Opinion Title: 05/27/2009 PUBLISHED In re Wilburgene v. Kwon et. al., Case No. 08-02101, Judge Thurman.

Body: In this adversary proceeding, the Plaintiff Wilburgene LLC (the "LLC") and certain defendants filed cross-motions for summary judgement seeking the determination of whether those defendants held a valid trust deed on the Plaintiff's property that was granted by a purported member of the Plaintiff to secure a personal loan. The Plaintiff argued that the grantor was not a member of the LLC, and could not encumber the its property. It further claimed that even if the grantor were considered a member, his actions could not bind the Plaintiff because they were not in the "ordinary course of the company business" as required by § 48-2c-802(1) of the Utah Code. The Court concluded that the grantor was a member of the LLC at the time the trust deed was granted, he had authority to sign the trust deed, and the exception contained subsection (3) rather than the general rule in subsection (1) of § 48-2c-802 governed. The Court held that under § 48-2c-802(3), the trust deed would be conclusive in favor of the defendants if they gave value without knowledge of the grantor's lack of authority. Although the Court determined that the defendants did give value in exchange for the trust deed, it held that there was a genuine dispute of material fact as to whether they had knowledge of the grantor's lack of authority. That issue was, therefore, reserved for trial.

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Judge: Judge William T. Thurman [2]

Date: Wednesday, May 27, 2009

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