Chapter 13

Office of the Chapter 13 Trustee—Akron Office
Keith L. Rucinski—Trustee

CHAPTER 13 QUARTERLY NEWSLETTER
MARCH 2022

1. INCREASE IN CHAPTER 13 DEBT LIMITS

Please note that effective April 1, 2022, the Chapter 13 debt limits have been increased to the following:

Secured Debt Limit- $1,395,875
Unsecured Debt Limit- $465,275

2. CREDITOR REQUEST TO ATTEND 341 MEETING

As the Chapter 13 341 meetings will continue to be held remotely for the foreseeable future either by telephone and/or video, creditors must make the request to attend early. The early request allows the Chapter 13 office to allocate the appropriate time and resources to allow third parties to virtually attend the 341 meeting. Generally, creditors who wish to attend the meeting can expect the meeting to be by video; and therefore, the creditor or their representative must provide an email contact so that the appropriate link can be sent to the parties prior to the 341 meeting.

Given that an early request is necessary, the Trustee asks that creditors note the following:

a. Any request by a creditor to attend the 341 meeting must be made no later than the Monday prior to the Thursday 341 meeting. The request can be made by emailing the request to aroyer@ch13akron.com.
b. Please note that creditors who do not make the request by the Monday 4 PM deadline cannot be guaranteed an opportunity to participate in the 341 meeting.

3. 84 MONTH PLAN OPTION EXPIRING THIS MONTH

Please note that the ability of the debtor to modify their plan for a duration of up to 7 years, pursuant to 11 USC § 1329 under the CARES Act, will soon expire.

This provision has been useful in allowing many plans to fix feasibility issues and for debtors to modify their plan in order to be successful. The modification approved by Congress to allow 84 month plans was available to all plans which were confirmed as of March 27, 2021.

This particular provision of the CARES Act had a one-year sunset provision and will expire on or about March 27, 2022. Therefore, after March 27, 2022, please note that the option to modify the plan up to 84 months is no longer available.

This deadline can be subject to change as there was some discussion that Congress may extend the right to modify a plan up to 84 months but as of the time of this newsletter, Congress has not acted to extend this provision of the CARES Act.

4. NO EMAIL APPROVAL

Effective immediately, please note that the Chapter 13 office will no longer place the signature of attorneys on a pleading if the only proof of the approval was an email by counsel.

Pursuant to Rule 9011, the party filing the pleading with Court can place email approval on the line but is also required to keep a hard copy of the signature of the parties in their permanent files. The Chapter 13 office and most law firms keep the signature electronically in their case files.

The practice of email approval has gotten excessive with people working remotely. Therefore, effective immediately, please note that if counsel are approving an agreed entry with the Chapter 13 office, counsel should sign the agreed entry and return the entire document to the Chapter 13 office. The Chapter 13 office will then be able to file the pleading with the Court in order to resolve the pending matter.

It has always been the customary practice of the Chapter 13 office that whenever email approval has been given, a copy of the pleading with the Trustee or his counsel's signature is returned to counsel in the regular course of business. Therefore, the Chapter 13 office is asking all counsel to provide the same courtesy that the Chapter 13 Trustee provides to all counsel.

5. DEBTOR ADDRESSES

The Chapter 13 office would ask counsel to remind their clients that it is important to keep both their counsel and the Chapter 13 office updated on any change in address. Recently, there has been an increase in cases which have successfully completed and funds needed to be returned to the debtor but the debtor had moved since the filing of the case and has not kept their address current.

In the age of scams and identity theft, the Chapter 13 office requires the debtors new address to be filed with the US Bankruptcy Court. This is generally something only counsel is able to do for their clients. The Trustee would ask counsel to work with their clients and remind them that if there is any change in address to let their counsel know so that a change of address can be filed with the US Bankruptcy Court. This will help debtors receive any funds that they are due at the conclusion of the case.

If there is no current address on file with the Court and funds are returned to the Chapter 13 office, absent a change of address being filed with the Court, the funds will be turned over to the unclaimed funds system of the US Bankruptcy Court.

6. DOCUMENATION REQUIRED FOR CAR PURCHASE

Please note that when a debtor needs to lease or purchase a new car, templates are available on the "sample pleadings" section of the Chapter 13 website located at www.chapter13info.com.

