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VERMONT SUPERIOR COURT
CHITTENDEN UNIT
CIVIL DIVISION

GMAC MORTGAGE, LLC Plaintiff v. JULIA E. MCCARTY, et al. Defendants	Docket No. S1543-09 CnC
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ORDER

This is a foreclosure case raising an issue that has lately been all over the news: the massive filing of potentially false affidavits by certain lenders in foreclosure cases across the country. A motion for summary judgment is pending. Plaintiff has recently submitted an amended affidavit of amounts due, indicating that the prior one “may not have been executed on personal knowledge of the affiant and may not have been executed in the physical presence of a notary public.” Letter of Joshua Lobe, Esq. dated September 29, 2010. The new affidavit is proffered as “a corrective Affidavit, which does not have these defects.” Id.

While the court appreciates the candor of Plaintiff’s counsel and attributes no inappropriate conduct to him, the court is at a loss to understand how it can rely upon an affidavit from a party that has apparently previously filed a false affidavit with the court. The court therefore will not rule on the motion based upon a written affidavit. The court will require that the affiant appear personally in court to testify to the accuracy of the information in the affidavit – not by telephone, but in person, so that the court can fully judge the affiant’s credibility.

However, because foreclosure mediation is currently scheduled, the court will await its conclusion before scheduling any hearing. If a hearing is scheduled, the court strongly urges Ms. McCarty to seek legal representation for the hearing, so that all potential legal issues may be raised by both sides.

Dated at Burlington, Vermont this 13th day of October, 2010.

Helen M. Toor
Superior Court Judge