IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE:	:	
	:	
DONALD J. WAGNER, SR.	:	CASE NO. 04-18091
DEBTOR	:	CHAPTER 13
	:	

OPINION

By: STEPHEN RASLAVICH, UNITED STATES BANKRUPTCY JUDGE.

Introduction.

Before the Court is the Motion for Relief from the Automatic Stay by Snap-On Credit, LLC. The Debtor has filed an Answer to the Motion. A hearing on the Motion was held on November 17, 2004. For the reasons set forth below, the Motion will be denied on a conditional basis.

Factual Background

Snap-On Credit obtained a prepetition judgment against the Debtor. Motion and Answer, ¶ 3. After Snap-On started execution proceedings, this Chapter 13 bankruptcy was filed. *Id.*, ¶¶ 6,7. The Debtor's plan does not provide for Snap-On's claim whatsoever. *Id.*, ¶ 13. That prompted Snap-On to file this motion for stay relief. Once the stay is lifted, Snap-On will resume the exercise of its state law remedies. *See* Motion, Prayer. The Debtor opposes the motion claiming that he owes Snap-On nothing. Answer ¶ 1.

At the hearing, the Court would ask the Debtor how he could contest liability in light of the judgment. Indeed, for the Court, the Debtor's ability to challenge the state court judgment became threshold issue. If, as a matter of law, he could not challenge

the judgment in this Court, then Debtor would be required to file an amended plan which provided for full payment of the Snap-On claim or the stay would be modified as Snap-On requested. Transcript (T) -7. The Debtor indicated his intention to file an amended plan if the court ruled against him on this preliminary question. *Id.* After the parties submitted briefs, the Court took the matter under advisement.

The Parties' Positions

Snap-On maintains that its judgment is immune from attack under federal preclusional (Full Faith and Credit res judicata, and collateral estoppel) and jurisdictional (*Rooker-Feldman*) doctrines. T-2. Debtor disputes the claim that the state court judgment is unassailable. But his reasoning on that point is not quite clear. While admitting that he did not oppose the summary judgment (Motion, ¶ 3), the Debtor explains that "under the Rooker-Feldman doctrine, the rules say that the claim must have actually been litigated in State Court." T-4. Inherent in this statement is the confusion of *Rooker-Feldman* with federal preclusion principles.[1] So before analyzing whether either apply to bar Debtor's claim, It would be helpful to discuss the difference between the two concepts. Highly useful here is the explication offered by the Seventh Circuit:

> Equating the *Rooker-Feldman* doctrine with preclusion is natural; both sets of principles define the respect one court owes to an earlier judgment. But the two are not coextensive. Preclusion in federal litigation following a judgment in state court depends on the Full Faith and Credit Statute, 28 U.S.C. § 1738, which requires the federal court to give the judgment the same effect as the rendering state

[1]In his brief, the debtor argues only that the judgment is not entitled to preclusive effect; there is no reference to *Rooker-Feldman*.

> would. *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 105 S.Ct. 1327, 84 L.Ed.2d 274 (1985). When the state judgment would not preclude litigation in state court of an issue that turns out to be important to a federal case, the federal court may proceed; otherwise not. *Harris Trust & Savings Bank v. Ellis*, 810 F.2d 700, 704-06 (7th Cir.1987). The *Rooker-Feldman* doctrine, by contrast, has nothing to do with § 1738. It rests on the principle that district courts have only original jurisdiction; the full appellate jurisdiction over judgments of state courts in civil cases lies in the Supreme Court of the United States, and parties have only a short time to invoke that jurisdiction. The *Rooker-Feldman* doctrine asks: is the federal plaintiff seeking to set aside a state judgment, or does he present some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party? If the former, then the district court lacks jurisdiction; if the latter, then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion. *See also* David P. Currie, *Res Judicata: The Neglected Defense*, 45 U.Chi.L.Rev. 317, 321-25 (1977) (elaborating the difference between *Rooker* and preclusion).

GASH Assoc. v. Village of Rosemont, Illinios, 995 F.2d 726, 728 (7th Cir. 1993).

Preclusion is based on federal-state comity and judicial economy; *Rooker-Feldman* is grounded in the jurisdictional limits of lower federal courts. Regardless of that difference, each doctrine would operate equally to bar this Court from hearing the judgment challenge.

Analysis

Does Rooker-Feldman Deprive this Court from Hearing the Debtor's Challenge?

