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Foreword

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FOREWORD

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THE publication of this edition of *SMU Law Review* marks the twenty-seventh time that an *Annual Survey of Texas Law* has been published by a law review at Southern Methodist University. During this period of operation under the Journal's former name, *Southwestern Law Journal*, SMU has been privileged to publish many manuscripts authored by leading legal citizens whose work has been cited with regularity by the judiciary. Survey articles written by Dean Page Keeton, Professor Joseph W. McKnight, Dean A.J. Thomas and Dean W. Frank Newton have been cited more than sixty times in judicial opinions.

A recently published study noted that the Survey has accounted for approximately two-thirds of all citations to the *Southwestern Law Journal* by state courts and more than one-half of all citations to the *Southwestern Law Journal* by all courts in reported opinions.[1] This solid record has made a major contribution toward making the *Southwestern Law Journal* the second most often cited law journal published in Texas during this century.[2] Although this is the first time that a Survey will be published under the new name, *SMU Law Review*, it is anticipated that this tradition of excellent service to the bench and bar will continue. This is also the first time that a foreword has been included in the Survey. Its purpose is to identify some of the identifiable trends in the development of Texas jurisprudence in an effort to make the more detailed articles in the Survey even more useful as resource tools for the bench and bar. Of course, even if time and space limtations would permit, no one can really accomplish this task on every subject cov-

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1. Jim Paulsen & James Hambleton, *Reviewing the Law Reviews, Texas-Style*, 56 TEX. B.J. 284, 284 (1993).

2. *Id.* (ranking of citations by state and federal appellate courts).

ered in the Survey without missing something of real significance that has happened or that is imminent. Nonetheless, it is my privilege to make this small contribution.

For at least the last twenty years, the subject of personal injury reparations law and the field of tort law in general has undergone relatively rapid and pervasive change and evolution. A major trend that has been continued during this Survey period involves a reexamination of both traditional and developing tort doctrines, including the relationship between tort and contract law. Building on case law decided during the last Survey period,[3] the Texas Supreme Court has continued to resolve the "contort" controversy by limiting the availability of traditional tort theories in commercial settings. A distillation of current Texas law yields the conclusion that although negligence law has a role to play in the context of cases involving breaches of contractual obligations,[4] depending primarily on the nature of the claimant's injury, as a general rule the negligent nonperformance of a contractual obligation causing a direct economic loss[5] is not actionable under a negligence theory. Even an intentional or a fraudulent failure to perform a contractual undertaking is not actionable in tort unless the breaching party fraudulently misrepresented the intention to perform at the time the contract was made.[6]

In other words, during this Survey period, the Texas Supreme Court has virtually eliminated the availability of traditional tort doctrine when the nature of the wrong is the breach of a contract.[7] Only fraud in the inducement remains as a viable theory of recovery under these circumstances.[8] Even this avenue of liability has been narrowed by the Texas Supreme Court decisions concerning a claimant's proof requirements. In an apparent retreat from earlier cases,[9] the court has held that not only is a party's failure to perform a contract, standing alone, no evidence of a party's intent not to perform at the time the contract was made,[10] a party's denial that the promise was made in the first place is not a sufficient basis for a jury finding that the promise was fraudulent.[11] At the same time, the court has indicated that the

3. Southwestern Bell Tel. Co. v. DeLanney, 809 S.W.2d 493 (Tex. 1991); Crim Truck & Tractor Co. v. Navistar Int'l Transp. Corp., 823 S.W.2d 591 (Tex. 1992).

4. Southwestern Bell Tel. Co. v. Delanney, 809 S.W.2d 493, 494 (Tex. 1991).

5. *See* Nobility Homes of Texas, Inc. v. Shivers, 557 S.W.2d 77, 78 n.1 (Tex. 1977); *see also* Note, *Economic Loss in Products Liability Jurisprudence*, 66 COLUM. L. REV. 917, 918 (1966):

> Direct economic loss may be said to encompass damage based on insufficient product value; thus, direct economic loss may be "out of pocket" the difference in value between what was given and received or "loss of bargain" the difference between the value of what is received and its value as represented. Direct economic loss may also be measured by costs of replacement and repair. Consequential economic loss includes all indirect loss, such as loss of profits resulting from inability to make use of the defective product.

6. *Crim Truck & Tractor Co.*, 823 S.W.2d at 597.