In addition to filing an appropriate motion, standard documentation that is required for the Chapter 13 office to review and approve a car purchase is a couple of the most recent paystubs of the debtor and their last filed tax return for the previous year.

This documentation is necessary even if the debtor is leasing or purchasing a new car for the same dollar amount which is listed on schedule J for the current automobile driven by the debtor. It does not matter if the new purchase is for the same or similar amount than listed on schedule J, the documentation is required in all cases and there is no exception.

Any delay in getting the documentation to the Chapter 13 office will result in a delay in debtors being able to get appropriate transportation in a timely manner.

7. NO SOCIAL SECURITY OR DRIVER'S LICENSE THROUGH PORTAL

As most counsel are aware, the Chapter 13 office uses a portal system for counsel to upload appropriate documentation for the 341 meeting. Some counsel have begun uploading driver's license and social security information through the portal under the category "Other". The Chapter 13 office would ask that counsel never submit social security or driver's license information through the portal system. Although the portal system is encrypted and every attempt is made to safeguard that information, it is not appropriate to send that information through the portal.

The Chapter 13 office receives the debtor's social security number from Court at the time of filing and as parties are aware, the Trustee asks counsel to affirm during the 341 meeting that they have met their client and verified their identity. Therefore, there is no need to upload this particular set of information through the portal system.

8. DIRECT PAYS CAN HURT ATTORNEYS CASHFLOW

Over the past few months, a number of Chapter 13 cases which were filed requested that the debtor be able to make direct payments. Most of these requests have had a routine reason which really was not justified given the facts of the case.

Please remember that for debtors who work a regular W-2 job that employer deductions are required pursuant to Admin Order 17-2. The Chapter 13 office does the employer deduction order when the case is filed so that by the time of the 341 meeting payments have begun and the case can often be scheduled for confirmation. When payments have not been received by the 341 meeting, confirmation can be delayed.

Direct payments are designed for people who are not W-2 employees such as those on retirement income, social security, or are self-employed.

Please be advised that it is understandable that debtors may not want to have a pay order most times because they don't want their employer to know about their Chapter 13 plan. However, most debtors work for companies which have other debtors in a Chapter 13 program on wage deduction without incidence. If the debtor wants a direct payment and then does not make those

payments, the Chapter 13 office has to do a wage order. This process can take some time which can delay the attorney fee paid for up to a year, especially if the debtor falls behind in making conduit payments. **Conduit payments must be paid before payment of attorney fees**.

The Trustee asks that counsel to deter their clients from seeking direct payments as in most cases the Trustee will object to said request.

In rare cases where the Trustee approves a direct pay order, please be advised that if the debtor pays less than the amount of the monthly Chapter 13 payment, it will be considered a breach of the agreed entry and the Trustee will file a wage order in the case.

All direct payments must be made electronically using TFS. The link can be found on our website, www.chapter13info.com.

9. PERSONAL FINANCIAL MANAGEMENT COURSE

The Chapter 13 office will continue to sponsor an on-line Personal Financial Management Course through the Trustee Education Network. Information regarding the online program is available on the Chapter 13 website at www.chapter13info.com. There is no charge to take the course online for Chapter 13 debtors who have filed in Akron, Ohio.

Please note: in a joint case, each debtor must take the on-line course separately and use two different e-mails. The software program generates the required certificates of completion partly based on e-mails to keep track of who has taken the required course.

Please find attached to this newsletter, a flyer for the on-line course that counsel may share with their clients in Chapter 13 cases.

10. CASE LAW

Lowry v. Southfield Neighborhood Revitalization Initiative (In re Lowry), 2021 U.S. App. LEXIS 38533, 2021 FED App. 0595N (6th Cir.), 71 Bankr. Ct. Dec. 36, 2021 WL 6112972

The debtor Lowry failed to pay the property taxes on his home in Southfield, Michigan for 2011 through 2015, although he entered into payment arrangements with the Oakland County Treasurer beginning in 2013. Lowry continued to struggle, however, and entered into payment plans for the 2014, 2015 and 2016 property taxes. At the time, Michigan law gave the state a right of first refusal to purchase property for the minimum bid needed to pay the outstanding tax bills, and that right "trickled down" to the city where the property was located if the state did not exercise its rights. In June 2016 the Oakland County Treasurer filed suit to collect the unpaid taxes and a judgment of foreclosure was entered in February 2017, providing that Lowry had until March 31, 2017 to pay the taxes, or title would vest with the Treasurer. Although Lowry entered into yet another payment plan, the property vested with the Treasurer, which sold it to the City of Southfield for the amount of the unpaid taxes ($14,496.50). The City then sold the property to the Southfield Neighborhood Revitalization Initiative ("SNRI") for $1. Lowry claimed the property was worth $152,000 at the time.

