Opinion Title: 03/23/2005 PUBLISHED Chase Manhattan Mortgage Corporation vs. J. Kevin Bird, Chapter 7 Trustee, 04-2515, Judge Thurman.

Body: This proceeding involved interpretation of Utah's constructive and inquiry notice law regarding the recording of a bank's trust deed in the tract and grantor/grantee indices. The Court was called upon to determine whether the bank's trust deed was avoidable pursuant to 11 U.S.C. § 544(a)(3) and whether there were facts that gave rise to placing the chapter 7 Trustee on constructive or inquiry notice of the same.The Court ruled on cross motions for summary judgment that the Trustee lacked constructive and inquiry notice of the Plaintiff's trust deed because it incorrectly described the location of the Debtors property. Under Utah law, liens must be accurately described in recorded instruments and placed in the tract index maintained by each county recorder to give constructive notice. Here, although the trust deed was recorded, the legal description referred to property miles away from the Debtor's property and was recorded against another tract of land. Although the county recorder maintained a grantor/grantee index, the Court determined that the recording of the trust deed in that index did not constitute constructive notice of the existence of the Plaintiff's trust deed in furtherance of the legislative intent to interpret land titles strictly. Further, there were no facts that suggested that anyone should investigate further regarding the existence of the Plaintiff's trust deed and accordingly, the Trustee was not on any inquiry notice regarding the existence of the trust deed.

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Judge: Judge William T. Thurman [2]

Date: Wednesday, March 23, 2005

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