

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

IN RE: Cumberland Investment Corp.  
Debtor

C.A. No. 02-240T  
(Bk No. 89-11051 Chapter 7)

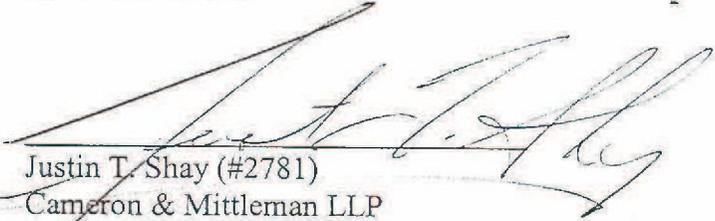
**MOTION TO DISMISS APPEAL**

Now comes Republic Credit Corporation I ("Republic"), assignee of the Federal Deposit Insurance Corporation ("FDIC"), and, pursuant to Rule 8011 of the Rules of Bankruptcy Procedure, hereby moves this Honorable Court to dismiss the appeal of Howard Chorney, *pro se*, as entirely frivolous and vexatious.

In support of this Motion, Republic relies on its Memorandum of Law filed herewith.

REPUBLIC CREDIT CORPORATION I

By Its Attorneys,



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Date: May 21, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of May, 2002, a true copy of the within was sent, via first-class mail, postage prepaid, to the following:

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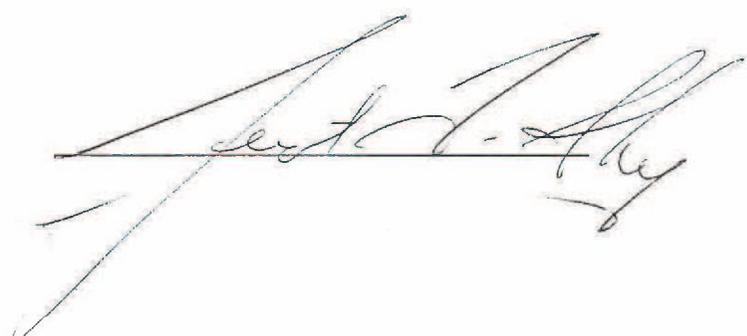
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IN RE: Cumberland Investment Corp.  
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C.A. No. 02-240T  
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**MEMORANDUM IN SUPPORT OF MOTION OF REPUBLIC BANK  
TO DISMISS APPEAL OF APPELLANT HAROLD F. CHORNEY, PRO SE**

**I. PRELIMINARY STATEMENT**

Harold F. Chorney, *pro se* ("Mr. Chorney"), has filed the instant appeal from the March 14, 2002 Order of the United States Bankruptcy Court for the District of Rhode Island, which granted the Joint Motion of the Chapter 7 Trustee, Jason Monzack (the "Trustee"), and Republic Credit Corporation I ("Republic") to distribute the proceeds of the sale of secured creditor's collateral and to abandon certain unsold assets to Republic (the "Joint Motion"). In response to the Joint Motion, Mr. Chorney filed his "Motion in Objection to Abandoning Assets Without an Accountability of Assets by the Chapter 7 Trustee, Jason Monzack" (the "Motion In Objection"). In turn, the Trustee filed his Motion to Strike Mr. Chorney's Motion In Objection. Mr. Chorney also filed a Motion and Memorandum for Continuance (the "Motion to Continue") to which Republic objected.

A hearing was held as to all Motions and Objections on February 7, 2002. After hearing, the Bankruptcy Court granted the Joint Motion and the Trustee's Motion to Strike. The Court denied Mr. Chorney's Motion In Objection and Motion for Continuance. The Court further deemed that Mr. Chorney had requested a stay pending appeal and ordered that the request for stay was denied.

Because the relief sought in the Joint Motion was based upon final, unappealed Orders of the Bankruptcy Court previously entered, Mr. Chorney simply had no standing to object to the Joint Motion. Additionally, Mr. Chorney's request for an accounting had been repeatedly determined by the Bankruptcy Court and those Orders are now final as well. Further, Mr. Chorney's continuing pattern of baseless objections and appeals prompted the Bankruptcy Court to enter Orders curtailing Mr. Chorney's participation in this proceeding years ago. This appeal continues Mr. Chorney's pattern of vexatious regurgitation of issues previously determined and, in and of itself, constitutes a violation of the Orders previously entered by the Bankruptcy Court.

