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VALIDITY OF REVOLVING CHARGE ACCOUNTS IN INDIANA

In *Standard Oil Co. v. Williams*,¹ the Indiana Court of Appeals held that a 1-1/2 per cent monthly finance charge on a revolving credit card account² did not violate the then existent usury statute,³ setting eight per cent per annum as the maximum allowable interest on written loan contracts. Indiana thereby joined the majority of jurisdictions which have tested the validity of such credit charges.⁴ The Indiana Supreme Court is presently considering acceptance of an appeal from the decision,⁵ but ultimate reversal seems unlikely. Finance charges of this type were expressly approved by the legislature's recent adoption of the Uniform Consumer Credit Code (UCCC)⁶ and repeal of the old usury law.⁷ Furthermore, it is improbable that the Indiana Supreme Court would be willing to cast doubt upon the validity of the overwhelming number of credit sales arrangements made before enactment of the UCCC. The reliance interests involved are simply too great.⁸ While the result in *Standard Oil* is probably settled law in Indiana, several aspects of the case should be briefly examined lest the cursory opinion suggest to other courts that

1. — Ind. App. —, 288 N.E.2d 170 (1972).

2. Under a typical revolving charge agreement the customer receives a monthly statement of his outstanding balance. If he pays the amount of the balance within the required time, which varies under different agreements from 15 to thirty days, he will incur no interest charges. If he pays less than the entire balance, there will be a 1½ per cent monthly charge on the unpaid balance. The agreement provides that a minimum amount, varying in proportion to the unpaid balance, must be paid by the customer each month and a limit will normally be set on the total debt allowance for each account. The balance is reduced when the customer pays a portion of the unpaid balance or receives a credit for the return of merchandise. Under most revolving charge agreements purchases made during the current billing period are excluded from the balance of that period, but if they remain unpaid until the next billing date they are added to the unpaid balance.

The revolving charge agreement in *Standard Oil* was substantially the same as the typical revolving charge account discussed above.

3. Pub. L. No. 366, § 10(1), [1971] Ind. Acts 1557, 1675.

4. Six jurisdictions have determined that revolving charge sales are not usurious. *Kass v. Garfinckel, Brooks Bros., Miller & Rhoads, Inc.*, 299 A.2d 542 (D.C. Mun. Ct. App. 1973); *Iowa v. Yonker Bros., Inc.*, No. 74765 (Dist. Ct. Jan. 31, 1972); *Maine Merchants Ass'n v. Campbell*, 287 A.2d 430 (Me. 1972); *Uni-Serv Corp. v. Commissioner of Banks*, 349 Mass. 283, 207 N.E.2d 906 (1965); *Sliger v. R.H. Macy*, 59 N.J. 465, 283 A.2d 904 (1971); *Dennis v. Sears, Roebuck & Co.*, 223 Tenn. 415, 446 S.W.2d 260 (1969). *Contra*, *Rollinger v. J.C. Penney Co.*, 192 N.W.2d 699 (S.D. 1971); *State v. J.C. Penney Co.*, 48 Wis. 2d 125, 179 N.W.2d 641 (1970).

5. *Standard Oil Co. v. Williams*, 1171 A 233 (Ind., filed Dec. 5, 1972).

6. IND. ANN. STAT. §§ 19-21-101 to 19-26-203 (Supp. 1972).

7. Pub. L. No. 366, § 10(1), [1971] Ind. Acts 1557, 1675.

8. While statistics are not available for Indiana, it has been estimated that sixty per cent of all credit sales in 1970 involved revolving charge accounts. *Wall Street Journal*, Mar. 4, 1971, at 1, col. 6.