After some unsuccessful state court efforts, Lowry ultimately filed a Chapter 13 bankruptcy in late 2018 and in 2019 in the bankruptcy court in the Eastern District of Michigan and later filed two adversary complaints against the Treasurer and SNRI, alleging the tax foreclosure process denied him due process and that the transfer could be avoided under 11 U.S.C. § 548 as a transfer for less than reasonably equivalent value. The bankruptcy court dismissed the adversaries, holding that Lowry was attempting to relitigate the state court foreclosure proceedings in violation of the *Rooker-Feldman* doctrine, and that the rule of *BFP v. Resolution Trust Corp., 511 U.S. 531, 544-45, 114 S. Ct. 1757, 128 L. Ed. 2d 556 (1994)* should be extended to tax foreclosures in Michigan, precluding the use of Section 548 to set aside the transfer. *BFP* was a U.S. Supreme Court case which held that the bankruptcy court could make determinations regarding the "reasonably equivalent value" of the debtor's real property through other means than through foreclosure proceedings.

The Sixth Circuit Court of Appeals reversed the district court's affirmance of a bankruptcy court decision dismissing Lowry's complaint to set aside a Michigan tax foreclosure and remanded for further proceedings. The bankruptcy court's ruling was based on the holding in *BFP* as well as the *Rooker-Feldman* doctrine. The district court affirmed solely on the basis of the *Rooker-Feldman* doctrine, deeming Lowry's efforts an attempt to review a state court judgment. Lowry appealed and prevailed, although the opinion is unpublished.

The Court of Appeals reversed on the *Rooker-Feldman* issue holding that Lowry was not trying to attack the state court judgment, but to set aside the resultant transfer of his real property under Section 548. The Court stated: "We can assume that the state court reached a proper foreclosure judgment, and then independently decide whether the foreclosure could be avoided as a fraudulent transfer under § 548." The Court recognized that the Supreme Court has limited the *Rooker-Feldman* doctrine to situations where the alleged source of injury is the state court judgment itself. Just like a foreclosure judgment is different from a foreclosure sale, here the judgment granting the foreclosure to the Treasurer was a different event than the actual transfer of the property once the taxes were paid.

Turning to the application of the *BFP* decision, the Court noted that the *BFP* ruling itself was limited to mortgage foreclosures and realized that the considerations under other forced sales may be different. The Court noted the factual differences between a public auction and the Michigan tax foreclosure process, which did not provide for an auction, but granted the state/city the right to purchase the property for the amount of outstanding taxes without any auction process. The Michigan property was not concerned with the value of the real property, only the amount of the outstanding tax bills, which distinguished the situation from that in the *BFP* case.

SAVE THE DATE
WHITE-WILLIAMS SEMINAR
APRIL 1, 2022
HARTVILLE KITCHEN

Personal Financial Management Course

THIS COURSE IS REQUIRED TO EARN YOUR DISCHARGE !

Online Chapter 13 Bankruptcy Course
Finally Financial Freedom!

** The Trustees' Education Network (TEN) – an affiliate of the National Association of Chapter 13 Trustees – has created an online financial management course for the benefit and financial education of Chapter 13 debtors. This course is approved by the United States Trustee Program. **

THIS COURSE IS FREE!

THIS COURSE IS ABLE TO BE COMPLETED PRIOR TO YOUR 341 HEARING WITH THE TRUSTEE*

SIGN UP ONLINE AT WWW.13CLASS.COM

WHAT YOU WILL NEED TO SIGN UP

- Unique Trustee Identifier Number
  - **TEN13010**
- Bankruptcy Case Number
- Your full Name "exactly" as shown on bankruptcy petition
- A valid email address (each debtor will need a separate email address)
- Your bankruptcy Schedules A/B, D, and E/F for Lesson 1 and Schedules I and J for Lesson 3.

