



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

In re:

**David Roy Orcutt and
Hollie Jean Stevens,
Debtors.**

**Chapter 13 case
11-10553**

**David Roy Orcutt and
Hollie Jean Stevens,
Plaintiffs,
v.
GMAC Mortgage, LLC,
Defendant.**

**Adversary Proceeding
11-1013**

*Appearances: Michelle M. Kainen, Esq.
White River Junction, VT
Attorney for the Plaintiffs*

*Jan M. Sensenich, Esq.
Norwich, VT
Chapter 13 Trustee*

*James B. Anderson, Esq.
Rutland, VT
Attorney for the Defendant*

**ORDER
GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT
AND DENYING DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT
ON REMAND**

For the reasons set forth in the memorandum of decision of even date, THE COURT FINDS that a determination of the validity of the Defendant's mortgage under 27 V.S.A. § 141 is integral to, and dispositive of, a determination of the Defendant's secured status under 11 U.S.C. § 506(a), resolution of the Defendant's objection to confirmation of the Plaintiffs' Chapter 13 plan under 11 U.S.C. § 1325(a)(3), and resolution of the Defendant's objection to the Plaintiffs' claim of homestead exemption under 11 U.S.C. § 522(b)(1) and 27 V.S.A. § 101.

THE COURT FURTHER FINDS that it has constitutional authority to enter a final judgment in the instant adversary proceeding determining the validity of the Defendant's mortgage.

THE COURT FURTHER FINDS that the Defendant's equitable arguments are insufficient to justify a decision contrary to the criteria set forth in 27 V.S.A. § 141 and the conclusion that the Defendant's mortgage is inoperative under the facts of this case.

Accordingly, IT IS HEREBY ORDERED that, for the reasons set forth in the memorandum of decision of even date and in this Court's memorandum of decision and order issued on February 24, 2012 (*see* doc. ## 28, 29), on remand, the Court grants the Plaintiffs' motion for summary judgment and denies the Defendant's cross-motion for summary judgment.

SO ORDERED.

April 2, 2013
Burlington, Vermont



Colleen A. Brown
United States Bankruptcy Judge