



SO ORDERED.

SIGNED this 27 day of October, 2005.

Janice Miller Karlin

JANICE MILLER KARLIN
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In Re:

**JERRY WADE OVERLEY and
CAROL JOANN OVERLEY,**

DEBTORS.

**CASE NO. 04-43227
CHAPTER 13**

**JERRY WADE OVERLEY and
CAROL JOANN OVERLY,**

PLAINTIFFS,

v.

ADV. NO. 04-7134

DOUGLAS BUCHANAN,

DEFENDANT.

**MEMORANDUM AND ORDER ON ISSUE OF THIS COURT'S JURISDICTION
TO DETERMINE WHETHER LIEN STATEMENT WAS TIMELY PERFECTED**

This matter is before the Court on Debtors' Motion for Summary Judgment, where they seek an adjudication that the mechanic's lien filed against their homestead is invalid, that defendant's claim is

therefore unsecured, and that a judgment lien against the homestead is avoidable.¹ This matter constitutes a core proceeding,² and the Court has jurisdiction to decide it.³

This adversary proceeding concerns, primarily, the effectiveness of a mechanic's lien statement arising out of a prepetition home construction contract between the Plaintiffs, Jerry and Carol Overly (Debtors), and the Defendant, Douglas Buchanan (Buchanan). The primary issue is whether Buchanan's mechanic's lien on Debtors' homestead is valid under Kansas law. Debtors assert the lien is invalid both because it omitted Buchanan's address, as required by K.S.A. 2003 Supp 60-1102, and because it was not timely filed under K.S.A. 2003 Supp. 60-1103. In addition, Debtors assert that the mechanic's lien, if valid, was not timely perfected, because the foreclosure action was filed more than a year after the lien statement was filed. Finally, they assert that Buchanan's judicial lien on their home arising from a related arbitration award can be avoided pursuant to 11 U.S.C. § 522(f)(1)(A).⁴ Buchanan essentially argues that he has a valid, perfected mechanic's lien on Debtors' homestead.

This Court heard oral argument on October 26, 2005. The oral argument was essentially confined to the issue whether the state court was the proper forum to decide the mechanic's lien issues in the case as a result of the District Court of Sedgwick County, Kansas having already entered a ruling on one of the issues this Court would, or might, have to decide.

¹Doc. 36 (motion) and Doc. 37 (memorandum in support).

²28 U.S.C. § 157(b)(2)(K).

³28 U.S.C. § 1334.

⁴All future references to the Bankruptcy Code in the text shall be to the section only. The Court notes that Buchanan concedes this issue.

Procedural history

Debtors filed the instant Chapter 13 bankruptcy proceeding on November 18, 2004. Soon thereafter, on December 30, 2004, Debtors filed the instant adversary proceeding, praying for a determination that Buchanan holds only a general unsecured claim, and that any mechanic's lien or judicial lien he has against their home is invalid.

On March 30, 2005, which is one year and four days after Buchanan filed his mechanic's lien statement, Buchanan filed an action to foreclose his mechanic's lien in the District Court of Sedgwick County, Kansas (hereafter *Buchanan v. Overlay*).⁵ On April 11, 2005, the Debtors filed a motion in the state court to dismiss that mechanic's lien foreclosure case, arguing it was not timely filed within the one year allowed by K.S.A. 60-1105, and that the bankruptcy filing had not tolled this period. By order dated May 27, 2005, the Sedgwick County District Court denied the motion to dismiss and ruled the foreclosure action was timely filed and not subject to dismissal because "the bankruptcy did toll the plaintiff's right of action."

Debtors then filed a Motion for Summary Judgment in this Court, seeking a determination not only that the mechanic's lien was invalid, but also that the state court had erred when it found that the perfection of the mechanic's lien [by filing the foreclosure action] was timely.

This Court Lacks Jurisdiction to Determine Whether Buchanan's Lien Statement was Timely Perfected

In Kansas, mechanic's liens are enforced through foreclosure. K.S.A. 60-1105 provides the foreclosure action must be filed within one year after the timely filing of the lien. It states:

⁵Case number 2005-CV-001311-RE.

(a) Limitations. An action to foreclose a lien under this article shall be brought within one year from the time of the filing of the lien statement, but if a promissory note has been attached to the lien statement in lieu of an itemized statement, the action shall be commenced within one year from the maturity of said note.

“When liens are not timely perfected pursuant to [the foregoing statute], K.S.A. 60–1108 provides a statutory remedy.”⁶ It states, in part, as follows:

If no action to foreclose or adjudicate any liens filed under the provisions of this article shall be instituted within the time provided in subsection (a) of K.S.A. 60–1105, and amendments thereto, the lien shall be considered canceled by limitation of law.

