

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:)	CHAPTER 7
)	
JOHN S. LOVETTE and ALTHEA L. LOVETTE,)	CASE NO. 03-65646
)	
Debtors.)	JUDGE RUSS KENDIG
)	
)	ADV. PRO. NO. 03-6154
)	
JOHN S. LOVETTE and ALTHEA L. LOVETTE,)	
)	
Plaintiffs,)	ORDER
vs.)	
)	
DANIEL F. SMITH et al.,)	
)	
Defendants.)	

This matter comes before the court upon two motions for default judgment filed against defendants GMAC Mortgage Corp. (hereafter "GMAC") and The Provident Bank (hereafter "Provident") (collectively "Defendants") in the above styled adversary proceeding. For the reasons that follow, the motions for default judgment are **DENIED**.

The motions for default correctly state that Defendants failed to respond to the complaint and summons. However the court cannot grant the motions because the complaint upon which judgment is sought seeks a result which is not permitted by law.

Count VI of the complaint seeks to avoid the mortgages of Provident and GMAC. Counts III and IV seek essentially the same result by requiring Provident and GMAC to respond or be barred from asserting an interest in the property in the future.

It is well established that a debtor may not avoid a mortgage in a Chapter 7 case. Talbert v. City Mortgage Services (In re Talbert), 344 F.3d 555, 556 (6th Cir. 2003) (finding that the case of Dewsnup v. Timm, 502 U.S. 410 (1992) compelled the conclusion that 11 U.S.C. § 506(d) does not permit a debtor to "strip off" a mortgage in a Chapter 7.) This court has also published a decision holding that §506(d) does not allow a debtor to strip off a mortgage in a Chapter 7 case. Webster v. Key Bank (In re Webster), 287 B.R. 703 (Bankr. N.D. Ohio 2002). Accordingly, although Defendants did not respond to the complaint, it would be improper for the court to grant default judgment in favor of the plaintiff.

For the foregoing reasons, plaintiff's motions for default judgment against Provident and GMAC are **DENIED**.

It is so ordered.

/s/ Russ Kendig

SEP 23 2004

RUSS KENDIG
U.S. BANKRUPTCY JUDGE

SERVICE LIST

John and Althea Lovette
327 Townview Circle North
Mansfield, OH 44907-1137

Kenneth J Freeman
515 Leader Bldg
526 Superior Ave
Cleveland, OH 44114-1903

GMAC Mortgage Corporation
6716 Grade Lane
Building 9
Suite 910
Louisville, KY 40213-1407

The Provident Bank
1 East Fourth Street
Cincinnati, OH 45250

Andrew L Zumbar
Lundgren, Goldthorpe & Zumbar
526 E Main St
PO Box 2595
Alliance, OH 44601-0595

Andrew A. Paisley
John D. Clunk Co LPA
5601 Hudson Dr
#400
Hudson, OH 44236

Stephen M Wildermuth
38 South Park St
2nd Fl
Mansfield, OH 44902

Robert H Cyperski
1201 30th St NW
#04-B
Canton, OH 44709