7. *Id.* at 597.

8. *Id.*

9. Spoljaric v. Percival Tours, Inc., 708 S.W.2d 432, 435 (Tex. 1986); *see also* King v. Tubb, 551 S.W.2d 436, 441 (Tex. Civ. App.—Corpus Christi 1977, no writ).

10. Schindler v. Austwell Farmers Coop., 841 S.W.2d 853, 854 (Tex. 1992).

11. T.O. Stanley Boot Co. v. Bank of El Paso, 36 Tex. Sup. Ct. J. 259 (Dec. 2, 1992).

new tort duties of good faith and fair dealing will not be expanded to provide claimants with new opportunities for imposing liability in the ordinary commercial context.[12] In a companion development, the common law of negligent misrepresentation has been relegated to a position of relative insignificance by the court because the measure of recovery is restricted to the claimant's "out-of pocket" losses and because no recovery of damages for mental anguish or lost profits is available.[13] In fairness, however, it must be noted that there is no clear indication that an assault will be made on the recoverability of damages when the claim is grounded on a statutory foundation, including the Deceptive Trade Practices Act.[14] Nonetheless, it appears that in all cases in which lost profits are available, the court has imposed relatively strict proof requirements.[15]

In addition to the elimination of mental anguish damages as a compensable loss in cases of negligent misrepresentation, the court has gone to great lengths in an attempt to curtail the continuing development of modern tort concepts allowing claimants to recover for emotional distress. Although the availability of these damages had appeared to be well-established,[16] the court's treatment of the companion tort theories of negligent and intentional infliction of emotional distress has clearly turned the clock backwards. In a nutshell, under current Texas law there is no general duty not to inflict reasonably foreseeable emotional distress when physical injury to the claimant is not reasonably foreseeable.[17] Furthermore, even though the tort of "outrageous conduct" or "intentional infliction of emotional distress" grounded on the Second Restatement of Torts, section 46 is well recognized by intermediate appellate courts in Texas,[18] the court has declined to recognize it as an independent basis for liability.[19] As in the commercial context, during this Survey period in large measure the court has demonstrated a fondness for traditional principles of liability interpreted almost as narrowly as existing recent precedent will allow.[20] Nonetheless, in several significant respects, traditional impediments to recovery against particular classes of

12. *See Crim Truck & Tractor Co.*, 823 S.W.2d at 596 (franchisor-franchisee relationship is not a "special relationship" giving rise to a tort duty of good faith and fair dealing); *see also* Mims v. Beall, 810 S.W.2d 876, 879 (Tex. App.—Texarkana 1991, no writ) (when standard is one of fiduciary obligation, any self-dealing is prohibited). *But see* Dearing, Inc. v. Spiller, 824 S.W.2d 728, 733-34 (Tex. App.—Fort Worth 1992, writ denied) (holder of executive rights in mineral lease held to same duty as a fiduciary such that any self-dealing is prohibited).

13. Federal Land Bank Ass'n of Tyler v. Sloane, 825 S.W.2d 439, 441 (Tex. 1991). "Restatement (second) 552B allows for damages suffered in reliance upon negligent misrepresentation, but not for the failure to obtain the benefit of the bargain." *Id.* at 443.

14. *See* Stewart Title Guar. Co. v. Sterling, 822 S.W.2d 1, 3 (Tex. 1991) (settlement credits applied only after actual damages were trebled); Henry S. Miller Co. v. Bynum, 836 S.W.2d 160 (Tex. 1992) (plaintiff has choice of damage measures in DTPA cases).

15. Holt Atherton Indus., Inc. v. Heine, 835 S.W.2d 80, 84-86 (Tex. 1992).

16. *See* St. Elizabeth Hosp. v. Garrard, 730 S.W.2d 649 (Tex. 1987).

17. Boyles v. Kerr, 36 Tex. Sup. Ct. J. 231 (Dec. 2, 1992).

18. *See* Tidelands Auto. Club v. Walters, 699 S.W.2d 939, 942 (Tex. App.—Beaumont 1985, writ ref'd n.r.e.)

19. Boyles v. Kerr, 36 Tex. Sup. Ct. J. 231 (Dec. 2, 1992); *see also* Diamond Shamrock Refining v. Mendez, 844 S.W.2d 198, 201-02 (Tex. 1992).