Accordingly, properly filed mechanic’s liens lose their effectiveness if the lienholder fails to file a foreclosure action within one year time from the date of filing.⁷

Buchanan commenced his foreclosure action against Debtors in Sedgwick County more than one year after the filing of his lien statement. Debtors therefore request this Court find that the lien is void, and that Buchanan can thus be properly treated as a general unsecured creditor in their bankruptcy. Before Debtors requested this Court decide that issue, however, Debtors first requested the Sedgwick County District Court to do so by filing a motion to dismiss in the state court mechanic’s lien foreclosure case. That court held the foreclosure action was timely, finding that the filing of the bankruptcy had tolled the period of limitations.

⁶*Boyce v. Knudson*, 219 Kan. 357, 362 (1976); see *In re Birdview Satellite Communications, Inc.*, 90 B.R. 465 (Bankr. D. Kan. 1988).

⁷*Boyce v. Knudson*, 219 Kan. at 362.

Debtors assert this decision is contrary to the Bankruptcy Code, as well as to case law within this Circuit, citing to Judge Pusateri's decision in *In re Birdview Satellite Communications, Inc.*⁸ Debtors also essentially assert that Buchanan should be estopped from arguing otherwise, as his counsel has agreed that *Birdview* is correct, as evidenced both by correspondence and the Report of the Parties' Planning Meeting.⁹

Buchanan predictably argues that Debtors are now bound by the state court ruling that the lien foreclosure suit was timely filed, because under the *Rooker-Feldman* doctrine, this Court lacks jurisdiction to consider whether the Sedgwick County District Court erred when finding the foreclosure action was timely. This Court agrees.

"*Rooker-Feldman* precludes 'a party losing in state court . . . from seeking what in substance would be appellate review of [a] 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.'"¹⁰ The doctrine applies in bankruptcy courts.¹¹ Jurisdiction to review a valid state court judgment lies exclusively with the state appellate courts and, ultimately, with the United States Supreme Court.¹² As a result, the *Rooker-*

⁸*In re Birdview Satellite Communications, Inc.*, 90 B.R. at 465 (holding that a Kansas mechanic's lien is perfected by filing a foreclosure action within one year, and that 11 U.S.C. § 362 does not stay the filing of such an action).

⁹See ¶11, Doc. 15 in Adversary Proceeding 04-7134.

¹⁰*Kenmen Engineering v. City of Union*, 314 F.3d 468, 473 (10th Cir. 2002) (quoting *Johnson v. De Grandy*, 512 U.S. 997, 1005–06 (1994)).

¹¹*Abboud v. Abboud*, 237 B.R. 777 (10th Cir. BAP 1999).

¹²*Id.* at 780.

Feldman doctrine prohibits a bankruptcy court from considering claims actually decided by a state court and also claims “inextricably intertwined” with a prior state court judgment.¹³

Debtors respond that there is an exception to the doctrine applicable to state court decisions “that involve the interpretation of the automatic stay.” Debtors’ primary authority is *In re Gruntz*.¹⁴ After repeated defaults in payment of child support obligations, Gruntz filed a chapter 13 proceeding, which was later converted to a Chapter 11. The support payments were not timely made, and Gruntz was criminally prosecuted for failure to make the payments. The conviction was affirmed by a state court, even though Gruntz claimed that the criminal prosecution violated the automatic stay. Gruntz then initiated a proceeding against the district attorney’s office in bankruptcy court, asking the court to declare the criminal prosecution void for violation of the stay.

The bankruptcy court, relying on collateral estoppel, and the district court, relying on *Rooker-Feldman*, declined to reach the merits. The Ninth Circuit Court of Appeals held, however, that neither collateral estoppel nor the *Rooker-Feldman* doctrine precluded review of Gruntz’s stay violation claim. The court reasoned:

In sum, by virtue of the power vested in them by Congress, the federal courts have the final authority to determine the scope and applicability of the automatic stay. “The States cannot, in the exercise of control over local laws of practice, vest State courts with power to violate the supreme law of the land.” Thus, the *Rooker-Feldman* doctrine is not implicated by collateral challenges to the

¹³See *Kenman Engineering v. City of Union*, 314 F.3d at 473.

