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Book Review: Creditors' Rights in Texas

Richard B. Amandes

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BOOK REVIEWS

CREDITORS' RIGHTS IN TEXAS. BY JOSEPH WEBB MCKNIGHT AND SPECIALIST AUTHORS. St. Paul, Minn.: West Publishing Co. 1963. Pp. XVIII, 789. \$11.50.

This volume is a handbook, something for the practitioner to have within arm's reach when the debtor or creditor presents his problem. As only the second of a contemplated series of Texas Continuing Legal Education practice manuals, it does great credit to all who have been responsible for its publication.

Chapter 1 is an introduction to the practical and proper ethical approach to creditors' rights matters. Such an introduction is omitted too often from practice handbooks and almost invariably omitted from treatises. Although the attorney new to the field may obtain assistance worth the purchase price from Chapter 1 alone, there are twenty-three others, many of which call for specific comment. The first fourteen are devoted to local remedies, essentially for the unsecured transaction. Chapters 15-23 provide a brief introduction to bankruptcy practice which will guide a neophyte, or one only occasionally involved in the field, through the typical bankruptcy. Sprinkled throughout much of the book are helpful hints for those on both sides of questioned transactions. The final chapter provides just what its title indicates, "A Postscript Concerning the Uniform Commercial Code"—a brief, general treatment of the effect that code might have as an addition to Texas law. In keeping with the essential division of the book into local and bankruptcy law, specific chapters will be considered in two parts.

Chapters 4 (Assignments for the Benefit of Creditors and Voluntary Compositions),¹ 7 (Collection of Debts by Extraordinary Proceedings: Attachment, Garnishment, Sequestration, and Receivership), 12 (Bonds and Liens on Public Work), and 13 (Perfecting Chattel Mortgages) are particularly noteworthy for the abundance of valuable hints to the practicing attorney. Chapter 7, dealing with extraordinary proceedings, is certainly one of the best in the book, starting as it does with the practical steps and dangers involved in attachment, garnishment, sequestration, and receivership. There follows an extensive and logical discussion of each of these remedies. The author's allusion on pages 234 and 242 to ethical problems facing a garnishee when served with a writ of garnishment is interesting and calls for amendment of the applicable Texas Rules of Civil Pro-

¹ Although Chapter 4 does not contain the bibliography at the end of the chapter which most other chapters do, that appears to be the only omission.

cedure² at an early date. Chapter 12 is basically in the form of a check list for counsel presented with a problem relating to liens on public work. It should prove most helpful to an attorney encountering the problem for the first time. A similar list applicable to liens on private projects would have made the chapter even more worthwhile. Chapter 13, relating to the perfection of chattel mortgages, though the style be somewhat colloquial, appears to be an excellent, practical presentation. Certainly the semi-outline form cannot fail to make the reader aware of all that is encompassed within its pages.

Several other chapters, though lending themselves less to the practical approach, are also worthy of favorable mention. The placement of exempt property (Chapter 2) as the first substantive chapter makes eminent good sense, especially in Texas where debtors, through numerous and substantial exemptions, fare better than in many other states. Having once been exposed to most of the law involved in this chapter during the presentation of a course entitled Marital Rights and Community Property, I read it with more than passing interest and found it thorough, complete, and apparently up to date. Similarly, Chapter 11 (Liability of Separate and Community Property for Obligations of Spouses to Strangers) appears to be thorough and complete. Unfortunately, however, much of what is contained in the chapter regarding the contractual capacity of married women was almost out of date before the book reached its audience, for H.B. 403³ was enacted and became effective in August, 1963. Chapter 14 (Priorities as Between Lien Creditors) is a well-written exposition of the subject, with many cogent examples of most of the problems in this area. Further, there are ample cross-references to tangentially related items and articles.

Chapter 5, dealing with creditors' bills, also appears quite thorough. *Quaere*, however, whether twenty-nine pages should have been devoted to a subject which the author introduces as follows: "The most salient observation concerning the creditor's bill in Texas is that its use is extremely limited."⁴ By comparison, less space is devoted to the combined matters of judgment liens and foreign judgments (Chapters 8 and 9). Perhaps more grievous is a substantive error in Chapter 9, where the author, in discussing federal court judgments, appears unaware of 28 U.S.C. § 1963, which allows the mere registration of a foreign federal court judgment in lieu of suit on the

² Tex. R. Civ. P. 661, 665.

