United States Bankruptcy Court
District of New Mexico

Document Verification

Case Title: **B. E. (Bill) Townes, et al. v. William J. Ash III, et al.**
Case Number: **01-01100**
Nature of Suit:
Judge Code: **S**
Reference Number: **01-01100 - S**

Document Information					
Number:	15				
Description:	Memorandum Opinion re: [3-1] Motion To Remand (01-1100) State Cause of Action No. D1329 CV 000989 to this Court by Notice of Removal dated 5/25/01 by Helen M. Townes, B. E. (Bill) Townes .				
Size:	6 pages (17k)				
Date Received:	10/30/2001 09:12:27 AM	**Date Filed:**	10/30/2001	**Date Entered On Docket:**	10/31/2001

Court Digital Signature View History

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:
DONNA ASH,
Debtor. No. 13-01-12227 SA

B.E. TOWNES and
HELEN TOWNES,
Plaintiffs,
v. Adv. No. 01-1100 S

WILLIAM ASH and
DONNA ASH,
Defendants.

MEMORANDUM OPINION ON
MOTION TO REMAND STATE CAUSE OF ACTION

This matter is before the Court on the Motion to Remand State Cause of Action (document 3) and Brief in Support of Plaintiff's Motion to Remand (document 10) filed by B.E. Townes and Helen Townes ("Plaintiffs") by their attorney Gary B. Ottinger. This adversary proceeding is a state court proceeding that was removed by defendant Donna Ash ("Debtor") by her attorney Donald D. Becker (document 1). Debtor filed a brief in support of removal (document 14). William Ash, the nonfiling spouse of and a creditor of Debtor, represented by attorneys Puccini & Meagle, P.A. (Shay E. Meagle), filed an objection to the Motion to Remand (document 9).

Debtor has also filed, in this adversary proceeding, an Objection to Proof of Claim of Bill E. and Helen Townes (document 12) and a Motion to Set Aside Judgment for

Restitution (document 13). In her claim objection the Debtor 1) argues that a state court judgment was entered without any jurisdiction, 2) denies the facts underlying the judgment and denies that it was based on a community debt, 3) denies that the state court had jurisdiction over her personally and claims that the Plaintiffs denied her due process by failing to allow her to assert defenses and counter-claims, and 4) asserts that she has claims against Plaintiffs for conversion, abuse of process, and for equitable relief. The Motion to Set Aside Judgment for Restitution asks the Court to set aside the judgment entered in a state court case on December 22, 2000, and asks the court to declare the Judgment is not binding on her as res judicata or issue preclusion.

The Court of Appeals for the Tenth Circuit most recently discussed the Rooker-Feldman doctrine in Kiowa Indian Tribe of Oklahoma v. Hoover, 150 F.3d 1163, 1169 (10th Cir. 1998):

> The threshold question is whether consideration of the Tribe's § 1983 action is barred by the Rooker-Feldman doctrine. See Rooker v. Fidelity Trust Co., 263 U.S. 413, 414-16, 44 S.Ct. 149, 68 L.Ed. 362 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983). The Rooker-Feldman doctrine bars "a party losing in state court ... from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." Johnson v. De Grandy, 512 U.S. 997, 1005-06, 114 S.Ct. 2647, 129 L.Ed.2d 775 (1994). As a

> rule, federal review of state court judgments can be obtained only in the United States Supreme Court. Feldman, 460 U.S. at 476, 103 S.Ct. 1303 (citing 28 U.S.C. § 1257; Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Eng'rs, 398 U.S. 281, 296, 90 S.Ct. 1739, 26 L.Ed.2d 234 (1970)); see also Rooker, 263 U.S. at 415-16, 44 S.Ct. 149. Generally, a federal district court cannot review matters actually decided by a state court, Rooker, 263 U.S. at 415, 44 S.Ct. 149, nor can it issue "any declaratory relief that is 'inextricably intertwined' with the state court judgment," Facio v. Jones, 929 F.2d 541, 543 (10th Cir. 1991)(quoting Feldman, 460 U.S. at 483-84 n. 16, 103 S.Ct. 1303 (extending doctrine to issues not actually decided by the state court)).

