

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) 1:12-cv-00113-JAW
)
 GREGORY HARRIMAN,)
 KATHRYN HARRIMAN, and)
 UNKNOWN OCCUPANTS of)
 207 Burnham Road, Troy, Maine,)
)
 Defendants.)

**ORDER ON MOTION TO STAY PENDING APPEAL AND MOTION FOR
ACCESS TO HOME PENDING APPEAL**

In this much-litigated and much-delayed matter, Gregory and Kathryn Harriman move to stay their eviction pending appeal to the First Circuit Court of Appeals and to issue an order granting them access to their home pending appeal. *Notice of Appeal to a Ct. of Appeals from a J. or Order of the Dist. Ct. with Mot. for Stay of Eviction* (ECF No. 48) (*Pls.’ Mot.*). Although it is not clear from their filing, which is a unified notice of appeal and motion for stay and access, whether the Harrimans intend to move for relief from this Court, under Rule 8 of the Federal Rules of Appellate Procedure, a “party must ordinarily move first in the district court for . . . a stay of the judgment or order of a district court pending appeal.” FED. R. APP. P. 8(a)(1)(A). Pursuant to that Rule, this Court is addressing the Harrimans’ claim for relief pending appeal.

The origins of this controversy go all the way back to 1995. In her 2001 recommended decision, the Magistrate Judge observed that “Gregory and Kathryn Harriman first became involved in litigation over their dairy farm in Troy, Maine in November 1995.” *Harriman v. United States Agric. Sec’y*, No. 01-148-B-H, 2001 U.S. Dist. LEXIS 18192, at *2 (D. Me. Nov. 6, 2001).

In 2009, the United States filed a complaint for foreclosure of the Harrimans’ Troy, Maine real property, alleging that the Harrimans had failed to comply with the provisions and conditions of a promissory note and real estate mortgage with the United States Department of Agriculture. *Compl. for Foreclosure* (ECF No. 1) (No. 1:09-cv-00348-JAW). On February 3, 2010, this Court issued a judgment in favor of the United States. *J. of Foreclosure and Sale* (ECF No. 21) (No. 1:09-cv-00348-JAW).

In 2011, the Harrimans filed suit against the United States in state of Maine Superior Court and on May 20, 2011, the United States removed the case to this Court. *Notice of Removal* (ECF No. 1) (No. 1:11-cv-00208-NT); *id.* Attach. 1 *Compl. for Redemption from Sale of Real Property*. On January 4, 2012, this Court granted summary judgment in favor of the United States. *Order on Mot. for Summ. J.* (ECF No. 18) (No. 1:11-cv-00208-NT). In that Order, the Court wrote that after the Court’s February 3, 2010 foreclosure judgment and after publication of the notices for sale, a foreclosure auction of the involved property took place on February 11, 2011. *Id.* at 2. Concluding that the Harrimans’ right of redemption had lapsed on May 4, 2010, ninety days after the judgment of foreclosure and sale, the Court granted the United States’ motion for summary judgment. *Id.* at 3-4. The Court recited the history of

the five prior lawsuits concerning the Harrimans' farm and concluded that the "present action can be seen as one more bid to delay the inevitable." *Id.* at 3 n.2.

Having purchased the property at the public sale on February 11, 2011, the United States brought a separate action in this Court on April 4, 2012 under 28 U.S.C. § 1345 to eject the Harrimans from the property. *Compl.* (ECF No. 1). On December 19, 2012, the Court issued a judgment in favor of the United States and against the Harrimans. *J.* (ECF No. 26). On January 8, 2013, the United States requested a writ of ejectment, *United States of Am.'s Req. for Execution of Ejectment* (ECF No. 27), and the Court granted its request on January 9, 2013. *Execution of Ejectment* (ECF No. 28). The Harrimans filed a notice of appeal on January 17, 2013, *Notice of Appeal* (ECF No. 30), as a well as a motion for stay pending appeal. *Mot. for Stay Pending Appeal* (ECF No. 29). Without objection from the United States, the Court granted the Harrimans a stay pending appeal. *Order on Mot. for Stay of Writ of Ejectment Pending Appeal* (ECF No. 33). On July 25, 2013, in a brief opinion, the First Circuit Court of Appeals affirmed this Court's judgment, *J.* (ECF No. 35), and on October 22, 2013, the Court of Appeals issued its mandate. *Mandate* (ECF No. 36). The United States later explained that it decided not to take immediate action to evict the Harrimans because it was reluctant to do so as winter approached and took hold. *Resp. to Defs.' Mot. for Injunctive Relief* at 3 (ECF No. 39).

