

Memorandum 74-66

Subject: Study 39 - Creditors' Remedies (Recent Developments)

This memorandum discusses recent developments concerning two aspects of creditors' remedies: stop notices in private construction projects and the garageman's lien law.

Stop Notices

In Connolly Development, Inc. v. Superior Court, 41 Cal. App.3d 543, ___ Cal. Rptr. ___ (1974), the Court of Appeal upheld the mechanics' lien law but declared the cumulative remedy of a stop notice unconstitutional. (Civil Code §§ 3156-3175; see Connolly, attached as Exhibit I). The court found that the stop notice is a summary prejudgment taking of construction loan funds without hearing which results in hardship to the lender and the borrower-contractor and cannot be justified on the grounds of extraordinary circumstances.

Since this is a decision by a court of appeal, the Commission is presented with the question of whether to take up this matter in the absence of a final determination by the Supreme Court. Does the Commission wish to study this subject or leave it to persons interested in the matter?

Garageman's Lien

We have previously distributed copies of Adams v. Superior Court, 11 Cal.3d 146, 520 P.2d 961, 113 Cal. Rptr. 145 (1974), in which the California Supreme Court held the sale provisions of the garageman's lien law unconstitutional. (Civil Code §§ 3071-3074.) Interim legislation to cure the defective procedure has been signed and is in effect with an expiration date of December 31, 1976. (S.B. 2293, Cal. Stats. 1974, Ch. 1262.) The counsel for the Senate Judiciary Committee advises that the statute was given an expiration date so that the Commission could review it and make a recommendation.

In view of the fact that this legislation has an expiration date of December 31, 1976, the Commission must in the near future study the subject with the intention of either recommending new legislation or continuing the procedures of the interim legislation. How does the Commission wish to deal with this problem? We must submit a recommendation to the 1976 session.

Respectfully submitted,

Stan G. Ulrich
Legal Counsel