

United States Court of Appeals For the First Circuit

No. 24-1342

U.S. BANK NATIONAL ASSOCIATION, as trustee, on behalf of the holders of the Asset Backed Securities Corporation Home Equity Loan Trust, Series NC 2005-HE8, Asset Backed Pass-Through Certificates, Series NC 2005-HE8,

Plaintiff - Appellee,

v.

ERIC RICHMOND, a/k/a Eric H. Richmond,

Defendant - Appellant,

CITIMORTGAGE, INC., f/k/a Citicorp Mortgage, Inc.,

Defendant.

Before

Barron, Chief Judge,
Kayatta and Rikelman, Circuit Judges.

JUDGMENT

Entered: July 25, 2024

Defendant-appellant Eric Richmond appeals from an interlocutory ruling by the district court in the underlying civil matter. Plaintiff-appellee U.S. Bank National Association, as trustee, on behalf of the holders of the Asset Backed Securities Corporation Home Equity Loan Trust, Series NC 2005-HE8, Asset Backed Pass-Through Certificates, Series NC 2005-HE8 ("U.S. Bank"), has moved to dismiss for lack of finality.

After careful review of relevant portions of the record, we conclude that dismissal is in order, as the challenged district court order, a simple case-management order, clearly is neither final nor immediately reviewable on an interlocutory basis. See 1st Cir. R. 27.0(c) (court may dismiss at any time when appellate jurisdiction is lacking); see also 28 U.S.C. §§ 1291, 1292 (statutory finality requirement); Rosario-Diaz v. Gonzalez, 140 F.3d 312, 314 (1st Cir. 1998) (case management orders not ordinarily appealable on an interlocutory basis); In re Recticel Foam Corp., 859 F.2d 1000, 1002-05 (1st Cir. 1988) (case management orders are not final and appealable

under § 1291 or under the collateral order doctrine); cf. Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 545-47 (1949) (describing collateral order doctrine); John's Insulation, Inc. v. L. Addison & Associates, Inc., 156 F.3d 101, 105 (1st Cir. 1998) ("[I]t has been uniformly held that a notice of appeal that designates the final judgment encompasses not only that judgment, but also all earlier interlocutory orders that merge in the judgment.").

This is the sixth interlocutory appeal Richmond has noticed in the underlying matter, and this is the sixth time this court has dismissed for lack of finality. Via judgments and orders entered in the prior appeals, this court repeatedly has warned Richmond regarding frivolous and vexatious litigation practices. For example, in its orders entered March 21, 2024, in Appeal Nos. 23-1573 and 23-1574, this court reiterated its "**final warning**" to Richmond as follows: "In the event Richmond notices another appeal in the underlying matter over which this court does not have jurisdiction, the court may have no choice but to impose monetary sanctions and/or filing restrictions."

Despite this warning, Richmond filed this sixth frivolous interlocutory appeal just 13 days later. Thus, Richmond has not heeded this court's "last warning against the taking of further frivolous appeals." Further abuses of this sort will not be tolerated, and, having provided ample warning, we now will take those steps necessary to curb Richmond's vexatious conduct.

As this court previously has recognized, clearly frivolous notices of appeal do not divest the district court of its jurisdiction. See Glob. Naps, Inc. v. Verizon New England, Inc., 489 F.3d 13, 19 (1st Cir. 2007) (observing that "[t]here are some exceptions to the rule that only one court at a time has jurisdiction, such as for transparently frivolous appeals" and that "[i]t is well established in this circuit that a district court can proceed, notwithstanding the technical pendency of an appeal, when it is clear that the appeal constitutes a transparently frivolous attempt to impede the progress of the case") (internal quotations omitted); United States v. Brooks, 145 F.3d 446, 456 (1st Cir. 1998) ("Like most rules, the rule that either the trial or the appellate court—but not both—may have jurisdiction over a case at any given point in time admits of some exceptions. Thus, a district court can proceed, notwithstanding the filing of an appeal, if the notice of appeal is defective in some substantial and easily discernible way (if, for example, it is based on an unappealable order) or if it otherwise constitutes a transparently frivolous attempt to impede the progress of the case.").

Accordingly, in the event Richmond proceeds to file a notice of appeal in the district court that designates a clearly unappealable order, the district court need not stay proceedings but should continue to adjudicate the underlying matter in the ordinary course, as if no notice of appeal has been filed. Once any such appeal is docketed in this court, the court will promptly conduct jurisdictional screening and, if appropriate, will dispose of the appeal as soon as practicable, with no need for U.S. Bank to file a motion to dismiss.

Additionally, with its motion to dismiss, U.S. Bank seeks costs and fees associated with the filing of its motion to dismiss. In accordance with Federal Rule of Appellate Procedure 38, U.S. Bank may file a separate motion seeking reasonable fees and costs incurred in relation to its motion to dismiss; with any such motion, U.S. Bank should include relevant documentation as an

exhibit. Any such motion should be filed within 14 days of entry of this judgment, and any response by Richmond should be filed within 7 days of service of the motion.

The appeal is dismissed. See 1st Cir. R. 27.0(c) (court may dismiss at any time when jurisdiction lacking). Any remaining pending motions, to the extent not mooted by the foregoing, are denied.

By the Court:

Maria R. Hamilton, Clerk

cc:

Eric H. Richmond
Reneau Jean Longoria
John A. Doonan