

# SUPREME COURT OF VIRGINIA



SUPREME COURT BUILDING  
100 NORTH NINTH STREET  
RICHMOND, VIRGINIA 23219  
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## **Granted Appeal Summary**

### **Case**

THOMAS JANIS, ET AL. v. TRUST COMPANY, AS CERTIFICATE TRUSTEE ON BEHALF OF BOSCO CREDIT II TRUST SERIES 2010-1, ET AL.  
(Record Number 181307)

### **From**

Circuit Court of Prince George County; W. Tomko, Judge.

### **Counsel**

Henry W. McLaughlin (The Law Office of Henry McLaughlin, P.C.) for appellant.

Daniel K. Eisenhauer for appellee.

### **Assignments of Error**

1. The Circuit Court of Prince George County, Virginia (“the trial court”) erred in its oral ruling on July 24, 2017 that the claim of the appellants, Thomas Janis and Kimberly O. Janis (“the Janises”) for an injunction based on usury failed because their claim of usury was based on averred improper charges that were *de minimus*. This was error, even though the trial court noted that injunctions are not to be granted liberally, because of the following:
  - A. The Janises sought an injunction to prevent a foreclosure of their home based on usury in a subsidiary mortgage loan based on Va. Code Ann. Section 6.1-330.72 (“Section 6.1-330.72”).
  - B. Section 6.1-330.72, at all relevant times, provided what charges are allowed in subsidiary mortgage loans, and stating, in pertinent part (excluding certain charges otherwise allowed by such statute not applicable to this case) “No other charges of any kind shall be imposed on or be payable by the borrower either to the lender or any other party in connection with such loan ....”
  - C. In *Garrison v. First Federal Savings and Loan*, 402 S.E. 2d 25 (1991) this Court held that any charge not attributable to principal or all allowed charge for collateral services is interest. Therefore, if the lender in this case imposed charges on the Janises that were neither towards principal or allowable collateral charges, such imposed charges were

interest and any such interest disallowed by Section 6.1-330.72 constituted disallowed interest and therefore usury.

- D. The Janises' complaint ("the complaint") verified by Kimberly O. Janis under oath, plausibly set forth that the lender imposed on the Janises two usurious charges -one for \$1 as an overcharge of the recordation fee and the other for \$158 for a claim of payment of a charge owed by the Janises which was tendered but not completed and not refunded to them.
  - E. There is no *de minimum* [sic] exception to the usury prohibition in Section 6.1-330.72.
  - F. Under the provisions of Va.Code Ann. Section 6.2-304 ("Section 6.2-304") because the subject loan was usurious, no interest was owed on the loan.
  - G. In their complaint, verified [sic] by the Janises under oath, because they owed no interest on the subject loan (pursuant to Section 6.2-304) they had satisfied the loan in full because they had paid more than the \$26,000 of the principal of the loan.
  - H. Because the Janises had satisfied the loan in full, it was error for the trial court on July 24, 2017 to rule against their plea for an injunction to prevent foreclosure of their home on July 25, 2017.
2. The trial court erred in its written order entered on July 25, 2017 denying injunctive relief as to Count One of the complaint. This was error for the reasons set forth in Assignment of Error No.1, in Assignment of Error No.1 [sic], including subsections A through [sic] H of that assignment of error.
4. The trial court erred in that part of the final order entered on July 9, 2018 which dismissed the complaint with prejudice. This was error because
- A. The final order thereby dismissed that part of the complaint which prayed that the trial court appoint a special commissioner with instruction to mark the deed of trust as satisfied on grounds, avrred [sic] in the complaint, that (a) the loan was usurious; (b) as a result of such usury, no interest was due on the subject mortgage loan; and (c) with interest removed, the Janises had paid the loan in full.
  - B. The final order thereby dismissed that part of the complaint which sought a declaratory judgment that the Janises were not responsible for the lender's foreclosure costs related to scheduling a foreclosure for July 25, 2017.
  - C. The loan was usurious because the lender imposed on the Janises as to the secondary mortgage loan at issue in this case a \$1 charge claimed for a recordation charge paid to the clerk's office but not actually so paid and not among the charges for a secondary mortgage oan [sic] under the provisions of Section 6.1-330.72.

- D. The loan was also usurious because the lender imposed a \$158 charge for a claim of payment of an amount owed by the Janises which was tendered but not completed and not refunded to them.
- E. Because the loan was usurious, pursuant to Section 6.2-304 no interest was due on the subject loan.
- F. Because no interest was due on the subject loan, the Janises had paid the loan in full.
- G. Because the loan was paid in full, the Janises were entitled to have the deed of trust marked as satisfied.