



## Michigan Supreme Court Says Excessive Interest is Still Illegal, No Matter What it is Called

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In a decision handed down earlier last year, the Michigan Supreme Court confirmed that excessive, illegal interest rates cannot be collected even if the loan document includes a clause stating that any of the fees and charges connected to the transaction should not be construed as illegal interest. This opinion has made it abundantly clear that an interest rate for a loan in Michigan that exceeds the statutory limit of 25 percent is still illegal and impermissible, even if those costs are not labelled as interest.

### **The \$1 Million House-Flipping Loan and Interest Rate at Issue**

The case, *Soaring Pine Capital vs. Park Street Realty*, involved a \$1 million loan from a non-bank lender (Soaring Pine) to a company (Park Street) that used the funds to purchase and renovate distressed properties in Detroit. The original loan document included a stated interest rate of 20 percent -- relatively high, yet below the permissible limit -- but other provisions of the loan included fees and charges which raised the effective interest on the principal to over 25 percent.

The loan instrument also included a "usury savings clause," which stated that the loan's interest rate is neither excessive nor illegal.

### **The Dispute and the Lower Courts**

Park Street paid more than \$140,000 of interest on the loan but then stopped making payments. Soaring Pine filed a lawsuit to recover the full amount of principal and interest. Park Street argued that Soaring Pine had charged fees which constituted illegal interest and violated Michigan's criminal usury statute. The Oakland County Circuit Court agreed that Soaring Pine had charged an illegal interest rate, but that it had not violated the state's criminal statute.

On appeal, the Michigan Court of Appeals ruled that the note and interest rate was legally enforceable because of the usury savings clause, but that Soaring Pine had violated the criminal usury statute

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when it sought to collect the effective interest rate by filing a civil suit.

### **The Michigan Supreme Court Decision**

The case was appealed to the Michigan Supreme Court, which addressed the legality of the usury savings clause and whether Soaring Pine was criminally liable for seeking to collect an unlawful interest rate:

- *Usury Savings Clause* – The court was clear in its holding that a usury savings clause is ineffective if the loan agreement otherwise requires a borrower to pay an illegal interest rate. This means that a lender cannot avoid the consequences of contracting for a usurious interest simply by adding a usury savings clause to the loan document.
- *Criminal Liability* – The court also held that seeking to collect an unlawful interest rate in a lawsuit is insufficient to trigger criminal liability under Michigan’s criminal usury law. The more appropriate remedy for a lender’s abusive lawsuit is success for the borrower in that lawsuit and related civil sanctions, not a criminal conviction for usury.

Although the court rejected the idea of enforcing the usury savings clause, it did note in its ruling that such clauses may not always be in violation of the long-standing public policy prohibiting the charging of interest that exceeds 25 percent. Specifically, the court postulated that a usury savings clause may be enforceable “when interest due later becomes usurious because of an event outside the control of the parties, it would not be inconsistent with public policy to permit the lender to recover at the maximum legal rate.”

### **Takeaways for Lenders**

This ruling sends a strong message about what constitutes excessive interest on a loan in Michigan. No matter how the terms or conditions of a loan’s interest rate are described or labelled, if the total effective rate of interest (including some fees and charges) on the principal exceeds 25 percent, it is usurious.

In addition, the court’s decision also includes this reminder for all lenders: “A lender’s interest in mitigating risk and uncertainty inherent in providing a loan in Michigan must give way to public policy protecting borrowers from illegal interest rates.”

*If you are a borrower or lender and have any questions on the legality and/or advisability of a current or proposed interest rate on a loan, the attorneys from Foster Swift’s Finance, Real Estate and Bankruptcy Practice Group are available to assist and provide counsel. Contact group leader Scott Hogan at [shogan@fosterswift.com](mailto:shogan@fosterswift.com)/616-726-2207.*