You must complete the entire course (all lessons and quizzes) to receive a Certificate of Completion from the Trustees' Education Network. Once you complete all coursework, the Trustees' Education Network will send a Certificate of Completion to you and to your Bankruptcy Court.

***Course satisfies legal requirements for debtors' Certificate of Completion and to gain a discharge of their bankruptcy case.*

**Other course providers may charge you a fee for this course.*

Lowry v. Southfield Neighborhood Revitalization Initiative (In re Lowry), 2021 U.S. App. LEXIS 38533, 2021 FED App. 0595N (6th Cir.), 71 Bankr. Ct. Dec. 36, 2021 WL 6112972

Lowry v. Southfiled Neighborhood Revitalization Initiative (In re Lowry)

United States Court of Appeals for the Sixth Circuit

December 27, 2021, Filed

File Name: 21a0595n.06

No. 20-1712

Reporter
2021 U.S. App. LEXIS 38533 *; 2021 FED App. 0595N (6th Cir.); 71 Bankr. Ct. Dec. 36; 2021 WL 6112972

IN RE: HAKEEM LOWRY, Debtor.HAKEEM LOWRY, Plaintiff - Appellant, v. SOUTHFIELD NEIGHBORHOOD REVITALIZATION INITIATIVE, et al., Defendants - Appellees.

Notice: NOT RECOMMENDED FOR FULL&TEXT PUBLICATION. *SIXTH CIRCUIT RULE 28* LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE *RULE 28* BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED.

Prior History: [*1] ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN.

Lowry v. Southfield Neighborhood Revitalization Initiative, LLC, 2020 U.S. Dist. LEXIS 98823, 2020 WL 3026452 (E.D. Mich., June 5, 2020)

Core Terms

foreclosure, insolvent, district court, mortgage foreclosure, fraudulent transfer, bankruptcy court, delinquent taxes, state court, foreclosure sale, foreclosure judgment, foreclosing, outstanding, parties, courts, bid

Case Summary

Overview
HOLDINGS: [1]-The ***Rooker*-*Feldman*** doctrine did not support the bankruptcy court's dismissal of the debtor's claim that the tax foreclosure could have been avoided as a constructive fraudulent transfer under 11 U.S.C.S. § 548 because the federal § 548 claim was independent of the state-court judgment, and the appeal did not involve a review of the merits of a state court judgment; [2]-The amount paid on foreclosure bore no relation at all to the value of the property, thus precluding defendants' alternative argument that that the sale was for a reasonably equivalent value. Remand was accordingly warranted for consideration of further arguments not fully developed below.

Outcome
Judgment reversed and remanded.

LexisNexis® Headnotes

Civil Procedure > ... > Preclusion of Judgments > Full Faith & Credit > ***Rooker*-*Feldman*** Doctrine

HN1 **Full Faith & Credit, Rooker-Feldman Doctrine**

The ***Rooker*-*Feldman*** doctrine may only be applied in cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.

Civil Procedure > ... > Preclusion of Judgments > Full Faith & Credit > ***Rooker*-*Feldman*** Doctrine

HN2 **Full Faith & Credit, Rooker-Feldman Doctrine**

The U.S. Supreme Court has stated that if a federal plaintiff presents an independent claim, it is not an impediment to the exercise of federal jurisdiction that the same or a related question was earlier aired between the parties in state court. Furthermore, exercising jurisdiction does not involve a federal court's review and rejection of the state court judgment.

Civil Procedure > ... > Preclusion of Judgments > Full Faith & Credit > ***Rooker*-*Feldman*** Doctrine

HN3[] **Full Faith & Credit, Rooker-Feldman Doctrine**

The U.S. Supreme Court has warned the lower courts against applying ***Rooker*-*Feldman*** too broadly. Neither ***Rooker*** nor ***Feldman*** elaborated a rationale for a wide-reaching bar on the jurisdiction of lower federal courts, and the Court's cases since ***Feldman*** have emphasized the narrowness of the ***Rooker*-*Feldman*** rule. ***Rooker*-*Feldman*** should be used only in an exceedingly narrow set of cases, and the main inquiry is whether the source of the plaintiff's injury is the state-court judgment itself.