Standard Oil's approach was the only one possible.⁹

THE TIME-PRICE DOCTRINE

The Court of appeals held, without elaboration, that *Standard Oil's* 1-1/2 per cent monthly finance charge fell within the so-called "time-price" exception to the usury laws.¹⁰ Under this judicial doctrine, a seller may establish one price for a cash sale and another price for a credit sale; the difference between the two prices is not considered interest.¹¹ *Standard Oil* did not establish a specific separate price for credit purchases. Instead, it appended a 1-1/2 per cent monthly charge against the total balance due on an account, and payments were made against the total balance rather than allocated against individual credit purchases.¹²

Quoting from another Indiana case, the court stated that the credit or time-price could be in the form of either a stated sum added to the cash price, or a percentage of the cash price added to it.¹³ However, the court failed to note that the quoted case involved an installment contract rather than a revolving charge plan of the type involved in *Standard Oil*.¹⁴ Under an installment contract the specific credit or time-price is easily ascertained by multiplying the periodic payment by the number of payments required under the contract. Under a revolving charge plan a credit purchaser might pay varying amounts indefinitely against an account kept open by continuing credit purchases.¹⁵ For this reason the Wisconsin Supreme Court has ruled that the credit or time-price of a revolving charge purchase cannot be ascertained at the time the credit sale is made

9. *Standard Oil* has already been cited, without discussion, as authority in *Kass v. Garfinckel, Brooks Bros., Miller & Rhoads*, 299 A.2d 542 (D.C. Mun. Ct. App. 1973).

This note will not examine every issue raised by this case because many of the issues have been discussed previously in connection with similar litigation in other jurisdictions. See Comment, *Service Charges for Revolving Charge Accounts: A Time-Price Exemption or Usury?*, 71 COLUM. L. REV. 905 (1971) [hereinafter cited as *Service Charges*]; 69 MICH. L. REV. 1368 (1971).

10. — Ind. App. at —, 288 N.E.2d at 173; *Newkirk v. Burson*, 28 Ind. 435 (1867); *Robrock v. Ditzler*, 113 Ind. App. 332, 47 N.E.2d 163 (1943); *Stevens v. Grossman*, 100 Ind. App. 417, 196 N.E. 123 (1935).

11. The doctrine was first announced in 1827 by the Court of the Kings Bench in *Beete v. Bidgood*, 108 Eng. Rep. 792 (K.B. 1827). The leading American statement of the doctrine appears in *Hogg v. Ruffner*, 66 U.S. (1 Black) 115 (1861). The leading Indiana statement is *Newkirk v. Burson*, 28 Ind. 435 (1867).

For a discussion of the origin and early development of the time-price doctrine, see *Service Charges*, *supra* note 9, at 906-09.

12. — Ind. App. at —, 288 N.E.2d at 171.

13. *Stevens v. Grossman*, 100 Ind. App. 417, 420-21, 196 N.E. 123, 124 (1935).

14. The parties had contracted for the construction of a garage at a stated price plus a carrying charge. The amount was to be paid in 24 monthly installments of varying amounts. *Stevens v. Grossman*, 100 Ind. App. 417, 418, 196 N.E. 123 (1935).

15. It has been said, therefore, that the customer ultimately controls the time-price of the merchandise. *Service Charges*, *supra* note 9, at 913.

and that such charges are therefore outside the time-price doctrine.¹⁶

While commentators have discussed this reasoning,¹⁷ the *Standard Oil* court did not consider it, perhaps because it is only superficially valid. The total cost of a revolving credit purchase depends upon how much the credit card holder decides to pay toward his account each month and how long he decides to draw out his payments.¹⁸ However, while the total time-price is indeed not fixed at the time of purchase, the credit card companies require credit purchasers to make minimum monthly payments which vary according to the total balance due.¹⁹ These minimum required payments can be used to determine the maximum amount which a credit card holder might pay for a particular credit indebtedness.²⁰ That the *maximum* time-price be ascertainable would seem to be all that the time-price doctrine requires,²¹ particularly since the credit purchaser has the option of avoiding the maximum price by increasing his payments over the minimum required.²²

16. See *State v. J.C. Penney Co.*, 48 Wis. 2d 125, 143-44, 179 N.W.2d 641, 651 (1970), where the Wisconsin Supreme Court states that insufficient disclosure of the cash and the credit prices and the calculation of the credit price in terms of interest or a percentage are indicia of usury. The Court determined that a revolving charge agreement was not a true time-price sale and, therefore, was usurious.

