COMMERCIAL LAW:
SECURED TRANSACTIONS

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SUPPLEMENTAL COURSE MATERIAL

BANKRUPTCY

IN A NUTSHELL®

TENTH EDITION

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CHAPTER II

AN OVERVIEW OF JUDICIAL COLLECTION LAW

A. WHAT CAN CREDITORS DO OUTSIDE OF BANKRUPTCY?

Creditors are generally happy to do nothing. More specifically, creditors are happy to do nothing so long as their debtors are paying them.

When debtors default in paying, creditors will first attempt through "persuasion" to get the debtor to pay "voluntarily." The creditor may even hire a collection agency or attorney to help persuade the debtor. If these nonjudicial collection efforts are unsuccessful, the creditor can resort to the debt collection remedies provided by either (i) creditors' judicial remedies or (ii) the creditor's contract to seize and sell the debtor's assets to satisfy the debt.

1. FORMS OF CREDITORS' JUDICIAL REMEDIES

Let's consider the law of creditors' judicial remedies first. At the broadest level, the law of creditors' judicial remedies involves only three questions: (1) when and how does a creditor gets a lien on property of the debtor, (2) how does a creditor with a lien enforce the lien so as to collect its debt and (3) what is the lien's priority in relation to third parties' rights to the property, including other creditors' liens and the claims of transferees. These

three issues are common to every kind of creditors' remedy.

Why the focus on "liens"? A creditor cannot seize and sell its debtor's property unless it has some property interest in the debtor's property, and the principal way to obtain such an interest is to obtain a "lien" on that property.

Say for example that *C* claims that *D* owes $1,000. *C* can't simply come over to *D*'s apartment and take *D*'s stuff. *C* needs to establish a legal right to be paid $1,000. *C* needs to establish a legal right to *D's* property. *C* needs to obtain a judgment and an execution lien.

This example illustrates the two most important general rules of the law of creditors' remedies: (1) generally a creditor is not able to obtain a lien in the debtor's property until the creditor reduces its claim to judgment[1] and (2) a creditor enforces this judgment through the appropriate postjudgment judicial process.

You should now be asking the questions why is action beyond a judgment necessary. The answer is that a judgment is no more than another form of debt.

A judgment does, however, differ from the original debt in that a judgment is the State's recognition of

[1] There is a very narrow exception to the general rule that a creditor cannot obtain a judicial lien until it has obtained a judgment. In a narrow group of situations, a creditor can obtain a prejudgment "attachment lien." Because of due process concerns, attachment liens do not often occur in practice (and will not occur on your exam.)

the legitimacy of the creditor's claim against the debtor. Along with this recognition a willingness by the state to use its coercive power to enforce this lien and otherwise collect the amount of the judgment forcibly from the debtor's property (both real and personal) if the judgment debtor does not pay "voluntarily."

a. Judgment Liens

But first the judgment creditor must obtain a lien. A judgment creditor can obtain a lien on the debtor's real property by "docketing" (i.e., recording) the judgment in the real property record system in the county in which the real property is located. Such a lien is called a "judgment lien."

A "judgment lien" is one form of a "judicial lien." A "judicial lien" is a lien obtained through litigation—through the creditor's use of the judicial process. A "judgment lien" is thus a judicial lien on the debtor's real property.

b. Execution Liens

A judicial lien on a debtor's personal property is called an "execution lien." Obtaining an execution lien on a debtor's personal property is a bit more complicated than obtaining a judgment lien on a debtor's real property.

A creditor with a judgment initiates the execution process by applying to the court that rendered the judgment (or sometimes a different court depending on where the debtor's property is located) for a *writ*

of execution, sometimes referred to as a writ of *Fieri Facias* ("FiFa" because lawyers like to use words that most people don't understand). The writ of execution is typically directed to the sheriff of the county where the property is located. The writ orders the sheriff to seize specified property of the debtor located within the county, sell it, and apply the proceeds in satisfaction of the judgment, after payment of the sheriff's costs. The process varies a bit from state to state,[2] but this is the general pattern.

With a judgment lien on real property or execution lien on personal property, an attorney for a judgment creditor can cause state officials to seize and sell a judgment debtor's property that is encumbered by the judicial lien.

c. Garnishment Liens

To reach a debtor's tangible property held by third persons, and to collect from third parties amounts owed the debtor, there is a special proceeding at law in the nature of an adversary suit against the person who holds the debtor's property or who owes the debtor money. This process is called *garnishment.*

Garnishment is in essence a special form of execution designed for reaching property of the debtor held by a third party The court orders the third party (called the garnishee) to turn over the property, or pay the judgment creditor the amount that the garnishee owed to the debtor.