The Rooker-Feldman doctrine applies in bankruptcy court. Fifth Third Bank of Western Ohio v. Singleton (In re Singleton), 230 B.R. 533, 537-38 (6th Cir. B.A.P. 1999)(Citing cases.) The Court finds that, for the most part, the Rooker-Feldman doctrine bars the relief requested by Debtor in this case. Debtor argues that the judgment is wrong, defective, and entered in violation of her rights[1]. She claims that the unlawful detainer cause of action in the state court case was improper and could not determine title to the real estate involved in that suit. She also claims that, under state law, the forfeiture of her interest in certain real estate would shock the conscience of the court. Any doubt that Debtor is

[1] Rooker-Feldman also bars claims that a party was denied procedural due process in the state court. Postma v. First Federal Savings & Loan of Sious City, 74 F.3d 160, 162 (8th Cir. 1996).

mounting a direct attack on the state court's judgment is resolved by Debtor's Motion to Set Aside Judgment for Restitution. These are all claims that should have been, and maybe still can be, raised within the context of the state court case. The Bankruptcy Court cannot serve an appellate function to the state court. Rooker-Feldman forbids direct appeals and also indirect attempts to undermine state court decisions. In re Brazelton Cedar Rapids Group, LC, 264 B.R. 195, 198 (Bankr. N.D. Ia. 2001). "[O]verturning the state court judgment" is "precisely what the Rooker-Feldman doctrine prohibits." Id. at 199.

Debtor also alleges in her pleadings that there was an "unwarranted forfeiture and unjustified windfall to Townes" that is "excessively harmful to the Debtor's estate." These facts, if developed more specifically, might state a cause of action under 11 U.S.C. § 548. This cause of action would not have been available at the time of the forfeiture, because it is a bankruptcy cause of action that could not have arisen until the bankruptcy petition was filed. Rooker-Feldman would therefore not bar this claim[2]. See Moccio v. New York State

[2] The Court is not considering the issue of whether a debtor has standing under section 548, which allows the "trustee" to avoid such transfers.

Office of Court Administration, 95 F.3d 195, 198-99 (2nd Cir. 1996):

> If the precise claims raised in a state court proceeding are raised in the subsequent federal proceeding, Rooker-Feldman plainly will bar the action. On the other hand, we have held that where the claims were never presented in the state court proceedings and the plaintiff did not have an opportunity to present the claims in those proceedings, the claims are not "inextricably intertwined" and therefore not barred by Rooker-Feldman.

(citation omitted.) See also Johnson v. Rodrigues (Orozco), 226 F.3d 1103, 1109 (10th Cir. 2000)("[I]t was error to dismiss Plaintiff's complaint in toto since that portion of his complaint need not be construed as an attempt to appeal a particular adoption decree.") The Debtor's bankruptcy claims are not "inextricably intertwined[3]" with the state court case.

The Court will enter an Order remanding this adversary proceeding to the Thirteenth Judicial District Court, Sandoval County, New Mexico. To the extent Debtor has raised new bankruptcy issues after filing the petition for removal, the

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[3] Claims are "inextricably intertwined" if the relief requested in the federal action would effectively reverse the state court decision or void its ruling, i.e., the federal action succeeds only to the extent that the state court wrongly decided the issues. Blackwell v. Lurie (In re Popkin & Stern), 259 B.R. 701, 706 (8th Cir. B.A.P. 2001)(Citing cases.) See also Moccio, 95 F.3d at 198-99 for a discussion of the various interpretations of "inextricably intertwined."

Court will also dismiss those without prejudice to their being refiled in their own adversary proceeding.

Honorable James S. Starzynski
United States Bankruptcy Judge

I hereby certify that on October 30, 2001, a true and correct copy of the foregoing was either electronically transmitted, faxed, delivered, or mailed to the listed counsel and parties.

Donald D. Becker
PO Box 422
Albuquerque, NM 87103-422

Gary B. Ottinger
P. O. Box 1782
Albuquerque, NM 87103

Louis Puccini
P.O. Box 30707
Albuquerque, NM 87190-707

Office of the United States Trustee
PO Box 608
Albuquerque, NM 87103-0608

Kelley L. Skehen
309 Gold Avenue SW
Albuquerque, NM 87102-608