
Consumers in Trouble: A Study of Debtors in Default

Lee Ann Conti

Follow this and additional works at: <https://via.library.depaul.edu/law-review>

Recommended Citation

Lee A. Conti, *Consumers in Trouble: A Study of Debtors in Default*, 24 DePaul L. Rev. 1080 (1975)
Available at: <https://via.library.depaul.edu/law-review/vol24/iss4/20>

This Notes is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Law Review by an authorized editor of Via Sapientiae. For more information, please contact wsulliv6@depaul.edu, c.mcclure@depaul.edu.

not be able to answer, but they are queries for every attorney and judge who must satisfy the "appearance of justice" in the court room.

Sharon Turkish Jacobson

CONSUMERS IN TROUBLE: A STUDY OF DEBTORS IN DEFAULT. by DAVID CAPLOVITZ. New York: The Free Press. Chapter notes. 1974. Pp. xiv + 352. \$10.95 cloth.

Most of this book is devoted to reporting the results of 1,331 interviews with debtors in New York, Philadelphia, Detroit and Chicago who had had default judgments entered against them. Professor Caplovitz's purpose was to support by documentation the charges of consumer advocates that courts, in consumer credit transactions, serve merely as collection agencies for creditors and not as arbiters of disputes or dispensers of justice. Statistics supporting this hypothesis abound. For example, only 54% of the New York debtors reported actual receipt of a summons notifying them of the suit. Perhaps the well-known reputation of New York for "sewer service" accounts for this figure, but even in Detroit where service was reportedly most effective, only 84% received a summons. Despite the fact that in the aggregate nearly 75% of the debtors were served with process, and approximately 19% of them accused their sellers of some form of fraud or deception, the attrition rate involved in the legal process was so high that apparently only seven cases were brought to trial on the merits.

The current legal doctrines which Professor Caplovitz attacks are holder-in-due-course, garnishment, repossession followed by deficiency judgments, and confession of judgment clauses. In all cases he points to the harsh effects upon the debtor of these creditor-oriented remedies. Garnishment, for instance, resulted in 19% of the garnishees losing their jobs. As the author aptly suggests, garnishment may defeat the creditor's self-interest since the unemployed are much less likely to be able to repay their debts. On the question of deficiency judgments, Caplovitz presents proof that people do not know or understand the law. Fully 54% of all debtors whose merchandise was repossessed thought that the repossession automatically extinguished the debt. He notes instances where the debtor encouraged the repossession for the very purpose of terminating the debt.

Only the last sixteen pages of the work are devoted to recommended reforms. The proposals are very superficial and in large part merely a collection of previously stated proposals. The most constructive reform seems to be an outright ban of door-to-door sales of merchandise over \$50 in value. Although direct sales account for only about 3% of all retail sales, they accounted for 30% of the defaults in this study. This reform could be expected to reduce that level greatly.

Other conclusions and proposals are less likely solutions. Caplovitz feels confession of judgment clauses should be "attacked" by the consumer movement. He believes that deficiency judgments will be eliminated in the near future, but he fails to tell us why. Generally, he seems to favor the free market features of the Uniform Consumer Credit Code, whereby anyone could become a lender of money and interest rate ceilings would be raised dramatically. A reward and punishment system might then govern interest rates; persons with good payment records would get lower rates while those with bad records would pay higher rates or eventually be eliminated from the credit system altogether. Sellers could purchase insurance which would cover defaults as long as their sales did not cause a person to exceed his credit limit. This system would rely upon credit bureaus to set those limits and report a person's credit status before every credit transaction. This reader sees this as a fundamental flaw in the proposal, since the abuses occasioned by inaccurate credit bureau reports and unyielding computers are well-documented elsewhere.

A major contradiction in Professor Caplovitz's logic appears in this proposed credit system. When he was attacking the holder-in-due-course and confession of judgment remedies, he was most solicitous of traditional notions of due process and the need to give everyone an opportunity to have his day in court. At the point in his proposal where a good credit rating becomes one of a person's most valuable assets, because it ultimately controls if, when, and on what terms a person could acquire all the other forms of material property valued by our society, Caplovitz seems to oppose the idea of considering it a form of "property" because that would conjure up "thorny issues" of due process.

Since Professor Caplovitz is a sociologist and not a lawyer, it is not too surprising that legal analysis is not his strong point. However, as might also be expected, a great deal of his analysis is devoted to the characteristics of the debtors and creditors involved in these transactions-gone-bad, and this is perhaps the strongest feature of the book. Most of his findings are not too surprising. The default debtor emerged as a minority group, blue collar worker earning between \$4,000 and \$8,000 per year in 1967, who has not completed high school, and who is younger than the average

credit user. The major reasons given for default were loss of income due either to misfortunes in the job market or illness. Debtors who bought from direct sellers and used automobile dealers reported deceit in the original transaction much more frequently than did other debtors.

When the various debtor and creditor characteristics are correlated to each issue, some unexpected findings occur. Race and income are only slightly related to whether a person reported actual receipt of a summons, while general quality of the neighborhood in which he lived and type of dwelling unit were more highly related to service. It was also found that the three most frequent creditor plaintiffs in New York, a bank, a direct seller, and a finance company, all had much lower rates of reported actual service than other similar creditors. The lowest rate went to the finance company, only 32% of whose customers reported actual receipt. Excellent tables are used throughout the volume to summarize these and other relationships.

For the law student or the attorney the book is of limited value, especially as a research tool. While some citations to both cases and other materials are included, other cases, studies, or projects are mentioned with no useful citation. As a source of actual law, it cannot be relied upon, since even Professor Caplovitz was careful to explain that there have been changes on both the national and local level since his study was done. As a general introduction to the area of consumer credit problems, it is useful, but the statistical data and analysis might discourage a novice. As a contrast of what has happened under four local legal systems, it is illuminating, especially since Philadelphia, a city in which garnishment is not an available remedy, is compared to other systems where that remedy is allowed and often used. Perhaps the most appropriate audience for this book are the legislators who have opposed reforms of consumer credit laws over the years. It might convince them of the need for change, even though it does not itself propose easy or effective alternatives.

Lee Ann Conti

HIT AND RUN: THE RISE AND FALL OF RALPH NADER by
RALPH DE TOLEDANO. New Rochelle, New York: Arlington House
Pubs. 1975. \$7.95 cloth.

In *Hit and Run*, Ralph de Toledano purports to objectively examine Ralph Nader's record and to critically evaluate the Nader Reports. Instead, the author uses undocumented statements and inaccurate conclu-