[2] For example, in a few states a lien against personal property arises simply by a central filing of the judgment.

The most common example of garnishment is garnishment of bank accounts. When a creditor tries to collect its judgment against the debtor from funds in the debtor's bank account, it seeks to obtain property of the debtor held by a third person, in this case the bank. In this context, the proper terminology regarding what occurs when, for example, the IRS tries to seize a bank account of delinquent taxpayer, is that the IRS is garnishing the bank account and the bank is the "garnishee."

In addition to bank accounts, a judgment creditor might also seek to garnish the debtor's wages by bringing a garnishment action against the debtor's employer or the cash surrender value of an insurance policy by garnishing the insurer.

2. CREDITORS' JUDICIAL REMEDIES SHORTCOMINGS

If you understood what you just read (and more especially if you did not understand what you just read), then you will understand why

- Most lawyers do not like to do debt collection work.
- Most creditors do not like to pay for this kind of legal work.
- Most law professors do not like to teach judicial collection law.

Happily, judicial collection law has become less important in practice and less important in law school. There are three reasons for this change:

(1) The most important reason for the diminished role of judicial collection law in practice and in law school is the increased role of bankruptcy in practice and in the classroom. Businesses and individuals are more willing to file for bankruptcy. And, as we will see, the filing of a bankruptcy petition not only bars a creditor from continuing its efforts to collect its debt using judicial collection remedies but also can require a creditor who has successfully collected its debt using judicial collection remedies to return what it has collected.

(2) Obtaining a judgment and getting a sheriff to seize and sell property of a debtor can be difficult, time consuming and expensive.

(3) Obtaining a judgment and getting a sheriff to seize and sell property of a debtor is often unsuccessful as a way of collecting a debt. There is no guarantee that the judgment debtor will have property that can be seized and sold, or that the property will be in the place that the judgment creditor told the sheriff to go look.

And, even if the judgment debtor has property, that property may be encumbered by other creditors' liens that have priority. These other liens may have been created because of (i) a prior judicial collection effort, or (ii) statute, or (iii) agreement.

3. STATUTORY LIENS AND LIENS CREATED BY AGREEMENT

Tax liens, mechanics' liens and landlords' liens are examples of statutory liens. These are liens that arise by operation of law-arise if the debtor fails to pay a debt protected by the statute.

While statutory liens are important, consensual liens are the most common liens. Most debt deals which are large enough to involve lawyers also involve consensual liens.

A big part of bankruptcy practice and a big part of law school bankruptcy courses deals with consensual liens and so a big part of this book deals with consensual liens, For now, you need to understand that: (1) by contract, a creditor can obtain property rights in addition to the rights available to a creditor under generally available state creditors' remedies law; (2) these rights, i.e., these consensual liens, have the effect of limiting the rights of other creditors under creditors' remedies law; and (3) these consensual liens are property rights and so enjoy the constitutional protection afforded to property rights (you know, due process, no takings, and all that Fifth Amendment stuff on your Con Law test). In essence, a creditor with a consensual lien (or any lien for that matter) really has two claims: (1) an *in personam* (or contract) claim against the debtor based on the promise or obligation to pay, and (2) an *in rem* (or property) claim against the collateral.

State law controls the creation and effect of consensual liens. State law tends to categorize the

types of consensual liens by the type of property involved. The two basic types of property in this regard are real property (that is, dirt and things built on and attached to the dirt) and personal property (that is, things that are not dirt or attached to dirt, both tangible (goods) and intangible (like accounts receivable)).

There are various devices for creating consensual liens on real property; i.e., the mortgage, the deed of trust, and the installment land-sale contract. When properly recorded in the local real estate records, these instruments establish the lender's *priority* in the property over other parties, such as other creditors and purchasers, that might claim an interest in the land.

When the creditor and debtor create a consensual lien on personal property or fixtures, the governing law is Uniform Commercial Code, Article 9. All 50 states have adopted Article 9 (yes, *even* Louisiana). Article 9 provides for only one kind of consensual lien on personal property, the "Article 9 security interest."