## **II. FACTS**

This case was originally filed as a Chapter 11 proceeding on November 8, 1989. On August 15, 1990, John F. Cullen ("Cullen") was appointed Chapter 11 Trustee of the Debtor. In December of 1990, Cullen borrowed certain funds from Eastland Bank pursuant to his Motion for Permission to Borrow in accordance with 11 U.S.C. § 364 (c)(1) dated October 26, 1990 and the Bankruptcy Court's Order dated December 12, 1990 (the "Borrowing Order"). The Borrowing Order authorized Cullen to borrow up to \$400,000.00 from Eastland Bank to pay Chapter 11 administration expenses. The Borrowing Order provided that Eastland Bank's loan to Cullen was secured by a first priority security interest having priority over all other liens, claims and encumbrances. Eastland subsequently failed, and Fleet National Bank ("Fleet") became the holder of Cullen's \$400,000.00 Promissory Note and the claim related thereto.

In 1994, this case was converted to a proceeding under Chapter 7 of the Bankruptcy Code and Jason Monzack was appointed Chapter 7 Trustee.

Pursuant to a certain Insured Deposit Purchase and Assumption Agreement (the "Agreement") dated December 11, 1992 between the FDIC and Fleet, the FDIC paid to Fleet certain sums in connection with Fleet's prior claim in this proceeding. Additionally, pursuant to the Bankruptcy Court's Order of April 14, 1998, Fleet was paid the sum of \$23,500.00 in full settlement of any claim of Fleet. The FDIC was then the sole remaining secured creditor in this Chapter 7 proceeding. In 1999, the FDIC assigned its secured claim to Republic.

During the course of the administration of this Estate, the Trustee sold estate assets in the form of stamps and coins pursuant to Court Order. The percentage allocation of the proceeds of these sales was also ordered by the Bankruptcy Court. These percentages are as follows:

For the Sale of Coins

- a. 10% of sale proceeds were payable to the auctioneer, Spink America ("Spink") (subject to a \$50.00 per lot minimum charge and a 10% buyer's commission);
- b. 60% of sale proceeds to be paid to the FDIC (now Republic);
- c. 22.5% to administrative and priority claims; and
- d. 7.5% allocated to unsecured creditors.

For the Sale of Stamps

- a. 5% of sale proceeds were payable to the auctioneer;
- b. 60% of sale proceeds to be paid to the FDIC (now Republic);
- c. 25% to administrative and priority claims; and
- d. 10% to unsecured creditors.

The Trustee has, with the permission of this Court, liquidated almost all remaining assets of the Debtor. The Trustee presently holds the sum of \$224,748.00 (the "Secured Creditor Fund") for the benefit of secured creditors following the auctions of the coins and stamps by Spink. As the sole remaining secured creditor, Republic is entitled to the Secured Creditor Fund as previously ordered by the Bankruptcy Court.

At the conclusion of the auctions, Spink continued to hold three (3) \$10,000.00 Gold Certificates, Series of 1900, which Spink reported as illegal to own and which they refused to offer for sale. Spink also continued to hold certain lots of unsold silver dollars.

On December 18, 2001, Republic and the Trustee jointly moved to distribute to Republic the Secured Creditor Fund of \$224,778.00 and to abandon those assets which Spink continued to hold in full satisfaction of all claims of Republic. Republic agreed to be responsible for any fees or charges of Spink regarding those assets which Spink continued to hold.

In response to the Joint Motion, Mr. Chorney filed his Motion In Objection and Motion for Continuance. On March 14, 2001, Judge Votolato entered the following Order:

1. That the Joint Motion for Approval of Distribution of the Proceeds of the Sale of Secured Creditor's Collateral and To Abandon Certain Assets to Secured Creditor (the "Joint Motion") filed by Jason D. Monzack, Trustee (the "Trustee"), and Republic Credit Corporation I ("Republic") is granted;
2. That the Motion in Objection to Abandoning Assets Without an Accountability of Assets by the Chapter 7 Trustee, Jason D. Monzack (the "Motion in Objection"), filed by Harold F. Chorney ("Mr. Chorney") is denied;
3. That the Trustee's Motion to Strike Mr. Chorney's Motion in Objection is granted;

4. That the Motion and Memorandum for Continuance filed by Mr. Chorney is denied, and the Objection thereto filed by Republic is sustained; and
5. That the Court deems that Mr. Chorney has filed a Motion for Stay of this Order pending appeal, and that said Motion for Stay is denied.

Mr. Chorney has filed his appeal from this Order of the Bankruptcy Court to this Honorable Court.

