

By: Sherman, Sr.

H.B. No. 1823

A BILL TO BE ENTITLED

AN ACT

relating to certain documents or instruments purporting to convey real or personal property.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 51.901(a), (c), (d), and (e), Government Code, are amended to read as follows:

(a) If a clerk of the supreme court, clerk of the court of criminal appeals, clerk of a court of appeals, district clerk, county clerk, district and county clerk, or municipal clerk has a reasonable basis to believe in good faith that a document or instrument previously filed or recorded or offered or submitted for filing or for filing and recording is fraudulent, the clerk shall:

(1) if the document is a purported judgment or other document purporting to memorialize or evidence an act, an order, a directive, or process of a purported court, provide written notice of the filing, recording, or submission for filing or for filing and recording to the stated or last known address of the person against whom the purported judgment, act, order, directive, or process is rendered; or

(2) if the document or instrument purports to create a lien or assert a claim on real or personal property or an interest in real or personal property or to convey real or personal property, provide written notice of the filing, recording, or submission for filing or for filing and recording to the stated or last known

1 address of the person named in the document or instrument as the
2 obligor, ~~or~~ debtor, or grantor and to any other person named as
3 owning any interest in the real or personal property described in
4 the document or instrument.

5 (c) For purposes of this section, a document or instrument
6 is presumed to be fraudulent if:

7 (1) the document is a purported judgment or other
8 document purporting to memorialize or evidence an act, an order, a
9 directive, or process of:

10 (A) a purported court or a purported judicial
11 entity not expressly created or established under the constitution
12 or the laws of this state or of the United States; or

13 (B) a purported judicial officer of a purported
14 court or purported judicial entity described by Paragraph (A);

15 (2) the document or instrument purports to create a
16 lien or assert a claim against real or personal property or an
17 interest in real or personal property or to convey real or personal
18 property and:

19 (A) is not a document or instrument provided for
20 by the constitution or laws of this state or of the United States;

21 (B) is not created by implied or express consent
22 or agreement of the obligor, debtor, or the owner of the real or
23 personal property or an interest in the real or personal property,
24 if required under the laws of this state, or by implied or express
25 consent or agreement of an agent, fiduciary, or other
26 representative of that person; or

27 (C) is not an equitable, constructive, or other

1 lien imposed by a court with jurisdiction created or established
2 under the constitution or laws of this state or of the United
3 States; or

4 (3) the document or instrument purports to create a
5 lien or assert a claim against real or personal property or an
6 interest in real or personal property or to convey real or personal
7 property and the document or instrument is filed by an inmate or on
8 behalf of an inmate.

9 (d) If a county clerk believes in good faith that a document
10 filed with the county clerk to create a lien or make a conveyance is
11 fraudulent, the clerk shall:

12 (1) request the assistance of the county or district
13 attorney to determine whether the document is fraudulent before
14 filing or recording the document;

15 (2) request that the prospective filer provide to the
16 county clerk additional documentation supporting the existence of
17 the lien or conveyance, such as a contract or other document that
18 contains the alleged debtor or obligor's signature or the alleged
19 grantor's signature, as applicable; and

20 (3) forward any additional documentation received to
21 the county or district attorney.

22 (e) A presumption under Subsection (c)(3) relating to a
23 security interest may be rebutted by providing the filing officer
24 in the filing office in which the document is filed or recorded the
25 original or a copy of a sworn and notarized document signed by the
26 obligor, debtor, or owner of the property designated as collateral
27 stating that the person entered into a security agreement with the

1 inmate and authorized the filing of the financing statement as
2 provided by Section 9.509, Business & Commerce Code.

3 SECTION 2. The heading to Section 51.903, Government Code,
4 is amended to read as follows:

5 Sec. 51.903. ACTION ON FRAUDULENT LIEN OR CLAIM AGAINST OR
6 CONVEYANCE OF [ON] PROPERTY.

7 SECTION 3. Sections 51.903(a), (e), and (g), Government
8 Code, are amended to read as follows:

9 (a) A person who is the purported debtor or obligor or who
10 owns real or personal property or an interest in real or personal
11 property and who has reason to believe that the document purporting
12 to create a lien or assert a claim against the real or personal
13 property or an interest in the real or personal property or to
14 convey the real or personal property previously filed or submitted
15 for filing and recording is fraudulent may complete and file with
16 the district clerk a motion, verified by affidavit by a completed
17 form for ordinary certificate of acknowledgment, of the same type
18 described by Section 121.007, Civil Practice and Remedies Code,
19 that contains, at a minimum, the information in the following
20 suggested form:

21		MISC. DOCKET NO. _____
22	In Re: A Purported	In the _____ Judicial District
23	Lien or Claim Against	In and For _____
24	<u>or Conveyance By</u>	
25	(Name of Purported	County, Texas
26	Debtor <u>or Grantor</u>)	

27 Motion for Judicial Review of Documentation or Instrument

Purporting to Create a Lien or Claim or Make a Conveyance

Now Comes (name) and files this motion requesting a judicial determination of the status of documentation or an instrument purporting to create [~~an interest in real or personal property or~~] a lien or assert a claim on real or personal property or an interest in real or personal property or to convey real or personal property filed in the office of the Clerk of (county name) County, Texas, and in support of the motion would show the court as follows:

I.