17. See, e.g., *Service Charges*, *supra* note 9, at 913. 69 MICH. L. REV. 1368, 1375 (1971).

18. If the credit card holder pays the purchase price within thirty days of the purchase he avoids all additional charges. The credit card holder, however, may decide just to pay the minimum monthly requirement and thereby extend his indebtedness and increase the cost of the credit. Consequently, the longer the balance remains unpaid, the greater the total cost of the revolving charge purchase.

19. Brief for Appellants at 7, *Standard Oil Co. v. Williams*, — Ind. App. —, 288 N.E.2d 170 (1972).

20. Under this agreement the credit card holder was required to pay a minimum of ten per cent of the monthly balance. — Ind. App. at —, 288 N.E.2d at 171. If the credit card holder makes only one purchase the maximum credit cost can be determined by adding the 1½% charge to the monthly balance and then reducing the balance by ten per cent to arrive at a new balance. By repeating this computation the monthly balance will be reduced to an amount under ten dollars. The agreement provided that once the balance falls below ten dollars that amount becomes the minimum payment. *Id.* Thus when the balance falls below this amount you can very simply calculate the total cost by adding up the total amount of the finance charges and thereby determine the maximum time-price.

21. The rationale for the time-price doctrine is said to be that the buyer should be permitted to choose an alternate price if he desires to defer his payment. See Note, *The Penney Decision and Revolving Charge Accounts*, 54 MARQ. L. REV. 223, 224 (1971) [hereinafter cited as *Revolving Charge Accounts*]. Therefore, if the maximum time-price is ascertainable, this rationalization would be satisfied.

Some states, however, require that both the cash price and the time-price be quoted at the time of the sale. Since by definition the time-price of a revolving charge sale is influenced by subsequent purchases a definite time-price cannot be quoted at the time of the sale. Thus, it would not be possible to validate revolving charge agreements in these jurisdictions. See Annot., 14 A.L.R.3d 1065, 1128-36 (1967).

22. Such an arrangement is analogous to an installment sale which allows payment of the indebtedness prior to the maximum allowable time specified in the agreement and

The superficial distinction between installment and revolving charge account contracts has generated more confusion than it warrants.²³ The next court to address the applicability of the time-price doctrine to revolving credit accounts should lay the matter to rest by expressly demonstrating that an ascertainable maximum credit price is essentially no different from the classic time-price of an installment contract. The revolving credit account only requires somewhat more sophisticated computations to determine its ceiling time-price than the simple multiplication used with installment contracts.

RETROACTIVITY OF THE UCCC

In addition to finding that the revolving charge arrangement was within the time-price exception to the usury law, the Court of Appeals in *Standard Oil* found that the UCCC, adopted after the transactions in question, operated retroactively to validate them. The court's reading of the UCCC and its legislative history was probably correct,²⁴ but hardly necessary since the court had already held the transactions to be within the time-price exception. A better approach would have been the one taken by the Court of Appeals for the District of Columbia Circuit in *Kass v. Garfinckel, Brooks Brothers, Miller & Rhoads, Inc.*²⁵ There the court regarded the legislature's adoption of a prospective validating statute²⁶ as a policy guide to which the court would defer, even though the statute did not control the period in question.

thereby reduces the time-price. For an example of such an agreement, see *Newkirk v. Burson*, 28 Ind. 435, 435-36 (1867).

23. For a discussion of the distinction between installment and revolving charge contracts, see *Revolving Charge Accounts*, *supra* note 21, at 233-35.

24. The Court of Appeals based its findings on § 8 of the Indiana act which adopted the UCCC:

(4) Transactions entered into before the General Effective Date of this Act and the rights, duties and interests flowing from them thereafter may be terminated, completed, consummated, or enforced as required or permitted by any statute, rule of law, or other law amended, repealed, or modified by this Act as though the repeal, amendment, or modification had not occurred, except this Act shall apply to

(b) sales or loans made pursuant to revolving charge accounts . . . and revolving loan accounts . . . entered into, arranged, or contracted for before the passage of this Act . . .