³ H.B. 403, Vernon's Tex. Sess. Law Serv. ch. 472, at 1188 (1963). See Smith, *Legislative Note: 1963 Amendments Affecting Married Women's Rights in Texas*, 18 Sw. L.J. 70 (1964).

⁴ State Bar of Texas, *Creditor's Rights In Texas* 151 (1963).

foreign judgment. Section 1963 is mentioned in Chapter 8 in a discussion of federal court judgments, although not in the detail which would enable a casual reader to discover the error in Chapter 9. Such inconsistencies can often be caught through cross-references in the index. Unfortunately, in this volume, the index is by chapter, virtually a duplication of the table of contents, which prevents effective index entry to the volume. However, a chapter index is almost inherent in a multi-author volume. Some chapters are received by the editor on time, some are not, and some never arrive at all, necessitating last minute fill-ins and replacements. Having served as an editor of similar projects, I can sympathize with the position in which Professor McKnight and his assistants found themselves.

"Part II" of the volume also starts with the practical approach. In fact the first section of Chapter 15 (An Attorney's Initial Concern) alerts the novice to the possibly devastating psychological effect which bankruptcy proceedings may have on the unsuspecting client seeking a "painless" way out of his financial pit. Chapter 16 attempts to remove some fears that practitioners new to the field may have, e.g., of summary jurisdiction. Chapter 17 (Who May Become a Bankrupt and When) is a useful, basic presentation of the sequence of typical bankruptcy proceedings, voluntary and involuntary, starting with the client's first appearance in the attorney's office. To one unfamiliar with bankruptcy, this, like the first chapter, may be reason enough to purchase the book. There is mention, for example, of what is ethically proper as well as legally permissible with respect to attorney's fees, which is certainly a matter that has concerned many a lawyer when confronted with his first bankruptcy.

Chapter 20 is another substantial entry (Bankruptcy of Partnerships) which contains a moderate amount of general partnership law in addition to that involving bankruptcy. The inclusion of this chapter is well justified in light of the recent adoption of the Uniform Partnership Act in Texas. Because of the timeliness of publication following the passage of the Act, Chapter 20 may be of considerable general value for some years to come. The final set of pages, which should become well marked over the years, is encompassed within Chapter 23 (The Effect of Discharge in Bankruptcy). Here in forty well-written pages are good basic law, helpful hints, and several distinctive cases, involving, *inter alia*, dog bites and support of illegitimate children and whether obligations involved in them are dischargeable in bankruptcy.

Chapter 18 presents a terse but useful summary of the trustee's avoiding powers. Chapter 19 deals effectively with problems involved

in classifying debts as secured or unsecured. It presents a number of alternative courses of action for an attorney who has filed a secured claim in bankruptcy. Good elementary coverage and a comparison of two more unusual proceedings, reorganizations and arrangements, are presented in Chapter 21. A sympathetic treatment of wage earner plans, necessary in a state without provision for garnishment of wages, appears in Chapter 22.

Everything relating to creditors' rights practice is not, and does not purport to be,⁵ covered in this volume. Collier encompasses eleven volumes, and another recent CLE-oriented publication, Cowans on Bankruptcy, consumes almost 1100 pages on bankruptcy alone. But here in 746 pages of text and tables is a valuable addition to a Texas library. The criticisms heretofore mentioned, the chapter instead of volume index, a substantive error or two, excessive "supra note" citations in some footnotes,⁶ typographical and other grammatical and punctuational errors, and a paucity of forms, are more than offset by the attempt to include all relevant cases up to the date of publication⁷ and by the overall quality of the volume.

In summation, the publication is well worth the \$11.50 purchase price. The authors, Professor McKnight and his assistants, and all who had a hand in *Creditors' Rights in Texas* are to be commended for what is, in toto, an excellent job. It can stand in concert with continuing legal education publications from other more experienced states.

*Richard B. Amandes**

⁵ State Bar of Texas, *supra* note 3, at VII.

⁶ *E.g.*, *id.* at 33 n.67, 300 n.73.

⁷ *E.g.*, *id.* at 93 n.177, 350 n.102, 357 n.155a, 480 n.30.

* Associate Professor of Law and Assistant Dean, University of Washington, School of Law, and Administrator of Continuing Legal Education in the State of Washington.

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