"Security interest" is Article 9's term for a consensual lien on personal property. Other Article 9 terms that you will encounter in this book are "secured party" and "perfection." A "secured party" under Article 9 is a creditor with a security interest. Perfection refers to action taken by the secured party to establish the priority of its security interest over other parties with an interest in the same property, including creditors with judgment liens. Perfection is usually, but not always, accomplished by filing

what's known as a UCC financing statement in the appropriate state government office.

B. WHAT CAN A DEBTOR DO OUTSIDE OF BANKRUPTCY?

There is not much that debtor can do outside of bankruptcy to fix its debt problems. At least not much that a debtor can do without the help and support of its creditors.

1. EXEMPT PROPERTY

If the debtor is an individual (that is, a flesh and blood human), state and some nonbankruptcy federal laws exempt certain property of the debtor from the collection efforts by judgment creditors. At most, these exemption statutes enable a debtor to protect some of their property, or at least part of the value of their property, from execution by their creditors.

State exemption laws vary significantly from state to state. In most states, the amount of property that a debtor can designate as exempt, and retain free from execution, is very limited—enough to assure only a subsistence level of living for the debtor and her dependents. And, in all states, creditors with a mortgage or other lien on property that is designated as exempt are not covered by exemption law; they are themselves "exempt" from it, and therefore can still seize and sell that property free from the exemption law claim. If, for example, Bank has a mortgage on *D*'s house and *D* defaults, First Bank can seize and sell *D*'s house even if *D* has designated the house as *D*'s exempt homestead.

Mortgage lenders pursue homeowners even after foreclosure

By Les Christie, staff writer, CNN Money.com. Wednesday February 3, 2010, 8:18 am EST

As terrible as it is to lose your house to foreclosure, at least it's a relief to put your biggest financial headache behind you, right?

Wrong.

Former homeowners may still be on the hook if there's a difference between what they owed on their mortgage and what the bank could sell it for at auction. And these "deficiency judgments" are ticking time bombs that can explode years after borrowers lose their homes.

It can even happen to people who got their bank to approve them selling their home for less than it is worth.

Vanessa Corey, for example, short sold her Fredericksburg, Va., home in April 2008. She and her husband built the house in 2004, but setbacks, both personal (divorce) and professional (housing bust), made it impossible for the real estate agent to keep her home. So she negotiated the short sale and thought that was the end of it.

"My understanding was that the deficiency was negotiated away," she said. "Then, last November, I got a letter from a lawyer telling me I owed my lender $65,000. I had to declare bankruptcy. There was no way I could pay it. "

Many homeowners are now in the same boat. And not just those who took out bigger loans than they could afford or who did so called "liar loans" where they didn't have to verify their income.

Because of falling home prices, borrowers who always paid their mortgage but who have run into unforeseen circumstances like unemployment or a job transfer can no longer sell their homes for what they owe. As a result, they are being forced to short sell or foreclose and are getting caught up in deficiency judgments.

"After the banks foreclose, it's very common now to have large deficiencies with houses not worth the balances owed," said Don Lampe, a North Carolina real estate attorney.

Lenders mostly declined comment. Although Corey's lender, BB&T did indicate it was pursuing more deficiency judgments.

"They follow the rise and fall of foreclosures," said the spokeswoman, who would not discuss Corey's account.

Can they come after you?

Whether banks can and will pursue deficiency judgments depends on many factors, including what state the borrower lives in and whether there's a second mortgage or other liens. But if borrowers ignore the possibility of deficiencies, it could haunt them.

"Once they have a judgment, they can pursue you anywhere," said Richard Zaretsky, a board-certified real estate attorney in West Palm Beach, Fla. "They can ask for financial records, have your wages garnished and, if you fail to respond, a judge can put you in jail."

In the case of foreclosure, lenders can pursue deficiencies in more than 30 states, including Florida, New York and Texas, according to the U.S. Foreclosure Network, an organization of mortgage law firms.

Some states, such as California, are "nonrecourse" and don't allow deficiency judgments. But, even there, if the if the original loan was refinanced, some or all of it may be subject to claims.

Deficiency judgments on short sales and deeds-in-lieu can happen in many more places. In these cases, extinguishing the debt is often a matter of negotiating with the bank.

But even when lenders are willing, many borrowers may not be aware that they have to ask for release. So, if you are pursuing a short sale, be sure your attorney asks the bank to release you from any further obligation.

"People shouldn't have a false sense of security that a deficiency judgment may not be later sought," Zaretsky said.