Pub. L. No. 366, § 8(4), [1971] Ind. Acts 1557, 1674. Section 8(4)(b) departs from UNIFORM CONSUMER CREDIT CODE § 9.101(4)(b) upon which it is based. Section 8(3)(b) of the Indiana Act deleted the phrase "after this Act takes effect" which appeared immediately after "sales or loans made" in § 9.101(4)(b) of the Uniform Act. This deletion led the *Standard Oil* court to conclude that the Indiana General Assembly intended to give the Indiana Act retroactive effect.

25. 299 A.2d 542 (D.C. Mun. Ct. App. 1973).

26. D.C. Consumer Credit Protection Act, 28 D.C. CODE ANN. §§ 3301-03 (1967), as amended, 28 D.C. CODE ANN. §§ 301-03 (Supp. V, 1972).

By unnecessarily reaching the UCCC retroactivity issue, the Indiana Court of Appeals may mislead other courts which will have occasion to deal with the validity of revolving charges in the future. The method of attack adopted by the Indiana court might suggest that revolving charges can be validated on either of two grounds—time-price or UCCC. However, the UCCC's approval of revolving charges is premised on its conclusion that such accounts fall within time-price.²⁷ If a court finds to the contrary on this point, it is doubtful whether the UCCC still applies.²⁸ Thus, other state courts treating the problem of revolving charges should confine their attention to the seemingly all-important time-price issue.

CONCLUSION

For a time it appeared that the question of revolving credit charges would be resolved by the courts.²⁹ The prospect excited some commentators³⁰ and frightened others.³¹ However, it appears now that both courts and legislatures have recognized that the question is one of far-reaching economic impact and thus better left to legislative resolution.³²

27. The UCCC sets the maximum "credit service charge" that parties may contract for in a consumer credit sale made pursuant to a revolving charge account. IND. ANN. STAT. § 19-22-207 (Supp. 1972). "Credit Service Charge" is defined as the sum of (1) all charges payable directly or indirectly by the buyer and imposed directly or indirectly by the seller as an incident to the extension of credit, including any of the following types of charges which are applicable: time price differential, service, carrying or other charge, however denominated. . . . The term does not include charges as a result of default, additional charges . . . [consumer credit insurance], delinquency charges . . . or deferral charges. . . .

IND. ANN. STAT. § 19-22-109 (Supp. 1972).

28. Those jurisdictions that have found revolving charge accounts outside the scope of the time-price doctrine have concluded that they represent a forbearance of a debt at a rate which violates usury statutes. See, e.g., *State v. J.C. Penney Co.*, 48 Wis. 2d 125, 135-36, 179 N.W.2d 641, 646 (1970).

29. Two jurisdictions totally abrogated the time-price doctrine. *Sloan v. Sears, Roebuck & Co.*, 228 Ark. 464, 308 S.W.2d 802 (1957); *Lloyd v. Gutgsell*, 175 Neb. 775, 124 N.W.2d 198 (1963). The Supreme Courts of two other jurisdictions concluded that revolving charge accounts were not within the scope of the time-price doctrine and were, therefore, usurious. *Rollinger v. J.C. Penney Co.*, 192 N.W.2d 699 (S.D. 1971); *State v. J.C. Penney Co.*, 48 Wis. 2d 125, 179 N.W.2d 641 (1970).

30. See, e.g., *Service Charges*, *supra* note 9, at 916; Note, *Rollinger v. J.C. Penney Company. A Credit Masquerade: The Revolving Charge Account—Interest Incognito*, 17 S.D. L. REV. 504, 515 (1972).

31. See, e.g., *Revolving Charge Accounts*, *supra* note 21; Note, *Regulation of Revolving Credit Service Charges*, 28 WASH. & LEE L. REV. 386, 401 (1971) [hereinafter cited as *Regulation of Service Charges*]; 69 MICH. L. REV. 1368, 1388 (1971).