Counsel: For HAKEEM LOWRY, Plaintiff - Appellant: Scott Fenton Smith, Law Office, Farmington Hills, MI.

For SOUTHFIELD NEIGHBORHOOD REVITALIZATION INITIATIVE, LLC, Defendant - Appellee: Matthew Nicols, Pentiuk, Couvreur & Kobiljak, Wyandotte, MI.

For OAKLAND COUNTY, MI TREASURER, Defendant - Appellee: Kevin C. Calhoun, Calhoun & Di Ponio, Southfield, MI.

Judges: Before: ROGERS, GRIFFIN, and THAPAR, Circuit Judges.

Opinion by: ROGERS

Opinion

ROGERS, Circuit Judge. Debtor Hakeem Lowry owned a home in Southfield, Michigan and failed to pay his property taxes for several years. The Oakland County Treasurer foreclosed on Lowry's home in 2017. The City of Southfield exercised its statutory right of first refusal and bought the property for the amount of outstanding taxes due, which was substantially below the alleged fair market value of the property. Lowry filed for Chapter 13 bankruptcy in 2018 and argues that the foreclosure can be avoided as a constructive fraudulent transfer under *11 U.S.C. § 548*. Because the federal *§ 548* claim is independent of the state-court judgment, the ***Rooker*-*Feldman*** doctrine does not support the bankruptcy court's dismissal of **[*2]** Lowry's claim. Furthermore, the amount paid on foreclosure bore no relation at all to the value of the property, thus precluding appellees' alternative argument that that the sale was for "a reasonably equivalent value" under the rule of *BFP v. Resolution Trust Corp., 511 U.S. 531, 544-45, 114 S. Ct. 1757, 128 L. Ed. 2d 556 (1994)*. Remand is accordingly warranted for consideration of further arguments not fully developed below.

Debtor Hakeem Lowry owned a single-family home in Southfield, Michigan. Lowry failed to pay outstanding property taxes from 2011 to 2015. Starting in 2013, he entered into annual payment plans with the Oakland County Treasurer to pay his delinquent taxes. The 2013 agreement stated that "[s]tate law requires the Treasurer's Office to continue to send notices of delinquency, forfeiture, and foreclosure, including personal service, until the delinquent tax is paid in full . . . This plan is valid for one year, and will need to be renewed . . . for the remaining delinquent taxes." Lowry entered into similar agreements with the Oakland County Treasurer in 2014, 2015, and 2016, each of which stated that if Lowry did not make consistent and timely payments each and every month, he could or would lose his property.

On June 7, 2016, the Oakland County Treasurer **[*3]** filed a petition to collect the taxes and fees that Lowry owed on the property. On February 8, 2017, the Oakland County Circuit Court entered a judgment of foreclosure against Lowry's property. The court ordered that if the delinquent taxes and fees were not paid by March 31, 2017, fee simple title would vest in the Oakland County Treasurer. On March 31, 2017, Lowry entered into another payment plan with the Oakland County Treasurer, and the plan provided that it was "valid until February 2018." On the same day, Lowry paid $6,361.10 to resolve his delinquent taxes from 2013, but he still had outstanding delinquent taxes from 2014 and 2015 in the amounts of $4,769.33 and $5,301.41, respectively. Nonetheless, because Lowry had not paid "all forfeited delinquent taxes, interest, penalties and fees" on or before March 31, 2017, as ordered by the court, title in the property vested with the Oakland County Treasurer.

Under the *Michigan General Property Tax Act*, the state of Michigan has a right of first refusal on properties subject to a tax foreclosure. *M.C.L. § 211.78m(1)* (effective until December 31, 2020). If the state does not exercise its right of first refusal, then the local government can buy the foreclosed **[*4]** property for a "public purpose" by paying the "minimum bid." *Id.* The statute in effect at the time stated:

> If this state elects not to purchase the property under its right of first refusal, a city, village, or township may purchase for a public purpose any property located within that city, village, or township set forth in the judgment and subject to sale under this section by payment to the foreclosing governmental unit of the minimum bid.

M.C.L. § 211.78m(1) (effective until December 31, 2020).

