

**Electronically Filed
Intermediate Court of Appeals
CAAP-22-0000266
04-NOV-2022
07:59 AM
Dkt. 43 OGMD**

NO. CAAP-22-0000266

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

THE BANK OF NEW YORK MELLON, fka THE BANK OF NEW YORK AS TRUSTEE (CWALT 2006-32CB), Plaintiff-Appellee, v. DENNIS DUANE DESHAW; SUSAN KAY BROER-DESHAW, Defendants-Appellants, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, SOLELY AS NOMINEE FOR FIRST MAGNUS FINANCIAL CORPORATION; VILLAGE PARK COMMUNITY ASSOCIATION; and DOES 1-20, inclusive, Defendants-Appellees, and SUSAN KAY BROER-DESHAW, Counterclaimant-Appellant, v. THE BANK OF NEW YORK MELLON, fka THE BANK OF NEW YORK, AS TRUSTEE (CWALT 2006-32CB), Counterclaim Defendant-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 1CC161001821)

ORDER GRANTING MOTION TO DISMISS APPEAL

(By: Leonard, Presiding Judge, Nakasone and Chan, JJ.)

Upon consideration of Plaintiff-Appellee Bank of New York Mellon FKA the Bank of New York, as Trustee (CWALT 2006-32CB)'s motion to dismiss the appeal (**Motion**), filed October 21, 2022, the papers in support and in opposition, and the record, it appears that we lack subject matter jurisdiction over Defendants-Appellants Dennis Duane Deshaw and Susan Kay Broer-Deshaw (**Deshaws**) appeal from the Circuit Court of the First Circuit's (**Circuit Court**) April 12, 2022 Judgment because the Deshaws failed to obtain a stay of the April 12, 2022 "Order Approving Commissioner's Report and Granting Plaintiff's Motion for Confirmation of Foreclosure Sale, Allowance of Costs, Commissions and Fees, Distribution of Proceeds, Directing Conveyance and for Writ of Possession/Ejectments [sic], Filed January 26, 2022," and the foreclosed property was sold to a bona

fide purchaser. See Bank of New York Mellon v. R. Onaga, Inc., 140 Hawai'i 358, 370, 400 P.3d 559, 570 (2017) ("[I]f a stay is not obtained and the property is sold to a bona fide purchaser, the appeal should be dismissed as moot because no effective relief can be granted."); Hamilton ex rel. Lethem v. Lethem, 119 Hawai'i 1, 4, 193 P.3d 839, 842 (2008) ("It is axiomatic that mootness is an issue of subject matter jurisdiction.").

Therefore, IT IS HEREBY ORDERED that the Motion is granted and the appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, November 4, 2022.

/s/ Katherine G. Leonard
Presiding Judge

/s/ Karen T. Nakasone
Associate Judge

/s/ Derrick H.M. Chan
Associate Judge