(Name), movant herein, is the purported obligor or debtor or person who owns the real or personal property or the interest in real or personal property described in the documentation or instrument.

II.

On (date), in the exercise of the county clerk's official duties as County Clerk of (county name) County, Texas, the county clerk received and filed and recorded the documentation or instrument attached hereto and containing (number) pages. Said documentation or instrument purports to have created a lien or asserted a claim on real or personal property or an interest in real or personal property against, or to have made a conveyance of property by, one (name of purported debtor or grantor).

III.

Movant alleges that the documentation or instrument attached hereto is fraudulent, as defined by Section 51.901(c)(2), Government Code, and that the documentation or instrument should therefore not be accorded lien or conveyance status.

1 IV.

2 Movant attests that assertions herein are true and correct.

3 V.

4 Movant does not request the court to make a finding as to any
5 underlying claim of the parties involved and acknowledges that this
6 motion does not seek to invalidate a legitimate lien, claim, or
7 conveyance. Movant further acknowledges that movant may be subject
8 to sanctions, as provided by Chapter 10, Civil Practice and
9 Remedies Code, if this motion is determined to be frivolous.

10 PRAYER

11 Movant requests the court to review the attached
12 documentation or instrument and enter an order determining whether
13 it should be accorded lien or conveyance status, together with such
14 other orders as the court deems appropriate.

15 Respectfully submitted,

16 _____
17 (Signature and typed name and address)

18 (e) After reviewing the documentation or instrument
19 attached to a motion under this section, the district judge shall
20 enter an appropriate finding of fact and conclusion of law, which
21 must be filed and indexed in the same class of records in which the
22 subject documentation or instrument was originally filed. A copy
23 of the finding of fact and conclusion of law shall be sent, by first
24 class mail, to the movant and to the person who filed the fraudulent
25 lien, ~~or~~ claim, or conveyance at the last known address of each
26 person within seven days of the date that the finding of fact and
27 conclusion of law is issued by the judge.

1 (g) A suggested form order appropriate to comply with this
2 section is as follows:

3 MISC. DOCKET NO. _____
4 In Re: A Purported In the _____ Judicial District
5 Lien or Claim Against In and For _____
6 or Conveyance By
7 (Name of Purported County, Texas
8 Debtor or Grantor)

9 Judicial Finding of Fact and Conclusion of Law Regarding a
10 Documentation or Instrument Purporting to Create a Lien or Claim or
11 Make a Conveyance

12 On the (number) day of (month), (year), in the above entitled
13 and numbered cause, this court reviewed a motion, verified by
14 affidavit, of (name) and the documentation or instrument attached
15 thereto. No testimony was taken from any party, nor was there any
16 notice of the court's review, the court having made the
17 determination that a decision could be made solely on review of the
18 documentation or instrument under the authority vested in the court
19 under Subchapter J, Chapter 51, Government Code.

20 The court finds as follows (only an item checked and
21 initialed is a valid court ruling):

22 _____ The documentation or instrument attached to the motion
23 herein IS asserted against real or personal property or an interest
24 in real or personal property and:

25 (1) IS provided for by specific state or federal
26 statutes or constitutional provisions;

27 (2) IS created by implied or express consent or

1 agreement of the obligor, debtor, or the owner of the real or
2 personal property or an interest in the real or personal property,
3 if required under the laws of this state, or by consent of an agent,
4 fiduciary, or other representative of that person; or

5 (3) IS an equitable, constructive, or other lien
6 imposed by a court of competent jurisdiction created or established
7 under the constitution or laws of this state or of the United
8 States.

9 _____ The documentation or instrument attached to the motion
10 herein:

11 (1) IS NOT provided for by specific state or federal
12 statutes or constitutional provisions;

13 (2) IS NOT created by implied or express consent or
14 agreement of the obligor, debtor, or the owner of the real or
15 personal property or an interest in the real or personal property,
16 if required under the law of this state or by implied or express
17 consent or agreement of an agent, fiduciary, or other
18 representative of that person;

19 (3) IS NOT an equitable, constructive, or other lien
20 imposed by a court of competent jurisdiction created by or
21 established under the constitution or laws of this state or the
22 United States; or

23 (4) IS NOT asserted against real or personal property
24 or an interest in real or personal property. There is no valid
25 lien, ~~or~~ claim, or conveyance created by this documentation or
26 instrument.

27 This court makes no finding as to any underlying claims of the

1 parties involved, and expressly limits its finding of fact and
2 conclusion of law to the review of a ministerial act. The county
3 clerk shall file this finding of fact and conclusion of law in the
4 same class of records as the subject documentation or instrument
5 was originally filed, and the court directs the county clerk to
6 index it using the same names that were used in indexing the subject
7 documentation or instrument.

8 SIGNED ON THIS THE _____ DAY OF _____.

9 _____

10 DISTRICT JUDGE

11 _____ JUDICIAL DISTRICT

12 _____ COUNTY, TEXAS

13 SECTION 4. Sections 51.901 and 51.903, Government Code, as
14 amended by this Act, apply with respect to a document or instrument
15 filed or submitted for filing before, on, or after the effective
16 date of this Act.

17 SECTION 5. This Act takes effect September 1, 2023.