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Sep 13 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Joseph M. Strickland, Master-In-Equity

Appellate Case No.: 2023-001054

Wells Fargo Bank, National Association, not in its individual or banking capacity, but solely
as Trustee on behalf of Green Tree Mortgage Trust 2005-HE1Respondent,

vs.

James E. Turner, a/k/a James Turner, Sr.Appellant.

NOTICE REGARDING APPELLANT'S BANKRUPTCY FILING

Respondent provides notice and wishes to make the Court aware that:

Subsequent to Appellant's filing of bankruptcy under Chapter 13 in Case No. 24-00811, the matter for which the instant case has been stayed, Appellant filed an Adversary Proceeding in the U.S. Bankruptcy Court in the District of South Carolina. Said Proceeding was assigned Adv. Pro. No. 24-80030.

Respondent engaged counsel at Bradley Arant Boult Cummings LLP, to contend with the Adversary Proceeding, who filed a motion to dismiss the matter. The undersigned counsel has recently become aware that, following a hearing on said motion to dismiss, the Bankruptcy Court issued an Order of Abstention, a copy of which is attached hereto as Exhibit '1'.

Said Order seems to indicate that though Respondent cannot move to have the subject collateral sold at a judicial sale, the automatic stay of 11 U.S.C. § 362 has been lifted such that the instant matter before the Court of Appeals may proceed. Should this Court agree with that interpretation, undersigned counsel requests clarity as to when Respondent's initial brief will be due.



RESPECTFULLY SUBMITTED
CRAWFORD & VON KELLER, LLC

Jason M. Hunter S.C. Bar No. 101501
Post Office Box 4216
Columbia, South Carolina 29204
Telephone 803-790-2626
ATTORNEYS FOR THE PLAINTIFF

Exhibit '1'

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re,

James Eugene Turner, Sr,

Debtor(s).

James Eugene Turner, Sr,

Plaintiff(s),

v.

NewRez, LLC d/b/a Shellpoint Mortgage
Servicing as servicer for Wells Fargo Bank
NA, ETC.,

Defendant(s).

C/A No. 24-00811-HB

Adv. Pro. No. 24-80030-HB

Chapter 13

**ORDER OF ABSTENTION
PURSUANT TO 28 U.S.C. § 1334(c)**

THIS MATTER came before the Court upon the Motion to Dismiss and Memorandum in Support thereof (the “Motion”) filed by Defendant NewRez, LLC d/b/a Shellpoint Mortgage Servicing as servicer for Wells Fargo Bank NA, ETC. (“Defendant”)¹ and Plaintiff James Eugene Turner, Sr.’s (“Plaintiff”) Response.² The Motion seeks dismissal of this adversary proceeding pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) (made applicable to this adversary proceeding by Fed. R. Bankr. P. 7012(b)); the *Rooker-Feldman* doctrine; *res judicata*; and collateral estoppel, or in the alternative abstention pursuant to 28 U.S.C. § 1334(c).

¹ ECF No. 9, filed July 22, 2024.

² ECF No. 15, filed Aug. 9, 2024.

BACKGROUND AND ALLEGATIONS OF THE COMPLAINT

The adversary complaint (“Complaint”) alleges that on July 31, 2018, Wells Fargo Bank, National Association, not in its individual capacity or banking capacity, but solely as Trustee on behalf of Green Tree Mortgage Trust 2005-HE1 (“Wells Fargo”) commenced a foreclosure action against Plaintiff in the Court of Common Pleas for Richland County, South Carolina as to Plaintiff’s primary residence and commercial property located at 526 Koon Store Road, Columbia, South Carolina 29203 and 528 Koon Store Road, Columbia, South Carolina 29203.³ Nearly five years later, on May 11, 2023, an evidentiary trial was held, and the Master in Equity for Richland County signed an Order of Foreclosure and Sale on June 15, 2023 (the “Foreclosure Order”).⁴ That action and Foreclosure Order involved numerous defendants and determined issues between Plaintiff herein (defendant in the state court action) and mortgagee Wells Fargo. On June 20, 2023, Plaintiff appealed the Foreclosure Order to the Court of Appeals of South Carolina.

On March 4, 2024, Plaintiff filed a Chapter 13 bankruptcy petition in this Court. On May 13, 2024, Defendant filed claims on behalf of Wells Fargo.⁵ On May 14, 2024, Plaintiff filed this adversary proceeding against Defendant challenging those proofs of claim. Although filed in the bankruptcy court by a debtor and asserted as a core proceeding pursuant to 28 U.S.C. § 157(b), the Complaint states Plaintiff, to the extent available under applicable law, seeks a jury trial.