On July 31, 2017, the Oakland County Treasurer sold the property to the City of Southfield for $14,496.50, the amount of outstanding property taxes owed by Lowry. The City of Southfield then executed a quit-claim deed to convey the property to the Southfield Neighborhood Revitalization Initiative ("SNRI") for one dollar. Lowry alleges that his property had an assessed value of $104,100 and a fair market value of $***152,000*** at the time of the foreclosure. On September 29, 2017, SNRI sent Lowry a notice to quit the property by October 29, 2017. After Lowry failed to vacate the property, SNRI filed a complaint in the 46th Judicial District Court of Michigan. The court granted SNRI's motion for summary disposition **[*5]** on April 9, 2018, and the Oakland County Circuit Court dismissed Lowry's appeal as untimely.

Lowry filed a Chapter 13 bankruptcy plan in late 2018. On January 30, 2019, Lowry filed an adversary complaint against the Oakland County Treasurer and SNRI in the U.S. Bankruptcy Court for the Eastern District of Michigan. Lowry argued that the county's foreclosure process denied him due process in violation of the state and federal constitutions. Lowry also asserted that the fraudulent transfer provision of the Bankruptcy Code permitted the court to avoid the tax foreclosure. *11 U.S.C. § 548(a)(1)(B)*. The fraudulent transfer provision in relevant part provides:

> (a)(1) The trustee may avoid any transfer . . . of an interest of the debtor in property, or any obligation . . . incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily—
> * * *
> (B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and
> (ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation.

11 U.S.C. § 548(a)(1)(B)(i)-(ii)(I).

Lowry then filed another **[*6]** adversary complaint against the Oakland County Treasurer and SNRI on May 16, 2019. Lowry again argued that he was denied due process and that *§ 548* permitted the court to avoid the tax foreclosure. On June 4, 2019, SNRI filed an amended motion for summary judgment. Lowry filed an emergency motion in the Oakland County Circuit Court to set aside the judgment of foreclosure, and the circuit court denied his motion on June 19, 2019.

The bankruptcy court orally granted SNRI's motion for summary judgment. The court determined that the ***Rooker-Feldman*** doctrine mandated dismissal because Lowry was attempting to relitigate the foreclosure proceedings from state court. The court also concluded that the rule in *BFP* should extend to tax foreclosures in Michigan. *See 511 U.S. 531, 544-45, 114 S. Ct. 1757, 128 L. Ed. 2d 556 (1994)*. The Supreme Court had held in *BFP* that if the foreclosing authority followed state law in a mortgage foreclosure sale, the sale price was the "reasonably equivalent value" of the property for purposes of *§ 548*. *See id.* The bankruptcy court extended that holding to a tax foreclosure, even where the state foreclosure proceeding required no arguable determination of the value of the property. Finally, the court determined that Lowry could not use *§ 548* to **[*7]** avoid the transfer, because "at the very least the expiration of the redemption period following the judgment of foreclosure cuts off" Lowry's ability to challenge the tax foreclosure. Lowry appealed the bankruptcy court's judgment to the district court, arguing that the ***Rooker-Feldman*** doctrine did not bar jurisdiction, that the rule in *BFP* should not be extended to Michigan tax foreclosures, and that *§ 548* could still apply even though the redemption period had expired.

The district court on appeal decided only the ***Rooker-Feldman*** issue and affirmed the judgment of the bankruptcy court on that basis. The court first dealt with the Oakland County Treasurer's argument that Lowry lacked statutory standing under *§ 548* because he was not insolvent. Noting that Lowry failed to respond to this argument in his reply brief, the court indicated without holding "that Lowry may, in fact, lack standing." The court proceeded to reject the Treasurer's assertion that Lowry had waived his right to appeal the ***Rooker-Feldman*** issue. The court held that ***Rooker-Feldman*** barred review because Lowry's appeal would require the court to revisit a fully-litigated state court decision. The court concluded that Lowry's arguments **[*8]** were "nothing more than an attempt to gain review of the state court's ruling." The court denied Lowry's motion for a rehearing, and Lowry filed a notice of appeal on July 20, 2020.