He expects many will be filed over the next few years, based on the fact that banks have sold many of these accounts to collection agencies and other third parties, at discount.

"The parties who bought those notes wouldn't have paid money for them unless they had the intention of acting," Zaretsky said.

Ticking time bomb

What can be scary is that the judgments don't have to be obtained immediately. Lenders or collection agencies may wait until debtors have recovered financially before they swoop in. In Florida, the bank can wait up to five years to file. Once the court grants a judgment, the lender has 20 years there to collect, with interest.

It doesn't have to be a large amount of debt for a lender or collection agency to come after borrowers. Richard Varno and his wife short sold their Nashville home back in 2004 after he lost his job.

It wasn't until 2008, when the second lien holder asked him for $25,000, that he realized he still was liable.

"I told them, 'Hey, you guys released the title,'" he said. "As far as I know, I'm off the hook."

He wasn't. Releasing title does not necessarily end the debt. It's complicated because of variations in state law, but, generally, a mortgage has two parts: a pledge of collateral, represented by the home, and a promise to pay off the loan.

Lenders may release property liens in order to facilitate short sales without releasing borrowers from their obligations to pay under the promissory notes. The secured debt can convert to an unsecured one after the sale.

Zaretsky had one client who was so relieved to have arranged a short sale that he signed every paper his real estate agent shoved at him, even a confession that clearly stated he still owed the debt.

"He had no idea what he was doing," said Zaretsky. "All the lender had to do was go to court to convert the confession into a deficiency judgment. "

Lenders are also very inconsistent. One of Zaretsky's short-sale clients was ready, willing and able to pay, but the bank did not even ask. Another lender always reserves the right to pursue the deficiency.

Strategic defaults

Sometimes lenders go after borrowers walking away from their homes if they have other assets, according to Florida real estate attorney Larry Tolchinsky.

"Banks are pulling credit reports to see if it's a strategic default," he said. "If you're behind on all your other payments, you're okay. But if you're not, they'll come after you. "

If borrowers have any doubts about their risks, they should seek legal advice. Or, at least, call non-profit organizations such as NeighborWorks for advice. According to Doug Robinson, a NeighborWorks spokesman, its counselors always try to negotiate away deficiencies when they facilitate short sales or deeds-in-lieu.

"We don't favor any short-sale contracts that leave any deficiency that can be pursued," he said.

Robinson himself knows what can happen. He paid off a deficiency after his own New Jersey house went through foreclosure 11 years ago.

KANSAS STATUTES ANNOTATED, CHAPTER 16A.--CONSUMER CREDIT CODE

16a-5-103. (UCCC) Restrictions on deficiency judgments.

(1) This section applies to a deficiency on a consumer credit sale of goods or services and on a consumer loan in which the lender is subject to defenses arising from sales (K.S.A. 16a-3-405 and amendments thereto); a consumer is not liable for a deficiency unless the creditor has disposed of the goods in good faith and in a commercially reasonable manner.

(2) If the seller repossesses or voluntarily accepts surrender of goods which were the subject of the sale and in which he has a security interest, the buyer is not personally liable to the seller for the unpaid balance of the debt arising from the sale of a commercial unit of goods of which the cash sale price was $1,000 or less, and the seller is not obligated to resell the collateral unless the buyer has paid 60% or more of the cash price and has not signed after default a statement renouncing his rights in the collateral.

(3) If the seller repossesses or voluntarily accepts surrender of goods which were not the subject of the sale but in which the seller has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services and the cash price of the sale was $1,000 or less, the buyer is not personally liable to the seller for the unpaid balance of the debt arising from the sale, and the seller's duty to dispose of the collateral is governed by the provisions on disposition of collateral (K.S.A. 84-9-610, and amendments thereto) of the uniform commercial code.

(4) If the lender takes possession or voluntarily accepts surrender of goods in which he has a security interest to secure a debt arising from a consumer loan in which the lender is subject to defenses arising from sales (K.S.A. 16a-3-405, and amendments thereto) and the net proceeds of the loan paid to or for the benefit of the debtor were $1,000 or less, the debtor is not personally liable to the lender for the unpaid balance of the debt arising from the loan and the lender's duty to dispose of the collateral is governed by the provisions on disposition of collateral (K.S.A. 84-9-610, and amendments thereto) of the uniform commercial code.

