



Lender Liability Claims – Alive and Well in Texas!

The 1980s were a period of big hair, big cell phones, and big problems for the banking industry in Texas. As the economy declined, “lender liability” type claims emerged and flourished. As a result, the 1980s and early 1990s were a period that most experienced bankers in Texas would frankly like to forget. It was also a time, however, that many of today’s younger bankers never experienced, since many of them were infants, or perhaps not even a twinkle in their parent’s eyes at the time.

Since then, for the most part, Texas has been blessed with a strong and growing economy, healthy banks, and prosperous times. As a result, lender liability claims have not garnered the same level of attention they once received. In fact, I occasionally hear some lenders take the position that lender liability claims are a relic of the past, never to be seen again. However, a recent decision issued by the U.S. Bankruptcy Court in Dallas illustrates that lender liability claims are still very much alive and well in Texas.

As described by the Court in *Bailey Tool & Mfg. Co. v Republic Bus. Credit*, Adv. No. 16-03025-SGJ, 2021 WL 6101847 (Bankr. N.S. Tex. Dec. 23, 2021), the *Republic* case involved a short-lived financing arrangement that went “terribly wrong.” In a nutshell, a bankruptcy trustee sued Republic Business Credit for (i) refusing to advance funds under the applicable factoring and inventory loan agreements, (ii) charging fees, expenses, and penalties “with abandon”, and (iii) exercising excessive control over the business; the combined alleged effect being the failure of the business.

Following a seven-day trial in which the Court received over 1,000 exhibits and heard from 11 witnesses, the Court agreed with the Trustee on most points, issuing an incredibly detailed 145-page opinion laying out the many errors made by Republic in what the Court characterized as an “excruciatingly difficult case.” At the end of the day, the Court awarded the Trustee almost \$17 million (before attorney’s fees), including almost \$1.5 million in punitive damages. Additionally, the Trustee sought an additional \$5,968,833 in attorney’s fees. In recent days, according to court filings, the parties appear to have negotiated a settlement in which Republic has agreed to pay \$4.5 million rather than face its own potential bankruptcy.

The *Republic* case is just one of several “lender liability” opinions that are issued in Texas each year and reflects an extreme example of how lenders and other types of finance companies can easily find themselves on the wrong side of one of these dangerous cases by simply failing to do what their documents require them to do, and overly dictating how a borrower should run its business. However, today’s lenders can avoid many of these claims by following the

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documents, keeping open lines of communication with their borrowers and credit managers, and seeking legal advice **before** things completely fall apart.

Whether you work at a traditional bank, factoring company, or private lender of any type, our experienced commercial litigation team is ready to help you navigate through any lender liability type claims that may arise, or any other type of financial litigation.

For more information, please contact [Jim Aycok](#).