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The *Rooker-Feldman* Doctrine and Foreclosure Proceedings

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In federal courts, a case will be dismissed for lack of subject-matter jurisdiction if the court lacks the "statutory or constitutional power to adjudicate it."[2] Rule 12(b)(1) of the Federal Rules of Civil Procedure requires that a plaintiff prove subject-matter jurisdiction by a preponderance of the evidence.[3] A federal district court lacks subject-matter jurisdiction under the *Rooker-Feldman* doctrine when a plaintiff complains of an injury caused by a state court judgment. Although the *Rooker-Feldman* doctrine appears simple in principle, it is complex in application.[4]

In the October 2016 issue, **Paul A. Avron** (Berger Singerman LLP; Boca Raton, Fla.) provided a thorough discussion of whether the *Rooker-Feldman* doctrine prohibits a bankruptcy court from reviewing a state law determination that the automatic stay did not apply to that state court action.[5] He concluded that the majority view appears to be that actions taken in violation of the automatic stay are *void ab initio*, thus the *Rooker-Feldman* doctrine would not divest the bankruptcy court from determining whether the state court action violated the automatic stay.[6]

This article builds upon Mr. Avron's analysis and provides a brief overview of the *Rooker-Feldman* doctrine. It then discusses two cases that apply the *Rooker-Feldman* doctrine to state foreclosure proceedings, *In re Buckskin Realty Inc.*[7] and *In re Daniel*,[8] focusing on whether a bankruptcy court can review allegedly void or fraudulent state law foreclosure proceedings.

Overview of the *Rooker-Feldman* Doctrine

The *Rooker-Feldman* doctrine was developed from two opinions issued by the U.S. Supreme Court: *Rooker v. Fidelity Trust Co.*[9] and *District of Columbia Court of Appeals v. Feldman*.[10] In *Rooker*, the plaintiff filed suit in a federal district court, alleging that the state court adverse judgment was unconstitutional and that therefore, the federal district court should declare the judgment null and void.[11] The Supreme Court explained that if the state court decision "was wrong, that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellate proceeding."[12] The Court further explained that because it had exclusive appellate authority to review a state court judgment, lower federal courts lacked the subject matter to do so.[13]

Sixty years later in *Feldman*, the plaintiffs filed an action in federal court after the District of Columbia's highest court denied their application to waive a District of Columbia rule requiring bar applicants to

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2 *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000).
3 *Id.* at 170.
4 *See, e.g., Perdue v. Kenny A.*, 559 U.S. 542, 567 (2010) (Breyer, J. dissenting) (describing *Rooker-Feldman* as a complex legal doctrine).
5 Paul A. Avron, "The *Rooker-Feldman* Doctrine and the Automatic Stay," XXXV *ABI Journal* 10, 36, 60-61, October 2016, *available at* abi.org/abi-journal.
6 *Id.*
7 *Buckskin Realty Inc. v. Windmont Ass'n (In re Buckskin Realty Inc.)*, Adv. Pro. No.: 15-01004, 2016 Bankr. LEXIS 3458 (Bankr. E.D.N.Y. Sept. 23, 2016).
8 *Daniel v. Jones Family Holdings LLC (In re Daniel)*, Adv. Pro. No. 16-9014, 2016 Bankr. LEXIS 3228 (Bankr. M.D.N.C. Sept. 1, 2016).
9 263 U.S. 413 (1923).
10 460 U.S. 462 (1983).
11 263 U.S. at 414-15.
12 *Id.* at 415.
13 *Id.* at 416 (explaining that district court's jurisdiction is strictly original).

have graduated from an accredited law school.[14] Looking to *Rooker*, the Supreme Court held that the federal district court lacked subject-matter jurisdiction over this action because such review "can be obtained only in [the Supreme Court]."[15]

It was not until 2005 that the Supreme Court applied the *Rooker-Feldman* doctrine to dismiss an action for want of jurisdiction. In *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*,[16] recognizing that the lower federal courts had sometimes construed the *Rooker-Feldman* doctrine "far beyond the contours of the *Rooker* and *Feldman* cases," the Supreme Court held that the doctrine was confined to cases that were "brought by state court losers complaining of injuries caused by state court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments."[17]

The Court further held that the "*Rooker-Feldman* doctrine does not override or supplant the preclusion doctrine or augment the circumscribed doctrines that allow federal courts to stay or dismiss proceedings in deference to state-court actions."[18] With this in mind, we turn to the recent decisions in *In re Buckskin Realty Inc.* and *In re Daniel*.