(5) For the purpose of determining the unpaid balance of consolidated debts or debts pursuant to open end credit, the allocation of payments to a debt shall be determined in the same manner as provided for determining the amount of debt secured by various security interests (K.S.A. 16a-3-303, and amendments thereto).

(6) The consumer may be liable in damages to the creditor if the consumer has wrongfully damaged the collateral or if, after default and demand, the consumer has wrongfully failed to make the collateral available to the creditor.

(7) If the creditor elects to bring an action against the consumer for a debt arising from a consumer credit sale of goods or services or from a consumer loan in which the lender is subject to defenses arising from sales (K.S.A. 16a-3-405, and amendments thereto), when under this section the creditor would not be entitled to a deficiency judgment if the creditor took possession of the collateral, and obtains judgment:

(a) The creditor may not take possession of the collateral, and
(b) the collateral is not subject to levy or sale on execution or similar proceedings pursuant to the judgment.

16a-5-109. (UCCC) Default.

An agreement of the parties to a consumer credit transaction with respect to default on the part of the consumer is enforceable only to the extent that

(1) the consumer fails to make a payment as required by agreement; or

(2) the prospect of payment, performance, or realization of collateral is significantly impaired; the burden of establishing the prospect of significant impairment is on the creditor.

16a-5-110. (UCCC) Notice of consumer's right to cure.

(1) After a consumer has been in default for 10 days for failure to make a required payment in a consumer credit transaction payable in installments, a creditor may give the consumer the notice described in this section. A creditor gives notice to the consumer under this section when the creditor delivers the notice to the consumer or delivers or mails the notice to the address of the consumer's residence as provided in subsection (6) of K.S.A. 16a-1-201 and amendments thereto.

(2) The notice shall be in writing and shall conspicuously state: The name, address, and telephone number of the creditor to which payment is to be made, a brief description of the credit transaction, the consumer's right to cure the default, the amount of payment and date by which payment must be made to cure the default and the consumer's possible liability for the reasonable costs of collection, including, but not limited to, court costs, attorney fees and collection agency fees, as provided in K.S.A. 16a-2-507 and amendments thereto. A notice in substantially the following form complies with this section:

_____

(Name, address, and telephone number of creditor)

_____

(Account number, if any)

_____

(Brief description of credit transaction)

_____ is the LAST DAY FOR PAYMENT
(Date)

_____ is the AMOUNT NOW DUE
(Amount)

You are late in making your payment(s). If you pay the AMOUNT NOW DUE (above) by the LAST DAY FOR PAYMENT (above), you may continue with the contract as though you were not late. If you do not pay by this date, we may exercise our rights under the law. You may be obligated to pay reasonable costs of collection, including, but not limited to, court costs, attorney fees and collection agency fees, except that such

costs of collection: (1) May not include costs that were incurred by a salaried employee of the creditor or its assignee; (2) may not include the recovery of both attorney fees and collection agency fees; and (3) shall not be in excess of 15% of the unpaid debt after default.

If you are late again in making your payments, we may exercise our rights without sending you another notice like this one. If you have questions, write or telephone the creditor promptly.

16a-5-111. (UCCC) Cure of default.

(1) This section applies to consumer credit transactions.

(2) Except as provided in subsection (3), after a default consisting only of the consumer's failure to make a required payment in a consumer credit transaction payable in installments, a creditor may neither accelerate maturity of the unpaid balance of the obligation nor take possession of collateral because of that default until 20 days after a notice of the consumer's right to cure (K.S.A. 16a-5-110, and amendments thereto) is given. Until 20 days after the notice is given, the consumer may cure all defaults consisting of a failure to make the required payment by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid delinquency charges. Cure restores the consumer to the consumer's rights under the agreement as though the defaults had not occurred.

(3) With respect to defaults on the same obligation after a creditor has once given a notice of consumer's right to cure (K.S.A. 16a-5-110, and amendments thereto), this section gives the consumer no right to cure and imposes no limitation on the creditor's right to proceed against the consumer or the collateral.

Anonymous Number:_____

Law 873
Commercial Law: Secured Transactions

Professor Stephen Ware
Spring 2016

EXAMINATION

This is a TWO hour exam. Check now to be sure you have three pages. When time is up, turn in your exam with your answers. Although your exam must be turned in, any writing on it will not be graded.

This is an "open book" exam. You may look at any written "hard copy" material during the exam. You may not use a computer (other than the Exam 4 software), the internet, or any other resources. You may not talk, or otherwise communicate, with anyone except me.

