

1989

Prows, et al. v. Industrial Loan Guaranty Corporation : Unknown

Utah Supreme Court

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Poole and Voros, P.C..

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UTAH SUPREME COURT

BRIEF

POOLE & VOROS, P.C.
ATTORNEYS AT LAW

890161

DENNIS K. POOLE, P.C.
J. FREDERIC VOROS, JR.
ALAN R. STEWART

PROWSWOOD PLAZA, SUITE 306
4885 SOUTH 900 EAST
SALT LAKE CITY, UTAH 84117
TELEPHONE (801) 263-3344
TELECOPIER (801) 263-1010

November 22, 1991

FILED

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Mr. Geoffrey J. Butler, Clerk
Utah Supreme Court
332 State Capitol
Salt Lake City, Utah 84114

CLERK SUPREME COURT
UTAH

Re: Prows et al v. Industrial Loan Guaranty Corp.,
Case No. 890161

Dear Mr. Butler:

I am writing pursuant to Rule 24(j) of the Utah Rules of Appellate Procedure to advise the Court with respect to a development in a related district court case.

In their Petition for Rehearing, Plaintiffs argued that this Court should not issue dicta on a question currently before the district court in the Industrial Loan Guaranty Corporation liquidation proceeding. This is especially so where there is little factual record on this appeal, since it arose from a motion to dismiss granted by the trial court.

On page 4 of its Response to Appellants' Petition for Re-Hearing, the State of Utah represented that "there is been no showing that the record in the ILGC proceeding will be any different than the one before this Court."

At the time this sentence it was written, there was in fact no record before the district court in the ILGC proceeding. However, counsel for the Utah Commissioner of Financial Institutions, in his capacity as Commissioner-in-Possession of the ILGC, has since filed a Motion for Order Approving Disallowance of the Prowswood Claim.

The Commissioner's motion is accompanied by a Memorandum of Points and Authorities annexed to which are approximately 90 pages of documents. These documents include the following:

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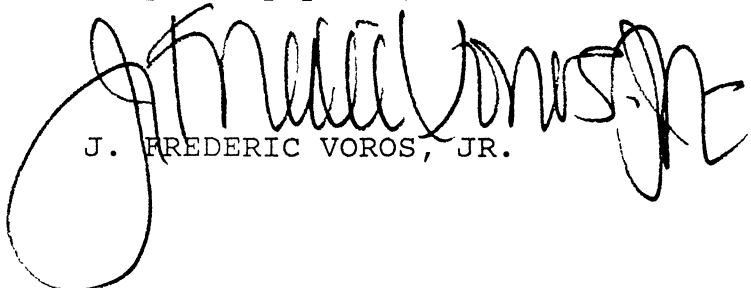
Foothill/Zions Bank Sale and Purchase Agreement
Commissioner's Petition for Reorganization of Foothill
Order Approving Reorganization Plan
\$4.9 million Promissory Note
Continuing Guaranty
Loan Workout Agreement

These documents have been filed by the Commissioner with the district court in the ILGC liquidation proceeding to assist it in determining whether claimants there (Appellants here) were deposit insurers.

None of these documents are before this Court. It is therefore clear that the record in the ILGC proceeding is indeed quite different than the one before this Court. The volume of these documents underscores the wisdom in allowing a trial court to determine the issue of Appellant's status as deposit insurers free from the shadow of dicta from this Court affecting that determination.

Thank you for your consideration of this matter.

Very truly yours,


J. FREDERIC VOROS, JR.

jm

cc: R. Paul Van Dam, Esq.
Brent A. Burnett, Esq.
Bryce H. Pettey, Esq.
Attorneys for State of Utah and
Dept. of Financial Institutions
P. Keith Nelson, Esq.
David L. Barclay, Esq.
Michael N. Emery, Esq.
Attorneys for Commissioner
in Possession of ILGC
Ray R. Christensen, Esq.
Jay E. Jensen, Esq.