

Campbell University School of Law

Scholarly Repository @ Campbell University School of Law

Other Publications

Faculty Scholarship

1985

North Carolina Security Interests (book review)

James B. McLaughlin Jr.

Campbell University School of Law, mclaughlinj@campbell.edu

Follow this and additional works at: https://scholarship.law.campbell.edu/fac_pubs

Recommended Citation

James B. McLaughlin Jr., *North Carolina Security Interests (book review)*, 21 Wake Forest L. Rev. 257 (1985),

This Book Review is brought to you for free and open access by the Faculty Scholarship at Scholarly Repository @ Campbell University School of Law. It has been accepted for inclusion in Other Publications by an authorized administrator of Scholarly Repository @ Campbell University School of Law.

BOOK REVIEW

LORD & LEWIS—NORTH CAROLINA SECURITY INTERESTS.
Charlottesville, Va. The Michie Company, 1985. Pp. 437.

In *North Carolina Security Interests*, Professors Richard A. Lord and Charles C. Lewis attempt to accomplish three rather ambitious goals. They state those three goals as: first, to provide a treatise for practitioners and judges who regularly deal with secured transactions in North Carolina; second, to provide an easily understandable reference book for attorneys who infrequently handle secured transactions in North Carolina; and third, to provide students with an introduction to security interests.¹ To accomplish such a task in only one volume in an easily readable form is truly difficult. Merely the attempt deserves recognition. Though not without its flaws, this work is a welcome addition to this area of legal publications in North Carolina. This work has been previously described as follows:

This one volume treatise fills the void in the working library of a North Carolina commercial lawyer by providing a survey of the interaction between the Uniform Commercial Code as enacted in North Carolina, . . . the non-U.C.C. North Carolina General Statutes, . . . the Bankruptcy Code, . . . and other Federal laws impacting upon commercial practice.²

Whether one believes that Professors Lord and Lewis have accomplished their stated purposes or not, one thing is clear—they have produced a significant work that is the first to analyze the Uniform Commercial Code provisions under the law of North Carolina. Therefore, this writer agrees with the above-stated evaluation. For the first time, practitioners and judges in North Carolina have a one-volume work available that will give them insight into many of the commercial law concepts with which they grapple on a daily basis.

The format of the book is simple and straightforward. The authors begin with an introduction to article nine and approach that article on a transactional basis. After discussing the provisions of article nine in the first seven chapters, the authors provide an overview of article nine secured creditors and their relationship to the bankruptcy trustees under the Bankruptcy Reform Act of 1978.³ In chapter nine, the authors discuss the priority rules as to perfected security interests and close their cover-

-
1. R. LORD & C. LEWIS, *NORTH CAROLINA SECURITY INTERESTS* v (1985).
 2. *Campbell Law Observer*, Apr. 26, 1985, at 22, col. 1.
 3. *Bankruptcy Reform Act of 1978*, 11 U.S.C. §§ 101-151326 (1982).

age with a close look at the default provisions of article nine of the Uniform Commercial Code as enacted in North Carolina. The format is logical, easy to follow, and workable. The authors have stated that their overriding objective is to write a book that is practical for their North Carolina audiences.⁴ This purpose is to be accomplished by guiding these audiences through the various provisions of the Uniform Commercial Code as enacted in North Carolina and answering questions most likely to be encountered in the actual practice of law.⁵ Any such purpose is to be applauded and welcomed by the practicing bar. The overall stated purpose has been accomplished in the main.

The strong points of this work outnumber its weaknesses. The most obvious strong points are:

- (1) Numerous references to North Carolina case law setting forth the North Carolina position on various points;
- (2) Good headings that enable the reader to know exactly where to find a particular subject area;
- (3) Excellent practice pointers that the practicing attorney will find useful;⁶
- (4) Text that is usually clear, concise, and to the point;
- (5) Easy to understand summaries of various areas of commercial law that the student and practitioner who are not specialists in the area will find helpful;⁷
- (6) Good explanations of the interrelationship between various code sections of the North Carolina law;⁸
- (7) A good explanation of the difference between documents and instruments that will not only be helpful to students and non-specializing practitioners, but also to specialists in this area because it makes an often troublesome area understandable;⁹
- (8) A good introduction to bankruptcy law as it relates to article nine¹⁰ (chapter eight deals with the Bankruptcy Reform Act of 1978); and
- (9) Citations to more in-depth treatments of many of the areas in which the authors apparently feel constrained by space limitations.¹¹

The following is a list of weaknesses that this writer feels duty bound to mention. However, the mention of these weaknesses or shortcomings is done with much trepidation because they can be readily explained by the fact that Professors Lord and Lewis had not set out to write a multi-volume treatise on the law of commercial transactions in which court decisions are critically analyzed, the law of all other jurisdictions is ex-

4. R. LORD & C. LEWIS, *NORTH CAROLINA SECURITY INTERESTS* v (1985).

5. *Id.*

6. *See, e.g., id.* at 42 n.37.