20. *See* Delaney v. University of Houston, 835 S.W.2d 56, 59 (Tex. 1992).

defendants have been eliminated[21] or greatly ameliorated.[22]

The last developments of real importance in the tort law field concern the related subjects of settlement and the adjudicative effects of settlement. In *Stewart Title Guaranty Co. v. Sterling*,[23] the court attempted to identify and reconcile the various contribution/settlement schemes that exist under Texas statutory and common law.[24] The court concluded that the 1917 Contribution Statute applied to the case rather than the *Duncan* scheme of pure comparative causation because the case involved an "intentional" tort not covered by the former comparative negligence statute or by *Duncan*.[25] It is obvious from the opinion that the court's conclusion rested primarily on a renewed affection for the "one satisfaction" or "credit" rule that had been rejected, if not abolished, by the court when the *Duncan* scheme was created[26] as well as the fact that the "tort reform" statute could not be applied.[27] Nonetheless, the court's opinion raises signifcant questions concerning the relationship of Chapters 32 and 33 of the Civil Practice and Remedies Code that will continue to bedevil the bench and bar until it is determined whether cases like *Sterling* are covered by the comparative responsibility statute.[28] Finally, the settlement game has also been changed radically by the elimination of Mary Carter agreements from the legal landscape for "those cases in the judicial pipeline where error has been preserved, and to those actions tried on or after December 2, 1992."[29] On balance, these developments represent an effort to resolve ongoing problems that confront tort lawyers on a daily basis. Unfortunately, the ultimate goal of facilitating fair settlements under clear guidelines could not be achieved during the Survey period.

The fields of procedural law and evidence have also been affected considerably by important decisions during the Survey period. The most notable trends in these subject areas concern the concepts of procedural waiver in the context of the jury charge and discovery, a reconsideration of the proper interpretation of the rules of civil procedure governing Texas charge practice

21. Cox v. Thee Evergreen Church, 836 S.W.2d 167, 171 (Tex. 1992).

22. Hughes v. Mahaney & Higgins, 821 S.W.2d 154, 157 (Tex. 1992); Aduddell v. Parkhill, 821 S.W.2d 158, 159 (Tex. 1991), *cert. denied*, 112 S. Ct. 2998 (1992); *see also* Havner v. E-Z Mart Stores, Inc., 825 S.W.2d 456 (Tex. 1992).

23. 822 S.W.2d 1 (Tex. 1991).

24. *Id.* at 2. TEX. CIV. PRAC. & REM. CODE ANN. §§ 32.001-32.003 (Vernon 1986) (the 1917 Contribution Statute); TEX. CIV. PRAC. & REM. CODE ANN. §§ 33.001-33.017 (Vernon 1986), amended by, Acts 1987, 70th Leg., 1st C.S., ch. 2 § 2.04 (the 1973 Comparative Negligence statute); TEX. CIV. PRAC. & REM. CODE ANN. §§ 33.001-33.016 (Vernon 1986 & Supp. 1993) (the "tort reform" Comparative Responsibility Statute enacted in 1987); Duncan v. Cessna Aircraft Co., 665 S.W.2d 414, 429 (Tex. 1984) (common law scheme).

25. 822 S.W.2d at 2.

26. Duncan v. Cessna Aircraft Co., 665 S.W.2d 414, 432-34 (Tex. 1984).

27. The *Sterling* case was filed before September 2, 1987, the effective date of current Chapter 33 of the Civil Practice and Remedies Code.

28. *See* First Title Co. of Waco v. Garrett, 802 S.W.2d 254, 262-63 (Tex. App.—Waco 1990, writ granted) (writ granted on points concerning entitlement of defendants to credit or offset for prior recoveries).

29. Elbaor v. Smith, 845 S.W.2d 240, 251 (Tex. 1992).

in civil cases, and the adoption of a more pragmatic approach to the doctrine of res judicata.

Any experienced Texas practitioner can attest that Texas appellate courts have been especially inclined to use waiver principles to resolve disputes that should be resolved on the merits. Moreover, in a number of important contexts, waiver has been imposed even though the trial judge was made fully cognizant of the complaint, but not in precisely the right form or manner. This infatuation with technical procedural rules is generally out-of-step with modern procedural thinking. Fortunately, as a result of a series of recent Texas Supreme Court decisions there is good reason to anticipate that Texas courts will begin generally to refrain from using technical procedural requirements as weapons for the insulation of erroneous judgments from reversal.

