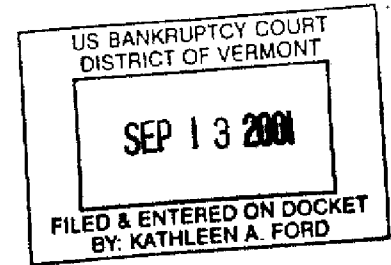


UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT



In re:

Justin L. & Lori A. Meigs,
Debtors.

Chapter 13 case
00-11438

Jan M. Sensenich, Chapter 13 Trustee
Plaintiff,

v.
Universal Mortgage Corp
Defendant.

Adversary Proceeding
01-1008

#32-1

**ORDER
DENYING DEFENDANT'S MOTION FOR RELIEF FROM JUDGMENT**


On June 11, 2001 the defendant herein filed a motion seeking relief from a judgment by default entered in the instant proceeding on May 30, 2001. A hearing was held on the motion on July 27, 2001. At that time the Court ruled that the defendant had established the first two prongs of the Bankruptcy Rule 7055 and Rule 60(b)(1) three part test, namely that the defendant did not wilfully default and secondly that the default was caused by factors that could be reasonably construed to be excusable neglect. However, the Court held that it did not have sufficient information before it with respect to the issue of whether the defendant had a meritorious defense. While Universal states in its motion to set aside default that it will file its defenses to the claim if its motion is granted, it never tells the Court what defense it has to a defective mortgage. The Court held that in the interests of justice and efficient use of judicial resources the question of whether the defendant had a meritorious defense must be determined prior to allowing this litigation to proceed. I specifically ruled that if the defendant could not demonstrate it had a meritorious defense the motion would be denied. Counsel were given an opportunity to file memoranda of law on the question of whether the defendant had a meritorious defense and the hearing was adjourned until today.

After reviewing the very thorough memoranda of law filed by counsel for each of the parties, and reviewing the case law, I find that the defendant has not demonstrated that it has a meritorious defense and therefore deny the defendant's motion for relief from judgement. In reaching this conclusion I rely on the

first circuit decision of Ryan v. Continental Assurance Co., 851 F.2d 502 (1st Cir. 1988), but primarily on Vermont law which I believe makes clear that a deed or mortgage that fails to comply with the statutory witness requirement of 27 V.S.A. §341 (i.e., one or more witnesses) creates no legal encumbrance on the premises. In particular, I find that the Vermont Supreme Court decisions of Merchants Bank v. Bouchard, 568 A.2d 412 (1989), Lakeview Farm, Inc. v. Enman, 166 Vt. 158, 689 A.2d 1089 (1997) and Day v. Adams, 42 Vt. 510 (1869) deal with this very issue and refute Universal's attempt to put the trustee on inquiry notice of the mortgage. These cases make clear that a defective mortgage is simply not sufficient to put someone on notice. The unpublished Judge Conrad decision of Orf v. First NH Bank of Lebanon, AP Case No. 90-0066 (Bankr. D. Vt., May 11, 1991) is equally compelling and defeats Universal's attempt to claim either that it has a meritorious defense or that the trustee had inquiry notice of the mortgage. I find that Universal fails to present any facts or law that distinguishes it from either Ryan or Orf.

While courts often indulge a defaulting party when excusable neglect is established, I find that the defendant's failure to demonstrate that it has a meritorious defense warrants a denial of the defendant's motion for relief from default judgment in this instance.

September 7, 2001
Burlington, Vermont



Colleen A. Brown
U.S. Bankruptcy Judge

NOTE:

Although the movant may have designated additional parties to receive this document, the court has served copies of this document only on the parties named below. If a designated party is not listed, they are not in the court's database as a party to this case.

Notice sent to:

Jan M. Sensenich
6 Palmer Court
White River Jct., VT 05001

Matthew J Carter
PO Box 1489
Burlington, VT 05402-1489

David W. Lynch
289 College Street
Burlington, VT 05401-8320

U S Trustee
74 Chapel St, Ste 200
Albany, NY 12207-2190

11400 Commerce Park Drive
Suite 600
Reston, Virginia 22091-1506

CERTIFICATE OF SERVICE

District/off: 0210-1
Case: 01-01008

User: kaf
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Page 1 of 1
Total Served: 4

Date Rcvd: Sep 13, 2001

The following entities were served by first class mail on Sep 15, 2001.
aty-intp +David W. Lynch, 289 College Street, Burlington, VT 05401-8320
pla +Jan M. Sensenich, 6 Palmer Court, White River Jct., VT 05001-3323
cr U.S. Trustee, 74 Chapel St #200, Albany, NY 12207

The following entities were served by electronic transmission on Sep 13, 2001 and receipt of the transmission was confirmed on:

aty-def +Fax: 802-864-0328 Sep 13 2001 20:07:21 Matthew J Carter, PO Box 1489,
Burlington, VT 05402-1489

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NONE.

TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
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I, Joseph Speetjens, declare under the penalty of perjury that I have served the attached document on the above listed entities in the manner shown, and prepared the Certificate of Service and that it is true and correct to the best of my information and belief.

Date: Sep 15, 2001

Signature:

