

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

In re RAYMOND E. CRONKITE,	)	
	)	
Debtor	)	
	)	
RAYMOND E. CRONKITE and	)	
DIANNE L'HEUREUX	)	
	)	Civil No. 2:12-cv-00271-NT
Appellants	)	Civil No. 2:12-cv-00322-NT
v.	)	
	)	
BANK OF NEW YORK MELLON,	)	
<i>as Trustee for the certificate holders of the</i>	)	
<i>CWABS Inc., ASSET-BACKED</i>	)	
<i>CERTIFICATES, SERIES 2006-13</i>	)	
<i>formerly known as</i>	)	
BANK OF NEW YORK	)	
	)	
Appellee,	)	

**ORDER DENYING MOTION TO STAY  
AND DISMISSING APPEALS**

On Friday, December 7, 2012, the Court entered an order granting Appellants extensions of time to file their statements of issues on appeal, record of items to be considered on appeal, any opposition to Appellee’s motion to dismiss the appeal in their first appeal, and briefs on appeal in both 2:12-cv-00271-NT (the “**271 Appeal**”) and 2:12-cv-00322-NT (the “**322 Appeal**”). (Doc. 3). This order also conditionally dismissed the appeals if the extended deadlines were not met. *Id.* Rather than comply with the deadlines set forth in the December 7, 2012 order, Appellants have filed a motion to stay these appeals while Appellants prosecute another appeal to the First Circuit that is related to an earlier order in Debtor / Appellant Cronkite’s (“**Cronkite**”) bankruptcy case.

The main appeal to the Court in this case, the 271 Appeal, arises out of an August 14, 2012 order of the Bankruptcy Court lifting the automatic bankruptcy stay with respect to Appellee Bank of New York Mellon's ("the **Bank**") rights in Cronkite's residence in Old Orchard Beach, Maine, permitting foreclosure of this property. Also on appeal is the Bankruptcy Court's September 25, 2012 order denying Appellants' motion to stay the August 14, 2012 order pending appeal.

According to the Bank's motion for relief from stay in the underlying case, the Bank holds a mortgage on Cronkite's residence in the original principal amount of \$935,000.<sup>1</sup> Appellants do not dispute that the loan was in arrears at the time of Bank's motion for relief from the stay, nor did they present any evidence to refute the Bank's calculations that, by the time the Bank had moved for relief from the stay, overdue interest on the loan had reached \$288,777.53 and total amount owed was \$1,291,707.17.<sup>2</sup>

The Bank asserted that it was entitled to relief from the stay under 11 U.S.C. § 362(d)(2) because Cronkite lacked equity in his home and this property was not necessary to an effective reorganization. The Bank recited an estimated market value for the property of \$1,100,000. This appears to have been an error on the Bank's part, as the Bank obtained its valuation from Cronkite's bankruptcy

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<sup>1</sup> Doc. 191 in *In re Cronkite*, No. 09-20451-jbh (Bankr. D. Me., July 19, 2012).

<sup>2</sup> See Joint Motion to Object to Movant's Motion for Relief from Automatic Stay (Real Property), Doc. 192 in *In re Cronkite*, No. 09-20451-jbh (Bankr. D. Me., Aug. 13, 2012), and Motion to Supplement Joint Motion to Object to Movant's Motion for Relief from Automatic Stay (Real Property), Doc. 193 in *In re Cronkite*, No. 09-20451-jbh (Bankr. D. Me., Aug. 13, 2012).

schedules, and those schedules listed the value of the property as \$1.3 million.<sup>3</sup> Nevertheless, the Bank demonstrated that, due to the accrual of interest on its loan over the course of Cronkite's three-year bankruptcy and to the existence of junior liens on the property including a junior lien to Fremont Investment & Loan in the face amount of \$177,500.00, there was by July of 2012 no equity left in the property. As for the "effective reorganization" prong of the test, Cronkite's bankruptcy had been converted from a reorganization (Chapter 11) to a liquidation (Chapter 7) on June 10, 2009.<sup>4</sup>

Appellants assert in their motion to stay their appeals that the Bankruptcy Court's August 14, 2012 order allowing the Bank to foreclose on Cronkite's home would not have occurred but for an earlier miscarriage of justice in which a creditor was allowed to sell Cronkite's commercial property in Biddeford, Maine. Cronkite mortgaged his home to obtain funds to improve the commercial property. He asserts that there was substantially more equity in the commercial property than realized in its sale and that he could effectively have reorganized in bankruptcy and satisfied his creditors, including the Bank, had the Bankruptcy Court allowed him to keep the commercial property and sell a piece of it to Appellant L'Heureux.

Whatever may have happened with Cronkite's commercial dealings, Cronkite does not dispute that the mortgage on his home had become seriously in arrears by the time the Bank moved for relief from the stay. Appellants also failed to provide

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<sup>3</sup> See Worksheet in Support of Motion for Relief, ¶¶ 8-9, Doc. 191-3 in *In re Cronkite*, No. 09-20451-jbh (Bankr. D. Me., July 19, 2012); Schedules and Statements, Schedule A, Doc. 32 in *In re Cronkite*, No. 09-20451-jbh (Bankr. D. Me., April 22, 2009) (listing value of the residence as \$1.3 million.)

<sup>4</sup> See Order on Motion to Convert Case from Chapter 11 to 7, Doc. 79 in *In re Cronkite*, No. 09-20451-jbh (Bankr. D. Me., June 10, 2009).

any evidence that there was equity left in Cronkite's residence or that that the property was necessary for an effective reorganization in his bankruptcy. Thus, the Bankruptcy Court's August 14, 2012 order granting relief to the Bank from the automatic bankruptcy stay contains no obvious error. Likewise, the Bankruptcy Court's September 25, 2012 order denying Appellants a stay on appeal was proper where there was no basis to conclude that the August 14, 2012 order might be overturned on appeal.

Appellants have not availed themselves of the opportunity to brief the Court on any error it may have missed in the orders on appeal. Appellants have likewise failed to provide a compelling reason to delay adjudication of these appeals. The Bank was not a party to any of the earlier alleged fraud, collusion, or other improper conduct in Cronkite's bankruptcy case. On the face of its motion, the Bank was entitled to the relief it sought. The Court cannot disturb relief granted to a blameless entity on the basis that Cronkite's failure to meet his obligations to that entity arose out of the misconduct of others. Accordingly, Appellants' motion to stay the appeals is DENIED and the appeals in both 2:12-cv-00271-NT and 2:12-cv-00322-NT are DISMISSED.

SO ORDERED.

/s/ Nancy Torresen  
United States District Judge

Dated this 4th day of January, 2013.

**Appellant**

**RAYMOND E CRONKITE**  
*Debtor*

represented by **RAYMOND E CRONKITE**  
125 HILLS BEACH ROAD  
BIDDEFORD, ME 04005  
207-282-2299  
PRO SE

V.

**Appellee**

**BANK OF NEW YORK MELLON**  
*as Trustee for the certificateholders  
of the CWABS Inc., ASSET-BACKED  
CERTIFICATES, SERIES 2006-13  
formerly known as  
BANK OF NEW YORK*

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*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**Interested Party**

**DIANE L'HEUREUX**

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