Indeed, during this Survey period, the Texas Supreme Court has clearly disapproved of this method of dispute resolution in one particularly important context, preservation of complaints concerning the jury charge, while ameliorating waiver problems in several others. After surveying the continuing expansion of waiver doctrine and the complex difficulties confronting counsel in preserving complaints about the jury charge as well as the need for amendments of the applicable procedural rules, the court appears to have repudiated the theoretical justification for a number of its prior decisions in favor of a more congenial approach that fairly places the responsibility upon the trial judge to work with counsel in developing a proper jury charge.[30] Under this approach, the "one test for determining if a party has preserved error in the jury charge . . . is whether the party made the trial court aware of the complaint, timely and plainly, and obtained a ruling."[31]

This welcome change in Texas procedural jurisprudence was accompanied by a series of "anti-waiver" decisions including opinions allowing counsel to reasonably explain non-compliance with the requirements for supplementation of discovery responses,[32] allowing the relaxation of a strict exclusionary rule as a sanction for noncompliance with the supplementation rules[33] and rejecting or disapproving of other forms of procedural punishment for tech-

30. State Dep't of Highways & Pub. Transp. v. Payne, 838 S.W.2d 235, 241 (Tex. 1992); *see also* Southwestern Bell Tel. Co. v. John Carlo Texas, Inc., 843 S.W.2d 470, 472 (Tex. 1992) (request was "substantially correct despite omission of element of 'good faith' "); *cf.* Keetch v. Kroger Co., 845 S.W.2d 262 (Tex. 1992) (complaint about failure to comply with Rule 277's mandate for broad-form submission waived).

31. 838 S.W.2d at 241. The court also explained that the "more specific requirements of the rules" should "serve rather than defeat this principle."

32. Smith v. Southwest Feed Yards Ltd., 835 S.W.2d 89, 90-91 (Tex. 1992) (witness' name was disclosed in answer to a different interrogatory about the case but not in response to question asking for identification of persons having knowledge of facts); Henry S. Miller Co. v. Bynum, 836 S.W.2d 160, 162 (Tex. 1992) (undisclosed party witness was deposed and was the "only individual named party"); Remington Arms Co. v. Canales, 837 S.W.2d 624, 625-626 (Tex. 1992) (good cause shown when response was provided to the same plaintiff's counsel in another case to identical request); *see also* Service Lloyds Ins. Co. v. Harbison, 826 S.W.2d 930 (Tex. 1991).

33. Alvarado v. Farah Mfg. Co., 830 S.W.2d 911, 915 (Tex. 1992); *see also* Koepp v. Utica Mut. Ins. Co., 833 S.W.2d 514 (Tex. 1992) (reiterating principle that "just sanctions must not be excessive").

nical mistakes that are correctable without legal prejudice to any party or to the public interest.[34]

As significantly, in an apparent effort to simplify Texas charge practice and to eliminate reversal of cases that have been fairly, although perhaps not perfectly tried, the court has backed away from a rigid adherence to the broadest interpretation of Rule 227's[35] mandatory broad-form submission requirement.[36] This "reinterpretation" has taken two distinct forms during this Survey period. First, the court has recognized that broad-form submission may not be feasible in multiple theory cases when the governing law is unsettled. In *Westgate, Ltd. v. State*[37] an inverse condemnation case in which a landowner alleged two alternative legal theories in support of a claim for compensation, the court determined that a bad faith claim was not included in the jury charge because its submission was not requested.[38] Provocatively, the court noted the following problem with respect to the inclusion of multiple theories in one broad-form jury submission:

> Westgate could have requested jury instructions on bad faith and negligence. Although we adhere to the principles of broad-form submission, *see Texas Department of Human Services v. E.B.*, 802 S.W.2d 647, 649 (Tex. 1990), Tex. R. Civ. P. 277 is not absolute; it mandates broad-form submission "whenever feasible." Submitting alternative liability standards when the governing law is unsettled might very well be a situation where broad-form submission is not feasible.[39]

Similarly, other decisions handed down during this Survey period suggest that reversal may be required when a broad-form submission allows a jury to decide the case on the basis of an insupportable legal theory.[40] Second, the court has held that the failure to submit a broad-form question does not amount to harmful error when the questions fairly submit to the jury the disputed issues of fact and incorporate a correct legal standard.[41] These two developments may ultimately lead to a more manageable body of law con-

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34. City of San Antonio v. Rodriguez, 828 S.W.2d 417, 418 (Tex. 1992); *see also* Crown Life Ins. Co. v. Estate of Gonzalez, 820 S.W.2d 121 (Tex. 1991) ("decisions . . . [should] turn on substance rather than procedural technicality").

