

MINUTES OF COMMISSION MEETING
April 22, 2004

Present at the meeting of the New Jersey Law Revision Commission held at 153 Halsey Street, 7th Floor, Newark, New Jersey, were Commissioners Albert Burstein and Peter Buchsbaum. Grace Bertone of McElroy, Deutsch & Mulvaney attended on behalf of Commissioner Rayman Solomon, Professor Bernard Bell of Rutgers Law School, Newark, attended on behalf of Commissioner Stuart Deutsch and Professor William Garland of Seton Hall Law School attended on behalf of Commissioner Patrick Hobbs.

Minutes

The Minutes of the March 25, 2004 meeting of the Commission were accepted as submitted.

Enforcement of Judgments

John Cannel reminded the Commission that the original position taken by the Commission was that there is no distinction between real and personal property when the time comes to enforce a judgment. This position encountered resistance first from Legal Services, then from the State Bar Association which altered its initial position to call for a requirement that personal property be executed against first. Mr. Cannel explained that he drafted the current piece to preserve a distinction between real and personal property, and to create a mechanism whereby a creditor could pursue real property if personal property was unavailable or insufficient. He explained that his proposed solution was not ideal, because it requires a judge's intervention, but that it would at least allow access to real property which, practically, cannot be reached now.

Professor Bell asked for a quick summary of the Legal Aid argument and was told that a scenario that Legal Aid objected to was one in which an elderly individual's home should be, akin to a homestead exemption, which we do not have in New Jersey. There was discussion of the point that unless the debt is considerable, in practical terms it is not worth forcing a sale of real property because a creditor is likely to be behind a first mortgage in priority and at execution sale prices, it is likely that not enough will be paid to pay off the mortgage and the judgment.

Additional discussion concerned the fact that during the last six years, the Commission has advocated what it considered to be a rational policy that was perhaps more of a radical departure from the current law than could obtain the necessary Legislative support. The current report is a smaller move in a direction that will be likely to improve things to a lesser extent but that may garner more support.

Chairman Burstein requested that the comment to section 3½ mention that the Commission has given consideration to the elimination of the distinction between real and personal property before explaining that the current draft may alleviate some of the concerns while allowing the law to move in a more practical direction.

There was discussion about allowing the creditor to recoup the costs incurred to pursue the real property since the judgment would include taxed costs incurred only to the time of judgment, and not for the subsequent proceedings necessitated by debtor action or inaction. Language would be added to clarify that the collection order shall be docketed as a judgment so that while it will not show in the title search, it will show up in a lien search. It was suggested that the language "diligently attempted" will be clarified to give the court some guidance by including language that suggests that it means "in accordance with standard commercial practice." The courts will work out a set of rules on an ad hoc basis as things come before them.

After continued discussion of the various issues, Professor Garland suggested that a dollar threshold be included in the statute, something like \$10,000 or whatever the limit for jurisdiction of the Special Civil Part is at the time and state that if the judgment is from the Special Civil Part and is for less than the set amount, real property cannot be executed upon, but above that limit a creditor can access the real property. Chairman Burstein asked that Staff draft up the expanded commentary as discussed, as well as an alternative provision based on what Professor Garland suggested in terms of a dollar threshold.

There was an unresolved question of whether in section c-6(b) the Commission should index the provision in the same manner as the federal statute does or stay with a two-year indexing scheme.

Motor Vehicle Lien

Commissioner Buchsbaum asked if this piece was ready to be discussed at the meeting with the Legislative representative the following day and Mr. Cannel advised that the piece could be discussed since there was only one modification and that was made to address an issue that the Commission had not noticed.

Title 39

The memorandum presented to the Commission on this project was described by Laura Tharney as a preliminary item from Volume 2 of Title 39 which was not expected to be reviewed in detail at this meeting.

Weights and Measures

Mr. Cannel told the Commission that he had a meeting last week with some representatives of the Food Trades Council. Those individuals suggested that they sometimes have the impression that they are being targeted and are being used as a source of revenue by the Weights and Measures officials. They also raised issues that the Commission may wish to consider and incorporate into the piece. For example, many

things on grocery store shelves are packaged, weighed, etc. by others. The grocers do not see why they should be held responsible. When asked by the Commission how it might deal with this issue, Mr. Cannel suggested that in general terms, the thing that protects against light packages is the threat of bad publicity; in practical terms, it is not in the interest of any large manufacturer to underweight boxes, the question is how careful they are. The Commission determined that this issue was no different from any other situation in which there are a number of individuals or entities involved in placing a product into the stream of commerce and that everyone is a guarantor.

Mr. Cannel also explained that the Food Trades representatives suggested that the price integrity information should not be included with Weights and Measures but with Consumer Affairs. Mr. Cannel does not see why an item should be treated differently if it is light weighted or improperly priced.

The Food Trades representatives also raised the issue of destructive testing. When the Weights and Measures people test, whether it be meat or soap powder, they have to destroy the package. It is no longer salable and has to be thrown away. The food retailers want a limit as to how many packages can be destroyed in this fashion. After considerable discussion, the Commission determined that the rule of reason would have to prevail since a specific limit for the number of items that may be destroyed could not readily be crafted for inclusion in the statute. The Commission requested that some limiting language be included as guidance, but that no specific limit be included.

The Food Trades representatives requested that if a consumer is being charged too little, or if a product is marked as a lower weight than it actually is, this should not be counted as a violation and, in some areas, it is presently considered a violation. The Commission agreed that "no harm, no foul" provisions would be included in the draft.

Another point raised by Mr. Cannel based on his meeting with the Food Trades representatives is the issue of targeting. He indicated that retailers other than super markets also sell items and are just as likely to improperly price, but food supermarkets are disproportionately targeted by Weights and Measures inspectors. To encourage Weights and Measures offices to inspect all kinds of retail stores, the Food Trades representatives requested that a report be filed by each inspector listing each store inspected. The Commission requested that language be included requiring that such a report be made and kept.

As far as the issue of the appropriateness of the fines, Chairman Burstein suggested that the Commission would need to hear testimony in this regard before considering any modifications to the current fines.

Confidentiality of Medical Peer Review

In response to an inquiry by a physician, the Commission agreed that the issue of the confidentiality of medical peer review is an appropriate and interesting issue for Commission review. Chairman Burstein recognized that inherent in the subject area is a balancing act between two serviceable principles that are antithetical to each other, but that a balance can likely be struck. Staff will continue preliminary research in this area in preparation for submission of information to the Commission.

Miscellaneous

Chairman Burstein advised that there was a meeting on Friday between members of the Commission and a representative of the Legislature. Various projects of the Commission will be brought to the attention of the Legislature and the Legislature will be asked if there are matters the Legislature would like the Commission to address.

The next meeting of the Commission is scheduled for May 20, 2004.