UNITED STATES BANKRUPTCY COURT DISTRICT OF VERMONT

In re:

Geoffrey David Muther and Kathy Doris Muther, Debtors.

Geoffrey David Muther and Kathy Doris Muther, Plaintiffs,

v.

CitiMortgage, Inc., Fidelity Mortgage Of NY, A Division of Delta Funding **Corporation; Mortgage Electronic Registration Systems, Inc., Defendants.**

Appearances:

Michelle M. Kainen, Esq.

Kainen Law Office, P.C.

White River Junction. VT

Attorney for Plaintiffs

For the reasons set forth in the memorandum of decision of even date, THE COURT FINDS that, under Vermont's homestead laws, (i) Mrs. Muther needs to have a homestead interest in the Property¹ in order to be a necessary party to the 2007 Fidelity Mortgage, and to challenge the validity of that mortgage, under 27 V.S.A. § 141(a); (ii) Mrs. Muther's homestead interest was extinguished by the 1997 Conveyance by virtue of the retroactive application of 27 V.S.A. § 141(d), thereby depriving her of the right to challenge the validity of the 2007 Fidelity Mortgage; and (iii) neither the terms of the 1997 Conveyance, nor Mrs. Muther's post-conveyance conduct, are sufficient revive her homestead interest in the Property. Accordingly, the Plaintiffs' prayer for relief in the complaint to void the 2007 Fidelity

Chapter 13 Case # 12-10029

Adversary Proceeding # 12-1002

Andrew S. Canella, Esq. Bendett & McHugh, P.C. Farmington, CT Attorney for Defendants

ORDER

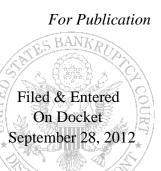
Kenlan, Schweibert, Facey & Goss, P.C.

Shannon A. Bertrand, Esq.

Attorney for Defendants

Rutland, VT

GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, DENVING PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT, AND DENYING DEFENDANT CITIMORTGAGE'S MOTION FOR SANCTIONS



Mortgage is denied and the Defendants are entitled to judgment as a matter of law in this adversary proceeding. THE COURT FURTHER FINDS that the Defendant CitiMortgage has failed to establish a sufficient legal basis for an award of sanctions in this case.

Therefore, IT IS HEREBY ORDERED that:

- the Defendants' motion for summary judgment, originally filed as a motion to dismiss (doc. # 10), is GRANTED;
- 2. the Plaintiffs' cross-motion for summary judgment, originally filed as an objection to the Defendants' motion to dismiss (doc. # 16), is DENIED;
- 3. judgment is entered in favor of the Defendants in this adversary proceeding; and
- 4. the Defendant CitiMortgage's motion for sanctions (doc. # 15) is DENIED.

SO ORDERED.

September 28, 2012 Burlington, Vermont

Coller a Brown

Colleen A. Brown United States Bankruptcy Judge