32. *Accord*, *Sliger v. R.H. Macy & Co., Inc.*, 59 N.J. 465, 470, 283 A.2d 904, 906 (1971); *Dennis v. Sears, Roebuck & Co.*, 223 Tenn. 415, 427, 446 S.W.2d 260, 266 (1969). Over half of the states have enacted legislation regulating revolving charge accounts. ALASKA STAT. § 45.10.120(c) (Supp. 1970); CAL. CIV. CODE § 1810.2 (West Supp. 1973);

For various reasons, sellers will probably be allowed to continue charging a higher rate under revolving charge agreements than may be charged as interest on loans.³³ The courts will still be confronted with a number of questions, such as the method of computing balances against which finance charges are levied.³⁴ However, the revolving charge account and its monthly finance charges are rapidly becoming an accepted fact of American economic life.

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DEL. CODE ANN. tit. 6, § 4337 (Supp. 1970); D.C. CODE ANN. §§ 301-03 (Supp. V, 1972); FLA. STAT. ANN. § 5235(3) (1972); GA. CODE ANN. § 96-904(b) (Supp. 1970); ILL. ANN. STAT. ch. 121-1/2, § 528 (Smith-Hurd Supp. 1971); KAN. STAT. ANN. § 16-508 (Supp. 1972); KY. REV. STAT. ANN. § 371.300 (1972); LA. REV. STAT. ANN. § 9:3523 (Supp. 1973); MD. ANN. CODE art. 83, § 153D(c) (1969); MASS. ANN. LAWS ch. 255D, § 27(c) (1969); MICH. COMP. LAWS § 445.857 (1967); MO. ANN. STAT. § 408.300 (Supp. 1972); NEB. REV. STAT. § 45-207 (1968); NEV. REV. STAT. §§ 97.245 (1967); N.M. STAT. ANN. § 50-16-3(c) (Supp. 1971); N.Y. PERS. PROP. LAW § 413 (McKinney Supp. 1972); N.C. GEN. STAT. § 24-11 (Supp. 1969); N.D. CENT. CODE § 51-14-03 (1960); OHIO REV. CODE ANN. § 1317.11 (Page 1962); PA. STAT. tit. 69, § 1904 (Supp. 1972); R.I. GEN. LAWS ANN. § 6-27-4 (Supp. 1972); TENN. CODE ANN. § 47-11-104 (1964); TEX. REV. CIV. STAT. ANN. art. 5069-6.03 (1971); VT. STAT. ANN. tit. 9, § 2406 (1970); VA. CODE ANN. § 601-362 (1973); WASH. REV. CODE § 63.14.130 (Supp. 1972). Another six states have adopted the Uniform Consumer Credit Code. COLO. REV. STAT. ANN. §§ 73-1-101 to 73-1-103 (1963); IDAHO CODE §§ 28-31-101 to 28-39-108 (Supp. 1972); IND. ANN. STAT. §§ 19-21-101 to 24-4.5-6-203 (Supp. 1972); OKLA. STAT. tit. 14, §§ 1-101 to 9-103 (1972); UTAH CODE ANN. §§ 70B-1-101 to 70B-9-103 (Supp. 1971); WYO. STAT. ANN. §§ 40-1-101 to 40-9-103 (Supp. 1971).

For a schematic comparison of the various provisions regulating revolving charge accounts, see *Regulation of Service Charges*, *supra* note 31, at 402-06.

33. An empirical study conducted in Arkansas following *Sloan v. Sears, Roebuck & Co.*, 228 Ark. 464, 308 S.W.2d 802 (1957), which totally abrogated the time-price doctrine, revealed that many borrowers considered to be average credit risks were being denied credit. Symposium—Consumer Credit Study, *An Empirical Study of the Arkansas Usury Laws: "With Friends Like That . . ."*, 1968 U. ILL. L.F. 554, 587. In addition, it was discovered that retailers were recovering the difference between the new permissible rate and the old rate by increasing the cash price to all consumers. *Id.* at 588. See also 69 MICH. L. REV. 1368, 1383-4 (1971).

34. The Court of Appeals of the State of New York has recently considered the validity of the previous balance method of computing finance charges under New York law. *Zachary v. R. H. Macy & Co.*, Calendar No. 386 (Ct. App., Dec. 28, 1972). For a discussion of the various methods of computing the balance, see *Regulation of Service Charges*, *supra* note 31, at 394-95.