7. *See, e.g., id.* at 46.

8. *See, e.g., id.* at 63.

9. *See id.* at 79.

10. *See id.* at 166. This is an especially good explanation of the benefit to general unsecured creditors resulting from the trustee in bankruptcy's avoidance of a security interest.

11. *See, e.g., id.* at 264.

amined, and every conceivable problem is raised.¹² On the contrary, they have specifically set forth to provide a reasonably short one-volume work on North Carolina law. Therefore, many of the following weaknesses are pointed out because of this writer's sense of duty in reviewing the work, not as true criticisms in light of Professors Lord and Lewis' stated purposes. The following are among these so-called shortcomings:

(1) This book is not an in-depth discussion of the many subtleties of the Uniform Commercial Code. While Lord and Lewis do give generally easy to understand explanations of many of the provisions of the North Carolina commercial statutes, they fail to give an in-depth explanation of some of the more troublesome areas. For example, in discussing the difference between inventory and equipment, the authors state conclusions without giving supporting reasons.

(2) Legal scholarship is often characterized by bold and straightforward criticism of obviously incorrect judicial decisions. While Professors Lord and Lewis do not hesitate to state when they believe a court is in error, they often equivocate by saying they understand the court's reasoning. This writer would feel more comfortable if the authors simply would state that the court is wrong, why the court is wrong, and urge the court to correct the error.

(3) The authors often give less than desired coverage of complicated areas of the law. For example, their discussion of "adequate protection" under the Bankruptcy Code is inadequate and over-simplified. Even in a "practical" publication, these areas of the law should be given more in-depth coverage for the practitioner who is grappling with these types of problems in his everyday practice. The cursory treatment of some of these more difficult areas will not give much guidance to the practitioner. On the positive side is the observation that the citations in connection with these areas seem to be excellent and should point the practitioner in the right direction in his research. Therefore, the book should not be viewed as the end of the research job, but only the beginning.

(4) *North Carolina Security Interests* fails to provide the reader with national cases in certain troubling areas that have not been addressed

12. The authors themselves forewarn their readers as follows:

However, two factors should be kept in mind. First, we have made no attempt to be all-inclusive in our coverage. Although we cover every relevant Code Section, as well as every General Statute that is likely to bear on secured transactions in North Carolina, it would be impossible to anticipate every problem that might arise in connection with secured transactions. In short, this book is not intended to replace standard treatises on Contract Law, Bankruptcy, or even Commercial Law and Secured Transactions. Second, our primary focus has been on North Carolina law; we have purposely avoided citing numerous cases from other jurisdictions not because they do not exist or are not important, but because most of the questions that arise can be answered either with the Code itself or through analyzing the cases that have already been decided by the North Carolina courts. Naturally, however, where the North Carolina courts have not spoken, and the Code does not provide answers directly, we have tried to present the various views available and the one that we would hope the North Carolina courts would adopt.

Id. at v-vi.

by the North Carolina courts. While the authors' stated purpose is to provide an analysis of the North Carolina statutes and case law in this area, it would be helpful to know the national trends in those areas in which the North Carolina courts have not yet ventured. It would be helpful for the North Carolina practitioner to know how other jurisdictions that have considered these various areas have decided these cases. In fact, since these areas have not yet been decided by the North Carolina courts, the national trends will likely be followed by the North Carolina courts; therefore, providing this information would be helpful.

Again, the above criticisms must be viewed in light of Professors Lord and Lewis' stated purpose, which is to provide a workable one-volume work for use by North Carolina practitioners and law students.¹³ They have attempted to provide a useful working tool for North Carolina practitioners, judges, and students in only one volume in a very difficult area of the law. To accomplish this in only one volume makes it impossible to give as much in-depth treatment to all the areas involved as one might desire.

Other weaknesses are not necessarily attributable to the stated purpose of the book. A major distraction to this writer is the authors' informal style. They continually use the first person pronoun. On occasion, their explanation of a particular area is verbose.¹⁴ The authors also often use phrases like "it goes without saying."¹⁵ If it goes without saying, don't say it.