In re Buckskin Realty Inc.

The debtor, Buckskin Realty, brought an adversary proceeding against Windmont Homeowners Association (WHA), among others, seeking to vacate a state court foreclosure judgment and sale of two unimproved lots, and to have those lots retitled to its bankruptcy estate.[19] In July 2010, the lots were foreclosed upon due to the debtor's failure to pay its real property taxes.[20] The lots were repurchased by the debtor at an October 2010 foreclosure sale. Thereafter, in April 2011, due to the debtor's failure to pay the common-charge assessments that were due, the WHA filed notices of lien against the lots.[21] In August 2011, the WHA filed an action to foreclose on the notices of lien. Default judgment and judgment of foreclosure and sale were ultimately entered against Buckskin in favor of the WHA, which purchased the lots for $58,389.11 at a foreclosure sale held shortly before the bankruptcy filing.[22]

The U.S. Bankruptcy Court for the Eastern District of New York characterized the debtor's complaint as "primarily an attack on the state court foreclosure judgment and sale."[23] The debtor argued that (1) the WHA board was not a legal entity, thus the foreclosure judgment was invalid and void; (2) the WHA and certain officers and directors thereof fraudulently obtained the foreclosure judgment by misrepresenting to the state court that the WHA held liens against the lots; and (3) the debtor, its counsel and its principal did not receive the required notice of WHA's foreclosure sale.[24] Buckskin's bankruptcy case was filed on Jan. 8, 2013, the same day as the foreclosure sale but shortly after the sale occurred.[25]

The defendants moved to dismiss the action filed by the debtor, arguing that the court lacked subject-matter jurisdiction over many of the claims pursuant to the *Rooker-Feldman* doctrine.[26] The bankruptcy court agreed, finding that the *Rooker-Feldman* doctrine prevented it from vacating the foreclosure judgment or declaring it void on any of the grounds articulated by Buckskin.[27] First, the court determined that the requirements of the *Rooker-Feldman* doctrine had been met: (1) the debtor lost in state court; (2) it complained of an injury caused by the judgment of the state court; (3) it asked for review of the state court judgment; and (4) the state court judgment was rendered prior to the commencement of the bankruptcy case.[28]

However, the debtor argued for the court to accept a *void ab initio* exception to the *Rooker-Feldman* doctrine. The debtor argued that the WHA's board was a nonexistent entity that did not have the legal authority to sue Buckskin or obtain title to the lots, thus rendering the foreclosure judgment invalid and permitting the court to declare it void without violating the *Rooker-Feldman* doctrine.[29]

The bankruptcy court disagreed, concluding that Second Circuit case law is clear that a federal court — other than the Supreme Court — may not review a state court judgment, and that even when it is argued, the judgment is *void ab initio* because the state court is the proper venue to challenge the foreclosure action.[30] The bankruptcy judge noted that some courts have recognized a *void ab initio* exception to the *Rooker-Feldman* doctrine, but only in situations such as violations of the discharge injunction or automatic stay, where the alleged harm falls within the jurisdiction of the bankruptcy court.[31] Finally, the court dismissed the debtor's argument that a fraud exception to the *Rooker-Feldman* doctrine applied, concluding that the exception only applies where a plaintiff "does not seek to overturn a state court judgment but rather seeks damages on an alternative theory of relief."[32]

In re Daniel

The debtor filed an adversary proceeding against Jones Family Holdings LLC (JFH) seeking to avoid the transfer of

14 460 U.S. at 463.

15 *Id.* at 476. However, the Supreme Court explained that, although the district court lacked subject-matter jurisdiction to review the District of Columbia's denial of the plaintiffs' petitions for waiver, the district court did have subject-matter jurisdiction over the plaintiffs' general challenge to the constitutionality of the District of Columbia rule. *Id.* at 483-84.

16 544 U.S. 280 (2005).

17 544 U.S. at 283-84.