35. TEX. R. CIV. P. 277.

36. *See* Tex. Dep't of Human Servs. v. E.B., 802 S.W.2d 647, 649 (Tex. 1990) ("Rule 277 mandates broad-form submissions "whenever feasible," that is, in any or every instance in which it is capable of being accomplished.").

37. 843 S.W.2d 448 (Tex. 1992).

38. *Id.* at 287.

39. *Id.* at 287 n.6.

40. *See, e.g.*, State Dep't of Highways & Pub. Transp. v. Payne, 838 S.W.2d 235, 236 (Tex. 1992) (special defect theory); Keetch v. Kroger Co., 845 S.W.2d 262, 267 (Tex. 1992) (negligent activity theory); Religious of the Sacred Heart of Tex. v. Houston, 836 S.W.2d 606, 607 (Tex. 1992) (substitute facilities doctrine).

41. H.E. Butt Grocery Co. v. Warner, 845 S.W.2d 258, 259 (Tex. 1992) (premises liability submission); *see also* Keetch v. Kroger Co., 845 S.W.2d at 268 (concurring opinion, even if plaintiff had properly objected to granulated premise liability questions, error would not have required reversal). *But see* Westgate, Ltd. v. State of Tex., 843 S.W.2d 448, 457 (Tex. 1992) (submission of before and after taking values in two questions was harmful because "the difference in the before and after values found by the jury . . . was within the permissible range of damages supported by the evidence, and would have stood as the damages if a broad-form of question had been given").

cerning the charge than Texas practictioners have enjoyed at any time during this century.

Another welcome development in Texas procedural law concerns the Texas Supreme Court's adoption of the Second Restatement of Judgment's transactional analysis approach to the doctrine of res judicata. Until this Survey period, Texas courts resorted to a variety of theories and tests to give res judicata a somewhat unpredictable application.[42] However, in 1992, the Texas Supreme Court embraced the "transactional" approach to the subject of claim preclusion by holding that a subsequent suit will be barred if it arises out of the same subject matter of a previous action and through the exercise of diligence, could have been litigated in a prior suit.[43]

After conducting an examination of its prior precedent on the subject, the court determined that the traditional Texas' approaches of res judicata were conflicting, ambiguous and unpredictable.[44] As a result, the court adopted an approach to the problem under which "[a]ny cause of action which arises out of [the] same facts should, if practicable, be litigated in the same lawsuit."[45] A determination of what constitutes a "transaction" is to be made pragmatically "giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a trial unit conforms to the parties' expectations or business understanding or usage."[46]

Although at first blush, the transactional approach also appears to suffer from vagueness, it is noteworthy that the same type of transactional analysis is applied under the Texas Rules of Civil Procedure to resolve questions concerning the permissive joinder of parties, compulsory counterclaims, and permissible cross-claims between coparties.[47] It is also the approach taken to the subject of claim preclusion by the Court of Appeals for the Fifth Circuit.[48]

Business and commercial law developments during the Survey period also reflect a careful consolidation and refinement of earlier developments as well as a strong tendency to make the substantive law of Texas conform with national trends.

In its first opinion under the Texas Free Enterprise and Antitrust Act,[49] the Texas Supreme Court rejected "predatory intent" as a test for predatory pricing in favor of an objective, economic test that requries, among other things, the plaintiff to prove the defendant could have reasonably expected the marketplace to permit a subsequent recoupment of the losses incurred

42. *See* William v. Dorsaneo, 5 TEXAS LITIGATION GUIDE § 131.07 (1992).
43. Barr v. Resolution Trust Corp., 837 S.W.2d 627, 628 (Tex. 1992).
44. *Id.* at 630.
45. *Id.*
46. RESTATEMENT (SECOND) OF JUDGMENTS § 24(2); *Barr*, 837 S.W.2d at 631.
47. TEX. R. CIV. P. 40, 97; *see also* Jack H. Brown & Co. v. Northwest Sign Co., 718 S.W.2d 397 (Tex. App.—Dallas 1986, writ ref'd n.r.e.) (applying Texas Rule of Civil Procedure 97).
48. *See* Kemp v. Birmingham News Co., 608 F.2d 1049, 1052 (5th Cir. 1979).
49. TEX. BUS. & COM. CODE ANN. §§ 15.01-15.51 (Vernon 1991) (the "Texas Antitrust Act").