¹⁴*Gruntz v. City of Los Angeles (In re Gruntz)*, 202 F.3d 1074 (9th Cir. 2000). The Tenth Circuit, in an opinion not selected for publication, followed *Gruntz*, holding that “the *Rooker-Feldman* doctrine is not implicated by collateral challenges to the automatic stay in bankruptcy” and “bankruptcy courts retain jurisdiction to review compliance with the automatic stay.” *Ebel v. Kayne (In re Ebel)*, 139 Fed. Appx. 26 (10th Cir. 2005).

automatic stay in bankruptcy. A bankruptcy court simply does not conduct an improper appellate review of a state court when it enforces an automatic stay that issues from its own federal statutory authority. In fact, a reverse *Rooker-Feldman* situation is presented when state courts decide to proceed in derogation of the stay, because it is the state court which is attempting impermissibly to modify the federal court's injunction.¹⁵

As to when the *Rooker- Feldman* doctrine does apply in bankruptcy proceedings, the Ninth Circuit stated:

This is not to say that the *Rooker-Feldman* doctrine or the related concepts of res judicata and collateral estoppel are wholly inapplicable in bankruptcy law. Preclusive effect is often extended to pre-petition state judgments as to identical issues raised in subsequent bankruptcy proceedings. When the bankruptcy court has lifted the stay, federal courts have given subsequent state decisions full faith and credit, "as they have by law or usage in courts of such State." In non-core proceedings that do not implicate substantive rights granted under title 11 or affect the administration of the bankruptcy case, the normal rules of preclusion, including the *Rooker-Feldman* doctrine, apply.

However, modifying the automatic stay is not the act of a state court merely interpreting federal law; it is an intervention in the operation of an ongoing federal bankruptcy case, the administration of which is vested exclusively in the bankruptcy court.¹⁶

Gruntz is clearly distinguishable from this case. In our case, the state court interpreted its own Kansas statute of limitations governing the time for filing a foreclosure action, and held the filing was timely because the bankruptcy stay had tolled the running of that time limit. Thus, the state court determined an issue of state law based upon its interpretation of the effect of the pending bankruptcy case. There is no contention, as there was in *Gruntz*, that the state court had itself violated the

¹⁵*In re Gruntz*, 202 F.3d at 1083 (citations omitted).

¹⁶*Id.* at 1084 (citations omitted).

automatic stay. In fact, the basis for Debtors' allegation of error by the state court is that the state court erroneously found that the stay did apply for a portion of the time prior to the filing of the foreclosure case.

In *Gruntz*, the state court tried and convicted a debtor of a criminal violation, finding that it was not barred by the automatic stay. The issue sought to be reviewed by the bankruptcy court in *Gruntz* was whether the finding that the stay did not bar the proceedings was erroneous. Debtors urge that this distinction is immaterial, arguing that the finding that the stay applied, rather than did not apply, "still implicates the exclusive jurisdiction of this Court." Debtors provide no authority for this proposition.

In fact, the majority, if not all, bankruptcy courts, hold that state courts have concurrent jurisdiction to determine whether the automatic stay applies, particularly when it affects the state court's own orders.¹⁷ For example, in *In re Oakwood*,¹⁸ the bankruptcy court held that tribal courts, as well as state courts, have authority to determine whether a bankruptcy stay applies to proceedings before them. In so holding, that court relied in part upon a New York bankruptcy case, *In re Siskin*.¹⁹ The

¹⁷A.M. Dickerson, *Colliding Judgments: Applying the Rooker-Feldman Doctrine in Bankruptcy Cases*, 14 J. Bankr. L. & Prac. , 4 Art.2 (2005). In addition, the Kansas Supreme Court has exercised jurisdiction to reverse a state court decision that was found to have violated the stay. *United Northwest Federal Credit Union v. Arens*, 233 Kan. 514 (1983).

¹⁸*Oakwood Acceptance Corp. v. Tsinigini (In re Oakwood Acceptance Corp.)*, 308 B.R. 81, 85 (Bankr. D.N.M. 2004).

¹⁹*Siskin v. Complete Aircraft Services, Inc. (In re Siskin)*, 258 B.R. 554 (Bankr. E.D.N.Y. 2001).

Siskin court similarly found that the majority of courts follow the rule that state courts have jurisdiction to decide whether the automatic stay applies to proceedings before them.²⁰

In *Siskin*, the question of state court jurisdiction was discussed in the context of determining whether the bankruptcy court had jurisdiction of an adversary proceeding seeking damages for the alleged willful violation of the automatic stay in a state court action where that court had determined that the proceeding before it was not stayed. The court rejected the contention that the state court lacked jurisdiction to determine whether the stay applied, and held that the *Rooker-Feldman* doctrine deprived the bankruptcy court of jurisdiction to review the state court's determination that its actions were not barred by the stay. The court carefully analyzed the *Gruntz* decision and rejected it to the extent it held *Rooker-Feldman* does not bar federal court consideration of a state court decision that the stay does not apply.²¹

The Sixth Circuit Bankruptcy Appellate Panel, in *In re Singleton*,²² also held that the *Rooker-Feldman* doctrine barred the bankruptcy court's consideration of whether the stay was violated when a state court allowed a foreclosure sale because it found the stay inapplicable to property owned by the debtor's corporation. The court acknowledged that if the state court did not have subject matter jurisdiction, its orders would be void and therefore subject to attack notwithstanding the *Rooker-*

²⁰*Id.* at 563 (holding that a proceeding to determine whether the stay applies to a state court action arises in or is related to a bankruptcy case and, in the absence of a provision in 11 U.S.C. § 362 or 28 U.S.C. § 157 depriving the state courts of jurisdiction, those courts have concurrent jurisdiction with the bankruptcy court to decide the issue).