Write your Anonymous Number in the space provided above.

If you are taking the exam on a computer:

- Make sure your Exam 4 exam software is set in the closed mode so that you cannot access any other program on your computer during the exam. Using any other mode is cheating.
- Insert an answer separator before your answer to each question. ("Tools" on the top menu.)
- Do not copy and paste from one part of your answer to another unless you are confident that I should be reading the same thing twice, which is unlikely.

If you are handwriting:

- Write your Anonymous Number on the first page of each blue book of your answer.
- Use a new blue book for your answer to each question and write on one side of each page only. There is no page limit on your answers.
- Your answers must be legible; no credit can be given for anything I cannot read.

Following the above instructions is worth two points on the exam.

This exam consists of three problems. Each problem or sub-problem is preceded by the suggested time to be allocated to it. The number of points a problem is worth is in proportion to its suggested time. The suggested time for reading these instructions is 10 minutes.

I will grade every student's answer to one problem before I grade any student's answer to another problem. In other words, each problem will be graded in isolation. Therefore, your answer to one problem should not ask me to remember, or refer to, something you wrote in your answer to another problem.

Organization counts. Therefore, you should think before you write. Also, please start a new paragraph when you start discussing a new topic. More paragraphs are better than long paragraphs.

References to relevant statutes, case law and other authority are valuable. Assume that all relevant jurisdictions are in the United States and have adopted the Official Text of the Uniform Commercial Code and the Uniform Motor Vehicle Certificate of Title and Anti-Theft Act. Good luck.

Problem 1

Ngwa Computer Corp. manufactures and sells computers. Bolivar Bank has a security interest in all Ngwa's inventory and equipment.

a. Suggested Time 30 minutes

Last year, Ngwa sold 100 computers to a university

i. How did that sale reduce Bolivar's collateral?

ii. How did that sale add to Bolivar's collateral?

iii. What type of collateral did that sale most likely add to Bolivar's collateral? And if not that type, then what second type of collateral did that sale most likely add? And if neither of those two types, then what third type of collateral did that sale most likely add?

iv. For each of the three types of collateral in question iii., how might that newly-added collateral pay Bolivar if Ngwa defaults to Bolivar a month after delivering the 100 computers to the university?

b. Suggested Time 40 minutes

Today, Ngwa breached its promise to pay Bolivar. Ngwa owes Bolivar $356,000. Ngwa owes its only other creditor $100,000. Ngwa's inventory is worth $80,000 and its equipment is worth $220,000. Ngwa now owns no property except inventory and equipment.

If all parties remain out of bankruptcy, how and how much is Bolivar likely to recover from Ngwa? If you identify an issue for which you need more facts then write the rest of your analysis in the alternative.

Problem 2
Suggested Time 10 minutes

What harm would come from repealing UCC 9-611? In other words, what good comes from requiring secured creditors to notify certain parties before holding a foreclosure sale?

Problem 3
Suggested Time 30 minutes

Larry Boskitchki is the sole owner of Boski, LLC ("Boski"), which owns and operates a restaurant.

Boski now owes FirstBank $60,000. Boski now owes its main supplier ("Supplier") $40,000. Boski has no other creditors.

Boski's property (primarily equipment) is worth about $15,000. FirstBank has a security interest in all Boski's property. FirstBank received this security interest two years ago when it first lent to Boski.

This morning, Boski filed for Chapter 11 bankruptcy. What do you expect will happen in this bankruptcy case? How and how much are FirstBank and Supplier likely to recover?

The Top Ten Things to Memorize about Secured Transactions

Stephen J. Ware, copyright 2003

1. Most plaintiffs are unsecured creditors.

2. Unsecured creditors can enforce debts by winning a judgment and obtaining a judicial lien.

3. Judicial liens are governed by non-uniform state law rather than Article 9 of the UCC.

4. An agreement (such as a security agreement, mortgage or deed of trust) is the way to acquire a consensual lien, that is, to become a "secured" creditor.

5. As between secured creditor and debtor, contract law is the place to start.

6. As between secured creditor and debtor, perfection is irrelevant.

7. As between secured creditor and somebody other than the debtor, perfection is relevant and often decisive.

8. There cannot be a perfected security interest unless there is a security interest.

9. Real estate is governed by non-uniform state law rather than Article 9 of the UCC.

10. Lawyers must read statutes thoroughly and carefully.