18 *Id.* In fact, the Supreme Court explained that in parallel litigation in state and federal court, "[d]isposition of the federal action, once the state-court adjudication is complete, would be governed by preclusion law" and that "[p]reclusion law is not jurisdictional." *Id.* at 293. Moreover, the Tenth Circuit Court of Appeals explained the difference between the *Rooker-Feldman* doctrine and preclusion in *Bolden v. City of Topeka* in the following manner:

> [S]ay a father was deprived of [the] custody of his child by a state court judgment. If he files suit in federal court, seeking to invalidate the state court judgment on the ground[s] that the state court proceedings deprived him of due process or that the judgment was otherwise contrary to federal law, his suit would be barred by *Rooker-Feldman*; the suit usurps the Supreme Court's exclusive appellate jurisdiction because it seeks to set aside the judgment based on a review of the prior proceedings. If ... the father simply brought [the] suit in federal court seeking custody of his child, without raising any complaint about the state-court proceedings, *Rooker-Feldman* cannot be invoked.... A myriad of other doctrines, including *res judicata*, would almost certainly bar the suit. But because he is not seeking to overturn a state court judgment, *Rooker-Feldman* is inapplicable regardless of whether a favorable judgment in federal court would be inconsistent with that judgment.

441 F.3d 1129 (10th Cir. 2006).

19 *Buckskin*, 2016 Bankr. LEXIS 3458 at *1. In addition to WHA, the debtor sued certain officers and directors of WHA, the law firm and an attorney who represented the WHA in the state court foreclosure proceedings and the state court foreclosure referee. *Id.* at *1-2.

20 *Id.* at *3.

21 *Id.* These two notices of lien were in addition to a notice of lien that had been filed by the WHA against the lots in September 2008. The total value of the notices of lien was $17,169. *Id.*

22 *Id.*

23 *Id.* at *4.

24 *Id.* at *6.

25 *Id.* at *7.

26 *Id.* at *9.

27 *Id.*

28 *Id.* at *12.

29 *Id.*

30 *Id.* at *14.

31 *Id.* at *16.

32 *Id.* at *17.

the debtor's residence to JFH as constructively fraudulent pursuant to § 548 of the Bankruptcy Code.[33] JFH purchased the property at a foreclosure sale and filed a motion to dismiss the complaint, arguing, among other things, that the *Rooker-Feldman* doctrine prevented the debtor's claims.[34] The bankruptcy court denied JFH's motion to dismiss, stating that the debtor had stated a claim and that JFH's challenges to the court's subject-matter jurisdiction to hear the complaint did not apply.[35]

Specifically, the U.S. Bankruptcy Court for the Middle District of North Carolina determined that the *Rooker-Feldman* doctrine does not apply against a litigant who was not a party to the prior state court action.[36] Moreover, the court held that an action pursuant to § 548 is a distinct federal claim and not subject to the *Rooker-Feldman* doctrine.[37]

The debtor in *Daniel* was not challenging or attacking the foreclosure sale by asking the bankruptcy court to find that the sale was void or to vacate the foreclosure judgment. Instead, the debtor claimed that the transfer to JFH occurred within two years of the petition date, that he was made insolvent by the transfer, and that he received less than "reasonably equivalent value" in exchange for the transfer.[38]

Conclusion

As stated by the Supreme Court, the *Rooker-Feldman* doctrine is a complex legal doctrine that prohibits a federal district court from reviewing a state court judgment. Although some courts have found a limited *void ab initio* exception when applied to a state court's determination of the applicability of the automatic stay or discharge injunction, *Buckskin* shows that a foreclosure judgment potentially void for reasons other than a violation of the automatic stay or discharge injunction may not give the federal district court subject-matter jurisdiction to review it. However, *Daniel* shows that a plaintiff might be able to obtain federal district (or bankruptcy) court jurisdiction if it can bring a cause of action that would effectively undo the foreclosure but would not be a direct attack on the state law judgment. abi

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33 *Daniel v. Jones Family Holdings Inc. (In re Daniel)*, Adv. Pro. No. 16-9014, 2016 Bankr. LEXIS 3228 (Bankr. M.D.N.C. Sept. 1, 2016).
34 *Id.* at *3.
35 *Id.* at *7.
36 *Id.* at *12.
37 *Id.* at *13.
38 *Id.* at *3.