With the coming of spring, the Government decided to act and evict the Harrimans and in response, on April 24, 2015, the Harrimans filed a motion for injunctive relief, demanding that the Court prohibit the Government from executing

its Writ of Execution of Ejectment. *Mot. for Injunctive Relief* (ECF No. 37). On April 30, 2015, the Court denied the Harrimans' motion. *Order on Mot. for Injunctive Relief* (ECF No. 43). Finally, about twenty years after the original litigation on the Harrimans' farm began, on May 8, 2015, the Government executed on the Writ; the United States Marshal for the District of Maine ejected the Harrimans from 207 Burnham Road in Troy, Maine and placed the United States "into the peaceable and quiet possession thereof." *Return of Writ of Execution of Ejectment* (ECF No. 47).

On May 14, 2015, the Harrimans filed a notice of appeal and demanded a stay and access to the property pending appeal. *Pls.' Mot.* at 1-2. In support of their motion, the Harrimans contend that the "plain language" of 28 U.S.C. § 3014(b)(3) prevents the Government from taking possession of their house. *Id.* On May 14, 2015, the United States responded, objecting to a stay pending appeal. *Resp. in Opp'n to Defs.' Mot. for Stay Pending Appeal* (ECF No. 52).

The Court rejects the Harrimans' motion for a stay pending appeal. In order to be entitled to a stay pending appeal, the Harrimans must demonstrate:

that there is a strong likelihood of success on the merits of its appeal; that he will suffer irreparable harm if a stay is not granted; that the harm will outweigh any harm opposing parties will suffer if a stay is granted; and that the public interest would be furthered by the granting of a stay.

United States Pub. Interest Research Grp. v. Atl. Salmon of Me., LLC, 262 F. Supp. 2d 1, 2 (D. Me. 2003) (quoting *Morgan v. Kerrigan*, 523 F.2d 917, 920 (1st Cir. 1975)).

The Court has already ruled on the sole issue that the Harrimans identified in their notice of appeal and the Court rejected their contention that 28 U.S.C. § 3014(b)(3)

applies to this case. *Order on Defs.’ Mot. for Hr’g and to Stay Disposition Pursuant to 28 U.S.C. §§ 3013 and 3014* at 2 (ECF No. 46). The Harrimans have failed to demonstrate that they have a strong likelihood of showing on appeal that the Court erred. Accordingly, their request for a stay pending appeal must fail.

As far as their request that they be allowed access to “their home” while this appeal is pending, the Court has determined through multiple proceedings that the property at 207 Burnham Road in Troy, Maine is no longer their property. It is the property of the United States. Whether the United States grants permission for the Harrimans to access the property until May 18, 2015 or longer to remove their personal belongings is a matter within the discretion of the United States as owner. The Court will not, however, order the United States to allow the Harrimans to remain in the property pending appeal. If past is prologue, once back in the property, the Harrimans would inevitably be back before this Court, demanding they be allowed to remain there pending yet another appeal of yet another writ of execution.

This nearly two-decade long saga must finally come to an end. The Court DENIES Gregory and Kathryn Harriman’s requested relief in their Notice of Appeal to a Court of Appeals from a Judgment or Order of the District Court with Motion for Stay of Eviction (ECF No. 48).

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
UNITED STATES DISTRICT JUDGE

Dated this 15th day of May, 2015

Plaintiff

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V.

Defendant

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Defendant

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Defendant

UNKNOWN OCCUPANTS

of 207 Burnham Road, Troy, Maine