The Complaint demands a declaratory judgment “as to Plaintiff’s rights and other legal relations with this Defendant.” It further seeks a determination that despite the Foreclosure

³ The residential and commercial properties have separate notes and mortgages.

⁴ ECF No. 17, filed Aug. 21, 2024.

⁵ See C/A No. 24-00811-hb, Claims 4-1 and 5-1. See also Plaintiff’s Response to the Motion. .

Order, the claims filed by Defendant are invalid. Plaintiff asserts the Foreclosure Order is not a final order based on his subsequent appeal, which is currently being held in abeyance due to his bankruptcy filing.

Defendant argues that, considering the Foreclosure Order, the Court should dismiss the Complaint pursuant to Rule 12(b)(6) due to claim preclusion and the *Rooker-Feldman* doctrine. However, after a careful review of the applicability thereof, the Court finds that the appropriate analysis here is whether this Court should abstain from exercising jurisdiction in this adversary proceeding pursuant to 28 U.S.C. § 1334(c), until such time as the state courts complete a final determination regarding the Foreclosure Order, and consequently the rights and other legal relations between Plaintiff and Wells Fargo.

LEGAL STANDARDS AND ANALYSIS

28 U.S.C. § 1334 states:

- (a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.
- (b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.
- (c) (1) Except with respect to a case under chapter 15 of title 11, nothing in this section 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...

28 U.S.C. § 1334. The District Court has referred such matters to this Court pursuant to 28 U.S.C. § 157. Local Civ. Rule 83.IX.01 (D.S.C.). Discretionary abstention pursuant to 28 U.S.C. § 1334(c)(1) should be the exception, not the rule. *Foxwood Hills Prop. Owners Ass'n, Inc. v. 783-C, LLC (In re Foxwood Hills Prop. Owners Ass'n, Inc.)*, Adv. Pro. No. 20-80049-

hb, 2021 WL 1812668, at *16 (Bankr. D.S.C. May 5, 2021) (citing *In re Morgantown Excavators, Inc.*, Case No. 12-1473, 2013 WL 4829165, at *3 (Bankr. N.D. W. Va. Sept. 9, 2013)). The existence of a claim against a bankruptcy estate is controlled by state law, while the allowance or disallowance of a claim is a matter of federal law left to the bankruptcy court. *In re Johnson*, 960 F.2d 396, 404 (4th Cir. 1992).

“Most courts find that abstention should only occur when the outcome of the litigation would not significantly affect estate administration, state law issues predominate, and the matter is non-core.” *Morgantown Excavators*, 2013 WL 4829165, at *3 (citing *DHP Holdings II Corp. v. Peter Skop Ind., Inc. (In re DHP Holdings II Corp.)*, 435 B.R. 220, 225 (Bankr. D. Del. 2010). Although simply instructive, and all need not be considered, the factors that may be relevant to determine whether to abstain are discussed below. *See BGC Partners Inc. v. Avison Young (Canada) Inc.*, No. 2:15-cv-02057-DCN, 2015 WL 7458593, at *9 (D.S.C. Nov. 24, 2015) (citations omitted). Consideration of the factors guides this Court to abstain.

Basis or lack thereof for federal non-bankruptcy jurisdiction; substance rather than form of an asserted “core” proceeding

Core proceedings include:

allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11,

and “counterclaims by the estate against persons filing claims against the estate”.

28 U.S.C. § 157(b)(2).

The bankruptcy initiated the claim filing and allowance process, and Defendant filed claims therein that comprise the basis of this adversary. Therefore, this dispute is pending in the context of a claim dispute. However, the substance of the matter involves disputes that can be and were raised in, and pending before, the state appellate court when this case was filed, properly brought outside the bankruptcy case, and appear to have no place in this Court absent the underlying bankruptcy filing. Plaintiff argues an independent basis for federal non-bankruptcy jurisdiction exists based on his request made under the Declaratory Judgment Act. However, the substance of the dispute involves the same state laws already applied by the state courts in rendering the Foreclosure Order and to be considered in the appeal, resulting in a waste of resources and delay if this Court exercises jurisdiction under the form of the Declaratory Judgment Act.

Presence of related proceedings in non-bankruptcy courts

Defendant moves for abstention to continue the appellate process that was initiated by Plaintiff prior to his bankruptcy filing. The issues which Plaintiff seeks to have determined here have been pending before the state courts since 2018, and exist independent of the bankruptcy filing.

Extent to which state law issues predominate; difficult or unsettled nature of state law

While the claims allowance process is part of the bankruptcy case administration process, the dispute centers around whether Defendant has a claim against Plaintiff based on settled state law. Accordingly, state law issues predominate. There is no reason to believe this Court, applying the same set of laws, would reach a conclusion different than the state courts or has a superior ability to do so just because a bankruptcy case was filed.