²¹*Id.* at 565.

²²*Singleton v. Fifth Third Bank of Western Ohio (In re Singleton)*, 230 B.R. 533 (6th Cir. BAP 1999).

Feldman doctrine.²³ However, it reasoned that although a bankruptcy court is the court from which the stay emanates and has exclusive jurisdiction to determine relief from stay, a non-bankruptcy court has jurisdiction to determine whether a matter pending before it is stayed by a party's bankruptcy filing.²⁴ Because the state court did not presume to grant relief from stay, but only to determine that the stay of the debtor's bankruptcy did not apply to the sale of property owned by a third-party, the bankruptcy court was barred from deciding whether the state court erred, or whether the debtor's personal chapter 13 bankruptcy stayed the sale of property owned by the debtor's corporation.²⁵

This Court is convinced that the *Rooker-Feldman* doctrine bars its consideration of Debtors' contention that Buchanan's foreclosure proceeding was not timely, and thus his lien is invalid. The Sedgwick County District Court has already determined the issue adversely to Debtors; if this Court were to consider the merits, it would be acting as an appellate court reviewing the state court decision. Although the Sedgwick County District Court made a determination that the bankruptcy stay applied and tolled the one-year period for filing the foreclosure action, it had jurisdiction to consider these bankruptcy matters as they applied to the case before it. This Court thus has no jurisdiction to determine whether the mechanic's lien was timely perfected.

Conclusion

Because this Court has no jurisdiction to decide what may be an important part of Debtor's summary judgment motion—the timeliness of the foreclosure suit, this Court believes it would be

²³*Id.* at 539.

²⁴*Id.* at 538-39.

²⁵*Id.*

inappropriate for it to decide the other issues, which require the interpretation of Kansas mechanic's lien statutes, and then return this case to the state court in that posture. What would the state court do with a bankruptcy court ruling deciding issues of first impression (since no Kansas appellate decisions exist on either of the two substantive mechanic's lien questions)? Would the state court be bound by this Court's decision interpreting state law, and be required to then enter a final order? If appealed, would the state appellate courts then be reviewing a bankruptcy court's decision? None of those alternatives seem appropriate.

Furthermore, 28 U.S.C. § 1334(c)(1) provides guidance. It states that "Nothing in this section [dealing with bankruptcy court jurisdiction] prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11." This is a clear case where the "interest of comity with State Courts and a respect for State law" compels this Court to abstain from hearing this Adversary Proceeding at this time, because it does not have jurisdiction to decide a potentially key issue in the case. Clearly, had the Sedgwick County District Court not already issued a ruling on the timeliness issue, this Court would have had jurisdiction to decide that issue as well as the other mechanic's lien issues in this case. But the state court has ruled, and this Court does not believe it appropriate to decide other state law issues in that case, which the state court is well equipped to handle.

This Court requests that the parties attempt to expedite the resolution of the matter in Sedgwick County because this is a reorganization proceeding, and time is of the essence since Debtors are paying, or are required to pay, funds into the Court each month for payment of creditors. After the

Sedgwick County District Court issues its final decision, the non-prevailing party will have the opportunity to appeal the decision to the Kansas appellate courts, which are the courts best able to interpret Kansas statutes,²⁶ especially when those statutes have never previously been interpreted under these facts.

When a final order is entered in *Buchanan v. Overlay*, the parties are directed to promptly notify this Court so that it may schedule an immediate status conference. For docket control purposes, and for the purpose of receiving an interim status report from the parties, this Court also continues all issues, including confirmation, to a docket to be held March 29, 2006 at 1:30 p.m.

IT IS, THEREFORE, ORDERED that Debtors' Summary Judgment Motion is denied, without prejudice, pending a final order arising out of *Buchanan v. Overlay* in the District Court of Sedgwick County, Kansas. The parties are ordered to forthwith notify the Court upon the conclusion of that litigation, and the Court continues all issues, for docket control purposes, and for a status conference on the progress of the state court litigation, to **March 29, 2006 at 1:30 p.m.**

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²⁶If Debtors persuade the District Court that the mechanic's lien statement is defective because the address does not appear on the face of the statement, or that Buchanan was required to file that statement under K.S.A. 2003 Supp. 60-1103, then the District Court's decision regarding timelessness of foreclosure would become irrelevant.