UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Judith G. Epps,

Debtor.

C/A No. 99-00026-D

JUDGMENT

Chapter 13

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Debtor's objection to the proof of claim filed by Chevy Chase Bank is denied. However, Chevy Chase Bank shall submit an itemized statement of its fees included in its claim to the Chapter 13 Trustee within ten (10) days of the entry of this Order. The Chapter 13 Trustee shall then have an additional period of ten (10) days to file his response and/or objection to that submission.

John E Waites
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
July 9, 1999.

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CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States Bankruptcy Court for the District of South Carolina hereby certifies that a copy of the document on which this stamp appears was mailed on the date listed below to:

JUL 9 1999

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

SHEREE R. PHIPPS

Deputy Clerk

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Judith G. Epps,

Debtor.

C/A No. 99-00026-D

ORDER

Chapter 13

THIS MATTER comes before the Court upon the Chapter 13 Debtor's objection to the proof of claim filed by Chevy Chase Bank ("Chevy Chase"). Based upon the arguments of counsel and a review of the pleadings and documents submitted to the Court at the hearing, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

On December 3, 1998, a Judgment of Foreclosure and Sale was entered against the Debtor's residence by the Court of Common Pleas, County of Florence, State of South Carolina ("State Court"). The Judgment of Foreclosure and Sale ordered the sale of the Debtor's residence to satisfy an outstanding mortgage held by Chevy Chase. The Judgment of Foreclosure and Sale set the amount of the debt under the note and mortgage at $69,261.29, which included an award of attorney's fees in the amount of $3,800.00. The State Court, in finding the amount of $3,800.00 for attorney's fees to be reasonable, held as follows:

> 13. The sum of $3,800.00 is a reasonable fee to allow as attorney fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the Note and Mortgage. These sums are likewise reasonable based on the time necessarily devoted to representation of the Plaintiff during the several month course of these proceedings. The services of counsel performed for the Plaintiff, including the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in

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> this particular case also support the amount awarded. The fees are also reasonable given the professional standing of the Plaintiff's counsel and their experience in handling foreclosure matters. The fees awarded herein are also reasonable in light of the fees customarily awarded by this court for similar services in this locality. Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a prompt foreclosure of the mortgage. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

The Debtor did not appeal the State Court Judgment. On January 5, 1999 the Debtor filed a Chapter 13 petition. On March 23, 1999, Chevy Chase filed its proof of claim. Three days later on March 26, 1999, the Debtor filed an objection to the claim of Chevy Chase stating in part that "the attorney's fees included in the arrearage portion of the claim are unreasonably high, unjustified, and should not be approved by the bankruptcy court for payment." On April 14, 1999, Chevy Chase filed a response to the objection to their claim stating that granting the relief requested by the Debtor would violate the Rooker-Feldman doctrine in as much as the State Court had already determined the reasonableness of the attorney's fees. All parties have agreed that the secured claim of Chevy Chase is oversecured pursuant to 11 U.S.C. § 506(b) and that prepetition attorneys fees not previously determined by the State Court and all postpetition fees are within the Court's review and jurisdiction.[1]

At the hearing on the objection, the Chapter 13 Trustee joined in the Debtor's position that the reasonableness of all requests for attorney's fees included in an oversecured claim are subject to review by the Court because in a Chapter 13 case, the fees will be paid from property

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[1] Further references to the Bankruptcy Code, 11 U.S.C. § 101, *et seq.* shall be by section number only.

of the estate.[2] Additionally, the Chapter 13 Trustee notes that he was not a party to the State Court litigation and therefore is not bound by the December 3, 1998 Judgment of Foreclosure and Sale under the Rooker-Feldman doctrine.

CONCLUSIONS OF LAW

Chevy Chase argues that this Court lacks subject matter jurisdiction pursuant to the Rooker-Feldman doctrine to consider the Debtor's objection to its claim to the extent that it calls for a review of the reasonableness of the prepetition award of attorney's fees by the State Court.

> Under the Rooker-Feldman doctrine, lower federal courts generally do not have jurisdiction to review state-court decisions; rather, jurisdiction to review such decisions lies exclusively with superior state courts and, ultimately, the United States Supreme Court. See Leonard v. Suthard, 927 F.2d 168, 169-70 (4th Cir.1991); see also Young v. Murphy, 90 F.3d 1225, 1230 (7th Cir.1996). The Rooker-Feldman doctrine bars consideration not only of issues actually presented to and decided by a state court, but also of constitutional claims that are "inextricably intertwined with" questions ruled upon by a state court, as when success on the federal claim depends upon a determination "that the state court wrongly decided the issues before it." Charchenko v. City of Stillwater, 47 F.3d 981, 983 (8th Cir.1995); see Pennzoil Co. v. Texaco Inc., 481 U.S. 1, 25, 107 S.Ct. 1519, 1533, 95 L.Ed.2d 1 (1987) (Marshall, J., concurring in the judgment) ("Where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state-court judgment.").