from pricing blow costs.[50] This decision was influenced strongly by federal case law in an effort "to harmonize our interpretation with federal law to the extent it is consistent with the purpose of the Texas Antitrust Act."[51]

In another important decision involving the Business and Commerce Code,[52] the court concluded that a partnership separation provision under which a former partner was liable in damages for soliciting or furnishing accounting services to partnership clients for twenty-four months after separation, should be analyzed by the same general principles as covenants not to compete in order to be enforceable.[53] This conclusion was also based on a careful consideration of the treatment of similar damages provisions in other jurisdictions.[54] After deciding that the separation provision was an unreasonable restraint of trade because it applied to clients who first became clients after the defendant left the firm or with whom the defendant had no contact at the firm,[55] the court rejected the plaintiff's argument that it was entitled to equitable modification and enforcement of the provision in accordance with the Covenant Not to Compete Act.[56] The court rejected this argument because Section 15.51(c) expressly provides that damages are not available for breach of a covenant "before its reformation."[57]

The other commercial law cases decided during the Survey period that will have a significant impact on Texas commercial law concern the negotiability of variable interest rate notes and the duties of secured creditors. In a decision that clearly changed Texas law, the Texas Supreme Court held that variable interest rate notes are fully negotiable under Texas law if the rate is "published," i.e., if the rate could be determined by any interested person, including inquiry at the financial institution that established the rate.[58] Although this decision does not embrace the result reached by the majority of the courts that have addressed the issue, the opinion again reflects a very careful study of the entire problem and the court's attempt to have Texas law conform with "modern commercial practices."[59]

Texas commercial law has also been advanced by two Texas Supreme Court decisions dealing with the rights and obligations of secured creditors. The Texas Supreme Court held that Section 9.503 of the Texas Business & Commerce Code imposes a non-delegable duty on a secured party to avoid a breach of the peace in the repossession of collateral.[60] Under this decision, secured creditors cannot avoid liability for breach of the peace by hiring

50. Caller-Times Publishing Co. v. Triad Communications, Inc., 826 S.W.2d 576, 588 (Tex. 1992).

51. *Id.* at 581.

52. TEX. BUS. & COM. CODE ANN. §§ 15.50-15.51 (Vernon 1991) (the "Covenant Not to Compete Act").

53. Peat Marwick Main & Co. v. Haass, 818 S.W.2d 381, 385-88 (Tex. 1991).

54. *Id.* at 385.

55. *Id.* at 387-88.

56. *Id.* at 388.

57. TEX. BUS. & COM. CODE ANN. § 15.51(c) (Vernon 1991).

58. Amberboy v. Societe de Banque Privee, 831 S.W.2d 793, 797-98 (Tex. 1992).

59. *Id.* at 796.

60. MBank El Paso v. Sanchez, 836 S.W.2d 151, 152 (Tex. 1992).

independent contractors to effect repossession.[61]

Finally, in an important procedural case, the Texas Supreme Court resolved the controversy about the allocation of the burden of pleading and proof when a secured creditor sues for a deficiency following the repossession and resale of collateral under Article 9 of the Uniform Commercial Code.[62] The court held that a creditor could generally plead that the resale was conducted in a commercially reasonable manner and need not prove these allegations unless the debtor affirmatively alleged improper disposition.[63] If the creditor specifically pleads commercially reasonable resale, the creditor automatically assumes the burden of proving the allegations.[64] In the opinion, the court acknowledged that no particular rule was "right," but that a clear rule was beneficial to both parties in litigation about a deficiency.[65]

As in other years, Texas appellate courts have been productively going about the business of deciding concrete controversies in a professional manner. Much can be learned by carefully surveying their work. This Survey edition, like its predecessors is a valuable resource tool that will facilitate the rendition of high quality legal services.

61. *Id.*
62. Greathouse v. Charter Nat'l Bank-Southwest, 35 Tex. Sup. Ct. J. 1017 (July 1, 1992).
63. *Id.* at 1020.
64. *Id.*
65. *Id.*