as general contract law is concerned, was selected as being of interest because of the strong dissenting opinions that appear in many of the cases. Both majority and minority opinions have much to be said for them.

Those cases involving the Georgia Industrial Loan Act also show divergence of opinion not only between the Justices of the Georgia Appellate courts but also between the court themselves. In addition, because of the heavy penalties involved, these cases demonstrate to lenders generally that extreme care must be taken in the drafting of loan contracts and in the imposition of charges against borrowers to be certain there are no violations of the Industrial Loan Act. In these cases the law does deal with trifles and a trivial violation can result in the loss of both principal and interest by a lender.

The field of Federal Truth-In-Lending is too complicated to be examined in depth in a general discussion of contracts but Truth-In-Lending also calls for extreme care on the part of the lenders. No one can deny that the objective of the law is praiseworthy in making certain that borrowers are fully aware of all costs involved in obtaining a loan. This enables them to shop around and compare the charges of various lenders. Here again, however, the courts have seized on minor violations. Even when all information concerning a loan is disclosed in a loan contract the courts have insisted that the various itemized charges must be set out in meaningful sequence and the lack of meaningful sequence means a violation. No legitimate lender would argue against the proposition that borrowers should

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44. *Id.*

45. 12 U.S.C.A. §1811 *et seq.* (Rev. 1969).

46. 12 U.S.C. §1831a(a) (Supp. Feb., 1975).

47. 12 U.S.C. §1831a(b) (Supp. Feb., 1975).

be fully informed, but over-zealous application of the law can vastly increase the cost of doing business and in the long run this will not be beneficial to borrowers.