Plyer v. Moore, 129 F.3d 728 (4th Cir. 1997). In essence, the Rooker-Feldman doctrine bars an attempt by a losing party from seeking what in substance would be an appellate review of a state court judgment by framing it as a violation of the loser's federal rights. The critical test pursuant

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[2] In order to review the fees, the Chapter 13 Trustee had previously requested an itemized statement of the fees from Chevy Chase but such had not yet been provided.

to the Rooker-Feldman doctrine is whether the issues raised in the federal court are either the same or "inextricably intertwined with" the issues raised in the state court.

By way of her objection to Chevy Chase's claim, the Debtor asserts a federal right emanating from § 506(b) to have the attorneys fees readjudicated for reasonableness, the identical issue decided by the State Court. It is the Debtor's position that the award of fees was too high and that the State Court was wrong in its award. In order for the objection to the claim to prevail, this Court would have to apply § 506(b) to reduce the attorneys fees ordered by the State Court.

At the time of its judgment, the State Court unequivocally had jurisdiction over the subject matter and the parties. At that point, the Debtor had not elected to file a bankruptcy case; there was no property of the estate, no automatic stay, no trustee, and no reorganization for the benefit of unsecured creditors. Section 506(b) was not yet applicable. If the State Court properly had jurisdiction to decide the reasonableness of fees before it, the question becomes whether the filing of the bankruptcy and submission by the creditor of an oversecured claim should reopen the issue to allow this Court's retroactive review of the same attorneys fees under federal standards. This Court thinks it does not.

Upon the decision of the State Court, the award of attorneys fees became a part of the indebtedness owed the creditor and an amount secured by the lien.[3] To now dissect the State Court Judgment and attempt to extract the attorney fees from the liquidated claim for reconsideration would be to invade the province of the State Court and place this Court, in

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[3] In fact, by waiving a personal or deficiency judgment, Chevy Chase chiefly relied upon its lien for collection.

essence, in the role of an appellate court. This is not a situation in which a state court was acting postpetition and contrary to the automatic stay or discharge injunction or otherwise not honoring federal law, nor one where the state court is usurping federal authority. It is more akin to cases in which courts have refused to reconsider prepetition state court judgments which determined liability or indebtedness between parties through the exercise of federal bankruptcy statutes.

> Independent statutory mechanisms, such as claims estimation or objection and adjudication cannot be used to collaterally attack a prior state court judgment when resolution of the claims estimation or objection necessarily involves review of the state court judgment, as it does in the present case.

In re Audre, Inc., 202 B.R. at 490 at 496, (Bkrtcy.S.D.Cal.1996). Also see In re Keenan, 201 B.R. 263 (Bkrtcy. S.D.Cal. 1996) (Rooker-Feldman doctrine prohibited estimation of judgment creditor's claim that arose from a prepetition state court judgment), In re Abboud, 232 B.R. 293 (Bkrtcy. N.D. Okla 1999) (Rooker-Feldman doctrine prohibited Chapter 13 debtor's objection to judgment creditor's proof of claim because it was inextricably intertwined with merits of state court action in which judgment was rendered against debtor), and In re Hatcher, 218 B.R. 441 (8th Cir. BAP 1998) (Rooker-Feldman doctrine prohibited reassertion of fraudulent conveyance action in bankruptcy case when state court had previously ruled on same elements of the action).

To support her argument, the Debtor takes the position that this Court has exclusive jurisdiction to determine the reasonableness of attorney's fees pursuant to 11 U.S.C. § 506(b) and therefore Rooker-Feldman does not apply. In support of this position, the Debtor cites In re Korangy, 106 B.R. 82 (Bkrtcy. D.Md. 1989) and In re Harper, 146 B.R. 438 (Bkrtcy. N.D.Ind. 1992). However, the courts in those cases did not consider the Rooker Feldman doctrine as it has been developed. Rooker Feldman is a broader concept than res judicata.

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> The Rooker/Feldman doctrine is related to but different from preclusion principles. The Sixth Circuit stated that the "doctrine [is] a combination of the abstention and res judicata doctrines..." United States v. Owens, 54 F.3d 271, 274 (6th Cir.), cert. dismissed, 516 U.S. 983, 116 S. Ct. 492, 133 L.Ed.2d 418 (1995). The Eighth Circuit views Rooker/Feldman as broader than issue or claim preclusion because it does not depend on a final judgment on the merits of an issue. See Goetzman, 91 F.3d at 1178 (citations omitted); Charchenko v. City of Stillwater, 47 F.3d 981, 983 n.1 (8th Cir.1995) (noting that aside from this distinction the doctrines are extremely similar). The Second Circuit observed, "Of course, the Rooker-Feldman doctrine differs from preclusion in certain critical ways. For example, preclusion defenses are generally affirmative and can be waived; Rooker-Feldman is jurisdictional and cannot." Hachamovitch v. DeBuono, 159 F.3d 687, 696 n.2 (2d Cir.1998).