As a general rule, lower federal courts are without power to sit in direct review of state court decisions. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482, 103 S.Ct. 1303, 1315, 75 L.Ed.2d 206 (1983). The *Rooker/ Feldman* doctrine[,] ...

derived from two Supreme Court cases decided sixty years apart, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923), and ... *Feldman*, *supra*." *In re Milstein*, 304 B.R. 208, 213 (Bankr.E.D.Pa.2004). The doctrine expresses the principle that federal trial courts have only original subject matter, and not appellate, jurisdiction and may not entertain appellate review of, or collateral attack on, a state court judgment. *In re Singleton*, 230 B.R. 533, 536 (6th Cir. BAP 1999). Moreover, if an issue presented to a federal court is "inextricably intertwined" with the state court's decision, and in ruling on the issue, the district court is in essence being called upon to review the state court decision, the district court is similarly without jurisdiction to consider the matter. *Feldman*, 460 U.S. at 483 n.16, 103 S.Ct. at 1314. A claim is inextricably intertwined with a state court decision if the relief requested from the federal court would effectively reverse the state court or void its ruling. *In re Siskin*, 258 B.R. 554, 564 (Bankr.E.D.N.Y.2001)(*quoting In re Hatcher*, 218 B.R. 441, 447 (8th Cir. BAP 1998), aff'd, 175 F.3d 1024 (8th Cir.1999)).

Reversing the state court decision is exactly what the Debtor would have this Court do. The Debtor's request comes to the Court in the guise of revaluing the Snap-On secured claim down to zero, but that cannot be done without setting aside the state court judgment. Under *Rooker-Feldman* then, this Court is without the jurisdictional competence to hear such a claim.

Is Debtor's Challenge to the State Court Judgment Precluded?

Known as the Full Faith and Credit Clause, section 1 of Article IV of the Constitution provides:

> Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

U.S.Const. Art. IV, §1. The Full Faith and Credit *Act* implements the Full Faith and Credit *Clause*:

> []*The records and judicial proceedings of any court of any such State*, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.
>
> Such Acts, records and judicial proceedings or copies thereof, so authenticated, *shall have the same full faith and credit in every court within the United States* and its Territories and Possessions *as they have by law or usage in the courts of such State*, Territory or Possession from which they are taken.

28 U.S.C. § 1738. *See Migra v. Warren City School District Board of Education*, 465 U.S. 75, 80, 104 S.Ct. 892, 896 (1984); *see also* 18 *Moore's Federal Practice* § 133.30[1] (Matthew Bender 3d ed.) The Supreme Court has made clear that "federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered." *Kremer v. Chemical Construction Corp*, 456 U.S. 461, 466, 102 S.Ct. 1883, 1889, 72 L.Ed.2d 262 (1982); *see also Jones v. Holvey*, 29 F.3d 828, 830 (3d Cir. 1994). This applies equally to bankruptcy courts. *See e.g. In re Brown*, 951 F.2d 564, 568-69 (3d Cir. 1991); *In re Scott*, No. 04-31618 (Bankr.E.D.Pa.), Memorandum and Order, 8 (Fox, J.). The sole exception to this rule of federal-state comity is where the state court judgment

is void *ab initio*. *James v. Draper (In re James)*, 940 F.2d 46, 52 (3d Cir. 1981). In this case, the judgment entered against the Debtor was a summary judgment which was not opposed. *See* Debtor's Answer, ¶ 3. All indications from the record are that the judgment was validly entered.

Under the law of Pennsylvania, the entry of a judgment bars the relitigation of all claims and defenses that were or could have been raised in a prior law suit between the same parties. *Allegheny International, Inc. v. Allegheny Ludlum Steel Corp.*, 40 F.3d 1416, 1429 (3rd Cir.1994); *Zarnecki v. Shepegi*, 367 Pa.Super. 230, 238, 532 A.2d 873, 877 (1987). If, as Debtor alleges, he was not liable on Snap-On's claims, then it was incumbent upon him to challenge that claim in state court. His failure to do so precludes this Court under the Full Faith and Credit Act from considering a challenge to that judgment.

Is the Debtor Collaterally Estopped from Challenging the Issue of Liability?

At the hearing, the Debtor explained that the claims against him were not "actually litigated." T-3. This refers, of course, to one of the elements of collateral estoppel, otherwise known as issue preclusion. Stated broadly, collateral estoppel prevents relitigation of the same issues in a later case. *Delaware Port Authority v. Fraternal Order of Police*, 290 F.3d 567, 572 (3d Cir. 2002). Collateral estoppel applies if (1) the issue decided in the prior case is identical to one presented in the later case; (2) there was a final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privity with a party in the prior case; (4) the party or person privy to the party against whom the doctrine is asserted had a full and fair opportunity to

litigate the issue in the prior proceeding and (5) the determination in the prior proceeding was essential to the judgment. *See Yamulla Trucking & Excavating Co. v. Justofin*, 771 A.2d 782, 786 (Pa.Super.2001)

The record indicates that all five prongs are met. The issue of liability was vetted in the state court otherwise the summary judgment would not have been entered. *See Kulick v. Pocono Downs Racing Ass'n, Inc.*, 816 F.2d 895, 898 n.6 (3d Cir.1987) ("Summary judgment is a judgment on the merits; it has the same effect as if the case had been tried by the party against whom judgment is rendered and decided against him."); *see also EF Operating Corp., v. American Buildings*, 993 F.2d 1046, 1049 (3d Cir.1993) (holding that summary judgment is a ruling on the merits which if affirmed would have preclusive effect). On the question of finality, Pennsylvania law provides that a judgment is deemed final for purposes of res judicata or collateral estoppel unless or until it is reversed on appeal. *See Shaffer v. Smith*, 543 Pa. 526, 529, 673 A.2d 872, 874 (1996). The judgment was entered in November 2003 and execution proceedings began three months later. Debtor's Brief, p.1. The record shows that no appeal was taken. *See* Motion, Ex. B, State court docket. The parties to the state court litigation are the same parties before this Court. There is also no indication that Debtor was somehow prejudiced in the state court proceeding. Finally, the issue of the Debtor's liability to Snap-on was central to that proceeding. The record shows that issue to have been litigated and this Court will not disturb that finding.