### III. ARGUMENT

A. Mr. Chorney Had No Standing to Object to the Joint Motion and Has No Standing to Maintain This Appeal

The Secured Creditor Fund ordered to be distributed to Republic, as assignee of the FDIC, is based upon the percentage allocation previously ordered by the Bankruptcy Court. Those Orders are now final and unappealable. Accordingly, as the sum sought to be distributed to Republic represents the percentages previously ordered and which are now final, there was and is no meritorious objection which could be interposed by any unsecured creditor, including Mr. Chorney, to the amounts to be paid to Republic. The distribution of the Secured Creditor Fund cannot have any effect upon any unsecured creditor because the percentage to be allocated to the secured claim is already determined and final. Administrative claims and unsecured creditors will receive their fixed percentages as well.

In that the assets which remained after the auctions are also the collateral of Republic, no unsecured creditor has or had any interest or standing to object to their abandonment to the party whose unsatisfied debt is secured by those assets, Republic. Mr. Chorney's objections below appear to be based in the possibility that there are other assets missing from the Estate. Because Republic agreed to accept the Secured Creditor Fund and the abandoned unsold items in *full satisfaction* of

its secured claim, any assets which may appear in the future will *not* be subject to Republic's secured claim. (See Joint Motion, ¶ 9). Accordingly, those assets described by Mr. Chorney, if they are indeed missing and are ever located, will be used to benefit the Estate and its other creditors besides Republic, including, ostensibly, Mr. Chorney. There was and is simply no reason to delay this distribution for any reason, especially after this Bankruptcy has been pending for thirteen (13) years.

B. Mr. Chorney's Request for an Accounting Had Previously Been Denied by the Bankruptcy Court and the Prior Determinations Are Final

In response to the Joint Motion, Mr. Chorney reiterated his oft repeated request for an accounting of assets not related to the matters at issue. In his Motion to Strike below, the Trustee noted that, within the last two (2) years, Mr. Chorney or one, Warren Taft, had filed five (5) pleadings demanding an accounting. These are:

- a. Petitioner's Request for Clarification and Accounting of Estate Property Sold on December 7, 1999 by Spink America (Taft);
- b. Petitioner's Request to Have Chapter 7 Trustee Provide an Accountability of Assets of the Estate and to Produce Requested Documents and Videotapes (Chorney);
- c. Petitioner's Motion to Compel Production of Requested Documents from Chapter 7 Trustee (Taft);
- d. Petitioner's Motion in Objection to Chapter 7 Trustee's Motion to Strike Motion to Compel Production of Requested Documents from Chapter 7 Trustee (Taft); and
- e. Motion in Objection to Trustee's Motion to Strike (Chorney).

On February 9, 2001, the Bankruptcy Court ruled that Warren Taft had no standing to bring these motions. Additionally, Mr. Chorney's prior request for an accounting was previously denied by the Bankruptcy Court in its Order of September 8, 2000. See Exhibits C through J of the

Trustee's Motion to Strike.<sup>1</sup> Those decisions are now final.

For Mr. Chorney to attempt to hold the turnover of funds to Republic hostage for his repeated and groundless demands for an accounting is intolerable. The Bankruptcy Court acted on his requests previously and those Orders are final. This repetition is representative of a pattern of baseless claims made by Mr. Chorney in this proceeding and for which Mr. Chorney has been chastised and sanctioned.

C. This Groundless Appeal Continues the Trend of Vexatious Proceedings Initiated by Mr. Chorney In This Bankruptcy

Republic further submits that Mr. Chorney's Motion In Objection and Motion for Continuance below, as well as this appeal, represent another chapter in a long and storied history of pleadings interposed for vexatious and dilatory purposes. These filings beat the same drum as numerous submissions previously made in this proceeding. The issues raised by Mr. Chorney were and are wholly irrelevant to the matters before the Court raised in the Joint Motion and have no import to or bearing upon the relief requested by the Trustee and Republic. These issues have also been previously determined. The Bankruptcy Court was eminently correct in its ruling. It is now time for this thirteen (13) year old case to proceed to finality.

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<sup>1</sup> In his September 8, 2000 Order denying Mr. Chorney's Request to Provide Accountability and Produce Documents, Judge Votolato relied on the reasons set forth in the Trustee's July 3, 2000 Motion to Strike. The Trustee's Motion to Strike provides, "Chorney's pleading is in direct violation of this Court's order of July 3, 1991 and seeks to raise issues long ago disposed of by this Court and various appellate courts." Mr. Chorney asks the Court to revisit these issues yet again.