In re Singleton, 230 B.R. 533 (B.A.P. 6th Cir.1999). Therefore, those cases are distinguishable from the case before this Court.

While case law indicates that reasonableness determinations under § 506(b) should be made according to federal standards, in the context of the facts of this case, such a holding reasonably applies to attorneys fees which have not yet been determined by a court of competent jurisdiction at the time of the filing of the oversecured claim.[4] Additionally, as a practical matter, it is likely that the State Court, rather than this Court, was in a better position to assess the reasonableness of fees for prepetition work engaged before it. If the Debtor disagrees with the

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[4] In Unsecured Creditors Committee v. Heller and Company, 768 F.2d 580 (4th Cir.1985), the Fourth Circuit Court of Appeals held that § 506(b) creates an independent right to attorneys fees and displaces state law to the extent that it might be contrary to the written agreement which provides for attorneys fees. Also see In re Shangra-La, Inc., 167 F.3d 843 (4th Cir.1999). However, the Heller decision is not controlling here because it addressed attorneys fees initially awarded in the federal bankruptcy court utilizing § 506(b) and not attorneys fees which had been previously determined prior to the bankruptcy by state court judgment. Furthermore, in the matter presently before this Court, there is no issue that state law has restricted the determination or award of reasonable attorneys fees.

State Court determination, the Debtor's recourse was to appeal within the state court system.

In conclusion, it appears to the Court that the only way to disregard the State Court's determination of the reasonableness of Chevy Chases' attorney's fees in considering the Debtor's objection to claim is if the State Court was acting without proper subject matter jurisdiction and that is not the case in this matter. It is also clear that the Judgment of Foreclosure and Sale was responsive to the issues raised in the State Court pleadings, that the parties were afforded due process, and that the State Court order clearly found that the amount of attorneys fees requested by Chevy Chase was reasonable. The issue that would be before this Court pursuant to the Debtor's objection to the claim of Chevy Chase is not only inextricably intertwined with the issue raised and addressed in the State Court litigation, it is the identical issue that was raised and ruled upon by the State Court. It is the finding of this Court that a review of the State Court's December 3, 1998 Judgment of Foreclosure and Sale by this Court pursuant to the Debtor's objection to claim would be tantamount to an appellate review of the State Court's findings and is therefore barred by the Rooker-Feldman doctrine.

However, the Rooker-Feldman doctrine does not bind a party which was not a party to a state court proceeding.

> The Rooker-Feldman doctrine does not apply to bar a suit in federal court brought by a party that was not a party in the preceding action in state court. Valenti v. Mitchell, 962 F.2d 288 (3rd Cir.1992). Furthermore, the doctrine may not bar a party against whom there is no state court judgment. Leaf v. Supreme Court of Wisconsin, 979 F.2d 589 (7th Cir.1992), cert. denied, 508 U.S. 941, 113 S.Ct. 2417, 124 L.Ed.2d 639 (1993).

United States of America v. Owens, 54 F.3d 271 (6th Cir. 1995). Since the Chapter 13 Trustee was not a party to the State Court foreclosure litigation, he cannot be bound by the State Court's

determination pursuant to the Rooker-Feldman doctrine. The Chapter 13 Trustee's right to object to a creditor's claim does not depend upon any standing or rights inherited from the Debtor, but emanates from federal statute. Pursuant to § 1302 and § 704(5), a chapter 13 trustee has a duty to "examine proofs of claims and object to the allowance of any claim that is improper." 11 U.S.C. § 704(5). Under similar reasoning, unsecured creditors who were likewise not parties to the state court foreclosure proceedings and who have standing to object to claims should not be precluded by the Rooker-Feldman doctrine from objecting to the payment of the claim filed by Chevy Chase. For all of these reasons, it is therefore,

ORDERED, that the Debtor's objection to the proof of claim filed by Chevy Chase Bank is denied. However, Chevy Chase Bank shall submit an itemized statement of its fees included in its claim to the Chapter 13 Trustee within ten (10) days of the entry of this Order. The Chapter 13 Trustee shall then have an additional period of ten (10) days to file his response and/or objection to that submission.

AND IT IS SO ORDERED.

UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
July 9, 1999.

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States Bankruptcy Court for the District of South Carolina hereby certifies that a copy of the document on which this stamp appears was mailed on the date listed below to:

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DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

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