Opinion Title: 07/19/2005 UNPUBLISHED In re Alaina Hopkins, 03-40481, Judge Thurman.
Body: In a contested matter, the Court considered the application of Utah's anti-deficiency statute, §57-1-32 Utah Code, the scope of issues presented in a pre-trial order and the qualifications of a creditor corporate officer to render opinion testimony on real property. The Court ordered the matter to proceed as an adversary proceeding and overruled the multiple objections of the Debtor to the creditor's proof of claim asserting a secured claim on two parcels of real property. The Debtor's son owned a construction company and convinced his mother, the Debtor, to take out a loan to finance a Model Home for the business. To secure the loan, the Debtor pledged both the Model Home and her personal residence. The son's business failed and neither he nor his business paid the Creditor on the loan. As a result, the Creditor commenced foreclosure actions on both the Model Home and the Debtor's residence. In response, the Debtor filed for chapter 13 relief. Among other claims, the Debtor alleged that the Creditor failed to properly advise her as to the consequences of signing the trust deed on her residence. The creditor obtained relief from stay as to the Model home early in the case. While the sale resulted in a loss, the Creditor did not amend its proof of claim or commence other action to assert a deficiency. The Debtor then argued that Utah's Anti-Deficiency Statute (§57-1-32) prevented the Creditor from asserting a deficiency.The Court found that the Debtor had been properly apprised of the terms of the trust deeds, that she voluntarily and knowingly signed the trust deed on her home and found no inappropriate conduct on the part of the Creditor in closing on the loan with the Debtor or that the Creditor committed any other improper act. In addition, the Court determined as a matter of law that §57-1-32 did not require the Creditor to amend its proof of claim or commence other action following the foreclosure on the Model Home to allow it to assert a deficiency, and as such, the Creditor maintained a security interest in the Debtor's residence. In addition to affecting jurisdiction, §57-1-32 requires that the Court determine the fair market value of a property at the date of its sale before a judgment for any deficiency may be rendered. The Debtor argued that the pre-trial order did not specifically preserve this issue for trial and thus the Court could not take evidence of the fair market value of the Model Home. The Court overruled this objection, finding that parties had stipulated in the pre-trial order that there was a question as to whether the Creditor was "prevented from enforcing its rights against the Debtor because of...'anti-deficiency law.'" In so doing, the Court determined that such issue was broad enough to allow the Court's inquiry into the fair market value of the Model Home. Finally, the Court found that the vice-president of the corporate Creditor was sufficiently qualified as an owner to give an opinion of value of the Model Home.
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Judge: Judge William T. Thurman [2]
Date: Tuesday, July 19, 2005

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