Another weakness of the book is the repetitive use of certain North Carolina cases to illustrate various points. This may be due to the lack of North Carolina cases to analyze and discuss in this area of the law. Nevertheless, the reader finds himself somewhat frustrated in having to read the same summary of the same case time after time. Perhaps this problem should have been corrected by the publisher's editorial staff. Such repetition, while distracting, is also very common in similar publications that are designed for use in the practice. This repetition is primarily due to the necessity of ensuring that the practitioner will find the appropriate case in a limited reading of the areas of the book in which he may be interested at that time. Therefore, the repetition is distracting primarily to those who will sit down and read the book from cover to cover, as opposed to those who will use it as a resource guide. It is possible that the repetition is necessary in light of the proposed use of the work by the practicing bar.

The treatment of the 1984 amendments to the Bankruptcy Reform Act of 1978 is not up to the generally high standards of the book. The basic text of this particular chapter appears to have been completed before the 1984 amendments were passed. Rather than rewrite the sections affected by the amendments, the authors apparently just "stuck in" the amendments as an afterthought. An illustration of this situation is

13. *Id.*

14. *See, e.g., id.* at 46-47.

15. *See, e.g., id.* at 176.

the following discussion of the "ordinary course of business" exemption to the preference provisions:

The second exception, found in Section 547(c)(2), is that the trustee may not avoid a transfer which pays a debt not more than forty-five days old (*the 1984 amendments delete the requirement that the payment be made within forty-five days after the debt was incurred*), which was incurred and paid in the ordinary course of the business or financial affairs of the debtor and the creditor and which was made according to ordinary business terms. This exception is designed to permit the debtor to pay ordinary bills as they come due, so long as they were incurred and paid in the ordinary course. Monthly utility bills, for example, might be incurred from day one through day thirty, and billed on day thirty. If the debtor pays those bills within forty-five days of the date when they were incurred, the payment is a transfer of the debtor's property to or for the benefit of a creditor for or on account of an antecedent debt (a debt which arose when the service was rendered). However, even if the other elements of a preference are met, the trustee in bankruptcy may not avoid the transfer so long as the payment was made within forty-five days (*or, under the 1984 amendments, even beyond forty-five days*), under ordinary business terms and circumstances.

As might be expected, the appellate cases to date have focused primarily on when a debt is incurred for purposes of the exception (*a question made unimportant by the 1984 amendments*), as well as on the types of transactions to which the Section will apply. Here, again, the response has not been particularly pro-creditor, though there are indications that somewhat greater protection will be afforded the creditor here than under Section 547(c)(1).¹⁶

However, the authors' overall treatment of the warfare that occurs between secured creditors and the bankruptcy trustee or the debtor-in-possession is of good quality. In fact, it is in this section of the book that one finds a commendable degree of scholarship.¹⁷ Otherwise, the scholarship is competent but unremarkable. The style is too informal for this author's complete satisfaction. There is also the previously mentioned lack of in-depth legal analysis of certain areas. Nevertheless, while North Carolina may not be extremely intellectually richer as a state because of this work, it definitely will be somewhat intellectually richer.

Most of the shortcomings of the book can be explained by the authors' purpose of providing a readable one-volume work useful to both practicing attorneys and students. They have accomplished this goal. The book will be a valuable addition to any practicing attorney's library. Therefore, this writer encourages practicing attorneys in the State of North Carolina to add this work to their libraries.

The book will be useful to students as well. This is an area of the law that students often find to be an unsolvable maze of statutes with no

16. *Id.* at 216-17 (emphasis added).

17. *See id.* at 224-25. This discussion of sections 547(e)(3) and 547(c)(3) is an excellent explanation of why both of the sections are necessary.

apparent logic. This work can be read in a short period of time and it will give the student a feel for the overall continuity and scheme of article nine. The work will be especially helpful to the student who is grappling with the interrelationship between article nine and the Bankruptcy Code. For this reason alone, the book is valuable to law students.

Yes, Professors Lord and Lewis have accomplished their primary purpose. This is true in spite of the difficulty of the undertaking of providing a reasonably comprehensive one-volume work that is also practical. They have written a work that will be helpful to both the practitioner and the law student in North Carolina. In fact, it is a work that any lawyer in North Carolina who practices in the commercial law area, either regularly or occasionally, should purchase. In addition, law students will find the style of the book easy to follow and understand. For these reasons, the book is a valuable addition to the legal literature of the State of North Carolina and the libraries of its practicing bar.

PROFESSOR JAMES B. McLAUGHLIN, JR.*

* B.S., Georgia Southern College; J.D., Mercer University. Associate Professor of Law, Campbell University School of Law.