Effect or lack thereof on efficient case administration; relatedness or remoteness to the main bankruptcy case

The validity of Defendant's claims must be finally determined, which determination will impact the administration of the underlying bankruptcy case. However, litigation concerning the substance of the underlying dispute was properly brought outside the bankruptcy case, pending when the bankruptcy was filed, and again, appears to have no place in this Court absent the underlying bankruptcy filing. Moreover, there is no apparent benefit to addressing the foreclosure matters raised in the Complaint in this forum as opposed to the state courts where an evidentiary hearing has already occurred, a decision has been rendered, and an appeal is well underway.

Presence of non-debtor parties in the proceeding; feasibility of severing state law claims from core bankruptcy matters; burdens on the bankruptcy court's docket; and existence of a right to jury trial

Currently, other than Defendant, no non-debtor parties are named in the adversary proceeding. However, numerous defendants were named in the foreclosure action to determine the rights between various parties. Resuming and completing the litigation in state court that involved non-debtor parties will give resolution to all disputes included. No cause appears to exist to sever any state law claims from core bankruptcy matters. A final determination of the state law claims is required before a determination as to claims allowance can be reached, and that process is well underway in the state courts. Once a final decision is reached there, the parties may return to the bankruptcy court to proceed through the claims allowance process, if necessary.

Plaintiff states a jury demand but, even if warranted, that raises no support for proceeding in the bankruptcy court, and any burden on the bankruptcy court's docket is not relevant to the analysis in this case.

Likelihood that the proceeding was the result of forum shopping by a party

The Court concludes that Plaintiff's filing of this adversary proceeding is the result of forum shopping, as the Complaint attempts to retry the issues or appeal the decision rendered in state court in a different forum. The Complaint raises evidentiary challenges decided by the state court and seeks a determination of substantially the same claims already determined in the Foreclosure Order, and ripe for consideration by the higher state courts.

CONCLUSION

The scales tip considerably in favor of abstention pursuant to 28 U.S.C. § 1334(c)(1), to return the matters to the state courts to decide the appeal already pending there, and to complete any subsequent litigation or additional appeals. The underlying bankruptcy case can continue to provide Plaintiff with the structure, asset protection, and reorganization options available through a Chapter 13 case while the disputes that are well underway in state court are resolved.

Pursuant to the foregoing, **IT IS, HEREBY, ORDERED** that Defendant's Motion to Abstain from the matters raised in this adversary proceeding pursuant to 28 U.S.C. § 1334(c)(1), is **GRANTED**. All other relief requested in the Motion is denied without prejudice. The automatic stay of 11 U.S.C. § 362 is lifted to allow Defendant herein to resume litigation pending pre-petition in the South Carolina state courts with Plaintiff, including pursuing those matters to final judgment and through any relevant appeals. However, for so long as this bankruptcy case is pending, or until further order of this Court, Defendant cannot take any action to collect from assets of the bankruptcy estate to satisfy any judgment that may be entered without first obtaining leave from this Court. Should any party to this adversary proceeding require additional orders or relief to move these disputes toward

resolution in the state courts, requests can be made by written motion, with notice to parties

in interest.

FILED BY THE COURT

08/28/2024



A handwritten signature in black ink, appearing to read "Adam L. Barris".

Chief US Bankruptcy Judge
District of South Carolina

Entered: 08/28/2024

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-In-Equity

Appellate Case No.: 2018-CP-40-04044

Wells Fargo Bank, N.A., not in its individual banking capacity, but solely as Trustee on behalf of
Green Tree Mortgage Trust 2005-HE1Respondent
v.

James E. Turner, a/k/a James Turner, Sr. Appellant.

PROOF OF SERVICE

I certify that I served the foregoing Respondent’s Notice Regarding Appellant’s
Bankruptcy Filing and Proof of Service in this case on the date given below by mailing it to
opposing counsel at the address noted below.

Glenn Walters, Sr.
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Orangeburg, SC 29116
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Respectfully submitted,

s/ Jason M. Hunter
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September 13, 2024



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September 13, 2024

Via ctappfilings@sccourts.org

SC Court of Appeals
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**RE: Wells Fargo Bank, N.A., not in its individual banking capacity, but solely as
Trustee on behalf of Green Tree Mortgage Trust 2005-HE1 vs. James E. Turner
a/k/a James Turner, Sr.
Appellate Case No.: 2018-CP-40-04044**

Dear Sir/Madam:

Enclosed please find Respondent's Notice Regarding Appellant's Bankruptcy Filing and Proof of Service regarding the above referenced matter.

Sincerely,

CRAWFORD & VON KELLER, LLC

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