The Oakland Country Treasurer filed a motion to dismiss for lack of jurisdiction, arguing that Lowry's failure to address the statutory standing issue (whether he was actually insolvent) in the district court constituted waiver. A panel of this court denied the motion to dismiss, because "when the bankruptcy court ruled that Lowry could not avoid the transfer, his pecuniary interest in his home was directly and adversely affected." We interpret this panel ruling as a determination that Lowry had Article III standing to appeal rather than as a ruling on the insolvency issue. The panel explicitly stated that there remain "significant questions about insolvency and the merits of Lowry's underlying claim." The parties, however, have not briefed the insolvency issue on this appeal.

Turning to the issue that the district court did rely upon, the

Rooker*-*Feldman doctrine does not apply here because this appeal does not involve a review of the merits of a state court judgment. ***HN1***[↑] It is now clear that the doctrine may **[*9]** only be applied in "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005)*. Lowry's alleged injury in this case is not the state court foreclosure judgment, but instead is the fact that he could not use *§ 548* to avoid the foreclosure as a fraudulent transfer. Although the *§ 548* issue is closely related to the state foreclosure judgment, that by itself does not mean that ***Rooker*-*Feldman*** applies. ***HN2***[↑] The Supreme Court has stated that "[i]f a federal plaintiff presents an independent claim, it is not an impediment to the exercise of federal jurisdiction that the same or a related question was earlier aired between the parties in state court." *Skinner v. Switzer, 562 U.S. 521, 532, 131 S. Ct. 1289, 179 L. Ed. 2d 233 (2011)* (cleaned up). Furthermore, exercising jurisdiction does not involve our "review and rejection" of the state court judgment. *See Exxon, 544 U.S. at 284*. We can assume that the state court reached a proper foreclosure judgment, and then independently decide whether the foreclosure could be avoided as a fraudulent transfer under *§ 548*. The Third Circuit ruled this way in very similar circumstances. *See In re Philadelphia Ent. & Dev. Partners, 879 F.3d 492, 500-01 (3d Cir. 2018)*.

HN3[↑] The Supreme Court has warned **[*10]** the lower courts against applying ***Rooker*-*Feldman*** too broadly. *See Skinner, 562 U.S. at 531-32*; *Exxon, 544 U.S. at 280-81*. In *Lance v. Dennis*, the Court noted that "[n]either ***Rooker*** nor ***Feldman*** elaborated a rationale for a wide-reaching bar on the jurisdiction of lower federal courts, and our cases since ***Feldman*** have emphasized the narrowness of the ***Rooker*-*Feldman*** rule." *546 U.S. 459, 464, 126 S. Ct. 1198, 163 L. Ed. 2d 1059 (2006)*. ***Rooker*-*Feldman*** should be used "only [in] an exceedingly narrow set of cases," and the main inquiry is whether the "source of the plaintiff's injury is the state-court judgment itself." *VanderKodde v. Mary Jane M. Elliott, P.C., 951 F.3d 397, 400, 402 (6th Cir. 2020)*.

The bankruptcy court's alternative reliance on the Supreme Court's decision in *BFP* does not provide an alternative basis for ruling against Lowry. The Supreme Court's rule in *BFP* does not apply to the facts of this case. The Court held in *BFP* that the price received at a mortgage foreclosure sale conclusively established "reasonably equivalent value" of the mortgaged property for *§ 548* purposes. *See 511 U.S. at 545*. The result is that if state law is followed in a mortgage foreclosure sale, the debtor cannot use *§ 548* to avoid the foreclosure as a fraudulent transfer. Unlike *BFP*, however, this case involves a tax foreclosure, not a mortgage foreclosure, and in *BFP* the Court explicitly declined to decide whether the rule applied **[*11]** to tax foreclosures. The Court noted that "our opinion today covers only mortgage foreclosures of real estate," and "[t]he considerations bearing upon other foreclosures and forced sales (to satisfy tax liens, for example) may be different." *Id. at 537 n.3*. The tax foreclosure process here was also significantly different from the mortgage foreclosure system in *BFP*. The debtor's home in *BFP* was sold for $433,000 in a foreclosure sale that provided sufficient procedural protections under state law. *See id. at 534, 541-42, 545-46*. In contrast, the Michigan foreclosure law here permitted the local government to purchase the property, without a public auction, for the "minimum bid." *M.C.L. § 211.78m(1)* (effective until December 31, 2020). The city bought Lowry's property for $14,496 (the amount of outstanding taxes due), an amount that had no apparent relation to the value of the property and was only about ten percent of the alleged fair-market value. The Michigan law also permitted the foreclosing government authority to retain the "surplus proceeds" from a foreclosure sale, which the Michigan Supreme Court recently held violated the takings clause of the state constitution. *See Rafaeli, LLC v. Oakland Cty., 505 Mich. 429, 952 N.W.2d 434, 440 (Mich. 2020)*. The Michigan tax foreclosure system is thus distinguishable from the **[*12]** mortgage foreclosure process addressed in *BFP*, so the rule in *BFP* does not apply to the facts of this case.