In the exhibits to his Motion to Strike below, the Trustee set forth a portion of the history of baseless pleadings and wrongful, repetitive proceedings initiated by Mr. Chorney which have consumed and wasted the limited resources of our Courts. As early as 1991, the Bankruptcy Court held:

2. Chorney has deliberately and continuously acted in bad faith to obstruct and to hinder the efficient administration of the estate, which action has been very damaging, expense-wise, to the estate and its creditors . . .

2. That, henceforth, Chorney and Aubin will no longer be permitted to intervene or otherwise participate in proceedings relating to sales or other disposition of estate assets, and are not entitled to any notice other than that received by general creditors . . .

4. Because of their willful interference with the orderly and economic administration of this estate, and for their unjustified waste of the time of this Court, and of numerous other parties, Chorney and Aubin are ORDERED TO SHOW CAUSE, on July 25, 1991 at 2:00 PM, why they should not be adjudged in contempt, and/or ordered to pay sanctions.

(Order of Votolato, J., July 3, 1991).

Following the contempt hearing referred to above, Judge Votolato ordered:

In prior proceedings we have found that Chorney has, *inter alia*, filed frivolous pleadings, willfully interfered with and obstructed the administration of the case, and generally and in bad faith abused the bankruptcy process, causing the estate and its creditors significant economic harm. *See In re Cumberland Investment Corp.*, BK No. 89-11051, slip op. at 1-2 (Bankr. D.R.I. July 3, 1991). Our July 3, 1991 order, which precipitated the instant show cause hearing, clearly expressed the Court's exasperation with Mr. Chorney's conduct.

The Court went on to hold:

The most damaging consequence of Chorney's incomprehensible behavior, however, is the incredible amount of needless expense that has been heaped upon the estate, and ultimately, of course, upon the creditors. The Trustee's and the Examiner's duties (and their fees and expenses) have been increased; secured creditors, long-delayed in exercising their rights, have seen the interest part of their claims escalate; and the likelihood of a meaningful distribution to hundreds of

unsecured creditors and redemption coin holders has been practically eliminated. All of this waste has been caused unnecessarily by Harold Chorney.

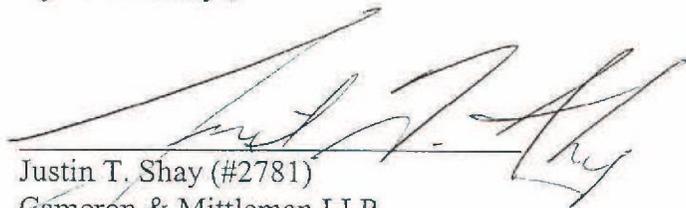
(Order of Votolato, J., July 2, 1992).

As shown by his past actions, Mr. Chorney's instant appeal can serve no legitimate purpose but delay and will achieve nothing but damage to Republic, as well as an utter waste of this Court's time and resources. The expenses related to this proceeding continue to escalate as a result. The issues raised by Mr. Chorney in his appeal are either wholly irrelevant to the matters raised in the Joint Motion and ordered by the Bankruptcy Court or have been the subject of prior Court Orders which are now final. It is time to put a stop to this continuing vexatious behavior and these dilatory tactics.

WHEREFORE, Republic Credit Corporation I prays this Honorable Court dismiss the appeal of Harold F. Chorney forthwith, impose appropriate sanctions for this waste of time, including attorneys' fees and costs, and grant such other and further relief as this Honorable Court shall deem meet and just.

REPUBLIC CREDIT CORPORATION I

By Its Attorneys,



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Date: May 21, 2002

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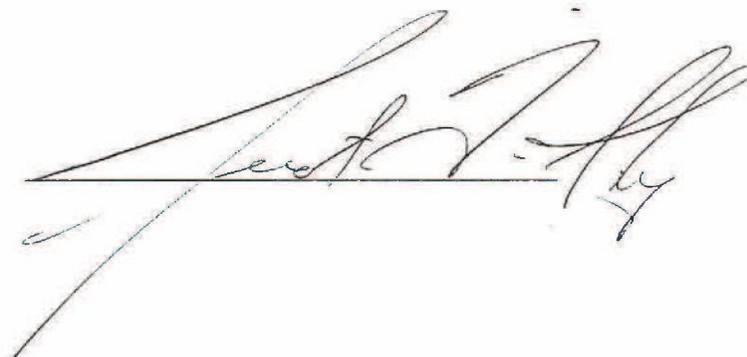
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