Does the Plan's Failure to Provide for Snap-On's Claim Constitute Cause to Modify the Automatic Stay?

Despite the existence of a valid judgment which the Debtor listed on his Bankruptcy Schedule D (Secured Claims), the Debtor provides no treatment of that obligation in his plan. For Snap-On, this omission constitutes "cause" under § 362(d)(1) to lift the stay. The Debtor's explanation is that he was waiting for Snap-On to file a claim. But that is no excuse, because "as a general rule, a secured creditor in a Chapter 13 case is not required to file a proof of claim but may choose to ignore the bankruptcy proceeding and look to its lien for satisfaction of the debt." *In re Hill*, 286 B.R. 612, 615 (Bankr.E.D.Pa.2002). In that event, Bankruptcy Rule 3004 and § 501(c) allow the debtor to file a claim for *any* creditor. *See* B.R. 3004; 11 U.S.C. § 501(c). Aside from what the Debtor could have done, Snap-On has filed a claim but the Debtor has not amended his plan to include their claim. How does that affect Snap-On's motion for relief?

Essentially, Snap-On's claim is being treated outside the plan. That, of course, is perfectly acceptable; as long as a debtor does not attempt to modify the rights of secured parties per 11 U.S.C. § 1322(b)(2) in his plan, by curing arrearages therein or in any other respect, he clearly has the option of not dealing with the secured claim at all in his plan. *In re Evans*, 66 B.R. 506, 509-510 (Bankr.E.D.Pa.1986). But that is not what the Debtor intends. He hopes to strip the claim down to zero. A similar situation existed in *In re Waldman*, 75 B.R. 1005 (Bankr.E.D.Pa.1987). There, the debtor had filed an objection to a creditor's secured claim contending that the secured claim was

being “paid outside the plan.” *Id.* at 1007. But like the Debtor in this case, the debtor in *Waldman* would not stipulate to stay relief. *Id.* The creditor complained that this placed her in an “indefinite state of limbo under which she would have no relief pursuant to the plan and at the same time would be precluded from proceeding on its lien.” *Id.* The Court would agree that such treatment was unacceptable :

> Therefore, what we are holding, in essence, is that, when a debtor opts to deal with a creditor "outside the Plan" and, thus, as if the bankruptcy never existed as to that creditor, the debtor must forebear use of the Code to affect the rights of the secured creditor in any other way.

Id. at 1008. *See In re Vincente*, 260 B.R. 354, 358 (Bankr.E.D.Pa. 2002) *quoting* 8 *Collier On Bankruptcy* ¶ 1325.06[1](b) (15th ed. rev.2000) (“The holders of secured claims not provided for by the plan may seek appropriate relief from the automatic stay in furtherance of any contractual or other remedies available against the chapter 13 debtor or their collateral.”); *see also Evans*, 66 B.R. at 510 (“Being dealt with 'outside' the Plan may make it quite easy for the secured claimant to obtain relief from the automatic stay, and hence proceed exactly as if there had been no filing.")

The Debtor’s proposed treatment of Snap-On is likewise impermissible; cause thus exists to modify the stay. Notwithstanding, the Court will allow the Debtor to avoid this result by giving the Debtor the opportunity to amend the plan and provide for payment of the Snap-On claim. The Debtor shall have fifteen (15) days from the date of entry of the attached order to file an amended plan that provides for full payment of the

Snap-On claim. Otherwise, the stay will be lifted.

An appropriate order follows.

BY THE COURT:

STEPHEN RASLAVICH
UNITED STATES BANKRUPTCY JUDGE

Dated: December 15, 2004

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE:	:	
	:	
DONALD J. WAGNER, SR.	:	CASE NO. 04-18091
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DEBTOR	:	CHAPTER 13
	:	

ORDER

AND NOW upon consideration of the Motion for Relief from the Automatic Stay by Snap-On Credit, LLC, the Debtor's Answer thereto, after hearing held on November 17, 2004, and for the reasons stated in the foregoing Opinion, it is

ORDERED that the Motion is Denied on a conditional basis only. The Debtor shall have fifteen (15) days from the date of entry of this order to file an amended plan that provides for full payment of the Snap-On claim. If the Debtor fails to do so, then the automatic stay shall be deemed lifted as to Snap-On without further order of this Court.

BY THE COURT:

STEPHEN RASLAVICH
UNITED STATES BANKRUPTCY JUDGE

Dated: December 15, 2004

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