It is true that the foreclosure sale in *BFP* did not necessarily result in fair market value, but it was at least somewhat correlated to the value of the property in the not-purely-market conditions of a statutory foreclosure sale. This is simply not the case when a tax foreclosure sale focuses on the value of the taxes owed rather than on the value of the property. This distinction of *BFP* is persuasively supported by the Seventh Circuit's opinion in *In re Smith*, where the court held that *BFP* did not extend to the state court tax foreclosure at issue. *See 811 F.3d 228, 234 (7th Cir. 2016)*. The Seventh Circuit emphasized that in the tax foreclosure process at issue, "bidders bid how *little* money they are willing to accept in return for payment of the owner's delinquent taxes." *Id. at 234* (emphasis in original). Consequently, unlike in a mortgage foreclosure sale, "the bid amounts bear no relationship to the value of the underlying real estate." *See id*; *cf. In re Tracht Gut, LLC, 836 F.3d 1146, 1149, 1153-55 (9th Cir. 2016)*.

The two primary arguments for affirming the lower court's dismissal of Lowry's constructive fraudulent transfer claim are accordingly insufficient at this juncture. Two remaining arguable **[*13]** alternative bases for dismissing the *§ 548* claim have not been adequately developed or resolved in the

lower courts. First, the lower courts did not decide the threshold issue of whether Lowry satisfies the insolvency requirement of *§ 548*. The portion of *§ 548* at issue here only applies if the debtor "was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation." *11 U.S.C. § 548(a)(1)(B)(ii)*. The district court briefly referred to the insolvency issue but did not decide it. The briefs before us do not address the issue at all.

Second, while the bankruptcy court held in the alternative that *§ 548* cannot be used to avoid a foreclosure as a fraudulent transfer once the property has been sold and the state redemption period has expired, there are two concerns with that conclusion that have not been addressed below or in the briefs before us. First, the parties point to caselaw from our circuit in which we have adopted that time limitation for curing mortgage foreclosures, and they argue whether we should do the same with the tax foreclosure here. *See, e.g.*, *In re Cain, 423 F.3d 617 (6th Cir. 2005)*. But that caselaw and limitation is grounded in *11 U.S.C. § 1322(c)(1)*, which provides that "[n]otwithstanding **[*14]** *subsection (b)(2)* and applicable nonbankruptcy law . . . a default with respect to, or that gave rise to, a lien on the debtor's principal residence may be cured under paragraph (3) or *(5)* of [*§ 1322(b)*] until such residence is sold at a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law." This statutory language most specifically addresses the situation of when a home mortgage foreclosure can be cured so as to bring the property into the bankruptcy estate, though some bankruptcy courts have applied *§ 1322* in the context of tax foreclosures. *See, e.g.*, *In re Martin, 496 B.R. 323 (Bankr. S.D.N.Y. 2013)*. But whether *§ 1322(c)(1)* applies to Michigan tax foreclosures was not relied upon or addressed below, and the parties have not adequately argued or briefed the issue here. Second, the parties have not addressed the interplay between *§ 1322* and *§ 548*. *Section 548* itself permits the undoing—within two years before bankruptcy—of constructive fraudulent transfers of property transferred without any other encumbrance or basis for retaining an interest, thus suggesting the possible argument that time limits for cure under *§ 1322* are not the same as time limits for *§ 548* purposes. We do not opine on the merits of these arguments, but because "we are a court of review, not first view," we leave them **[*15]** for consideration by the courts below in the first instance. *See Taylor v. City of Saginaw, Mich., 11 F.4th 483, 489 (6th Cir. 2021)*.

We reverse the judgment of the district court and remand to that court for proceedings consistent with this opinion. The district court may in its discretion further remand the case to the bankruptcy court.

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