

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

In re:

Joseph Anthony Uzzolino,

Debtors.

Hon. Michael B. Kaplan

Lead Case No. 14-11429 (MBK)

Chapter 7

**ORDER DENYING MOTION TO JUDICIALLY ESTOP DEBTOR JOESPH ANTHONY
UZZOLINO FROM RECEIVING ANY DISTRIBUTION PURSUANT TO 11 U.S.C. § 726**

The relief set forth on the following pages, numbered two (2) through nine (9), is hereby
ORDERED.

THIS MATTER having come before the Court upon the motion (the “Motion”) by *Michael J. Mitrow, Tony Petracca, Rae Marie Mitrow, Marie Petracca, Nickolas Mitrow, Ashley Mitrow, Christina Mitrow, Brian Mitrow, Isabella Mitrow and Matthew Mitrow* (collectively, the “Movants”), for the entry of an order judicially estopping *Joseph Anthony Uzzolino* (the “Debtor”), from receiving any distribution pursuant to 11 U.S.C. § 726; and having considered the Motion, the responses thereto, and the Court having held a hearing on the Motion on August 27, 2018 (the “Hearing”), with oral argument; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and for the reasons set forth hereinafter in the incorporated Findings of Fact and Conclusions of Law, and for good cause shown, it is hereby

ORDERED THAT:

1. The Motion is DENIED as set forth herein.
2. The Chapter 7 trustee shall administer the Debtor’s estate in accordance with the statutory distribution scheme set forth under 11 U.S.C. § 726, with any surplus to be paid to the Debtor.
3. This Court shall retain jurisdiction over all matters relative to the interpretation and implementation of this Order.

Findings of Fact and Conclusions of Law

- A. The Court has jurisdiction over this contested matter under 28 U.S.C. §§ 1334(a) and 157(a) and the Standing Order of the United States District Court dated July 10, 1984, as amended September 18, 2012, referring all bankruptcy cases to the bankruptcy court. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A) and (O). Venue is proper in this Court pursuant to 28 U.S.C. § 1408. The following constitutes the

Court's findings of fact and conclusions of law as required by FED. R. BANKR. P. 7052.¹

- B. On January 28, 2014 (the "Petition Date"), the Debtor filed with this Court a voluntary petition for relief under chapter 7 of the Bankruptcy Code. In his bankruptcy schedules and Statement of Financial Affairs, the Debtor failed to disclose any financial interest in Access Communications, Inc. ("Access").
- C. On January 24, 2014, Barry R. Sharer was appointed chapter 7 trustee (the "Trustee") for the Debtor's bankruptcy estate. *See* ECF No. 3.
- D. On February 24, 2014, the 341 Meeting of Creditors was held. Again, the Debtor did not disclose any financial interest in Access.
- E. On April 1, 2014, the Trustee filed his Report of No Distribution. On September 19, 2014, the Debtor received a discharge and thereafter, on September 23, 2014, the Court closed the case. *See* ECF No. 20 & Docket Generally.
- F. On June 3, 2015, the Debtor filed suit against the Movants in the Superior Court of New Jersey, Law Division, Ocean County, Docket No. OCN-L-1562-15 (the "State Court Action") alleging that he was owed \$14,000,000 for the sale of Access, a company in which the Debtor had held an equity interest.
- G. On June 10, 2016, the Movants filed a motion for summary judgment in the State Court Action, seeking to dismiss the Debtor's claims based on judicial estoppel. Subsequently, Movants withdrew the motion and awaited proceedings in the bankruptcy court.
- H. On September 23, 2016, the Trustee filed a motion to reopen the Debtor's bankruptcy case in order to pursue the State Court Action, and on September 29, 2016, the Court

¹ To the extent that any of the findings of fact might constitute conclusions of law, they are adopted as such. Conversely, to the extent that any conclusions of law constitute findings of fact, they are adopted as such.

granted the Trustee's motion. *See* ECF Nos. 23 & 29. The Trustee was directed by the Court to pursue the State Court Action for the benefit of the bankruptcy estate.

- I. On June 20, 2018, after trial, the jury in the State Court Action returned a verdict against the Movants and in favor of the Trustee in the amount of \$5,000,000.
- J. On July 9, 2018, the Movants' filed a Motion for a New Trial, Remittitur, or to Mold the Jury Verdict in the State Court Action (the "Remittitur Motion").
- K. On August 13, 2018, Movants filed the **Motion** presently before this Court seeking to judicially estop Debtor from receiving any distribution pursuant to 11 U.S.C. § 726. *See* ECF No. 54. On August 22, 2018, the Trustee filed an objection to the Motion, *see* ECF No. 66, and the Movants filed a reply memorandum in further support of the Motion on August 24, 2018, *see* ECF No. 67. Following the August 27, 2018 hearing on the Motion, the Court requested supplemental briefing from the parties. On September 17, 2018, the Movants filed a supplemental brief in support of their Motion, *see* ECF No. 73, and on September 27, 2018, the Trustee filed a response to that submission, ECF No. 74. Finally, on October 2, 2018, the Trustee filed an additional supplemental brief in opposition to the Motion. *See* ECF No.75.

Movants' Motion

- L. The motion before the Court seeks to bar Debtor from receiving any distribution from his bankruptcy estate under a theory of judicial estoppel. The Movants contend that the Debtor should be precluded from profiting from his state court claims because of the inconsistent positions he has taken with respect to disclosure of his interest in Access. It is undisputed that the Debtor did not disclose his financial interest in Access in his

bankruptcy schedules or Statement of Financial Affairs, or at the 341 Meeting of Creditors, and then (after closure of his bankruptcy case) brought suit against the Movants in state court alleging that he was owed approximately \$14,000,000 from the sale proceeds of Access, arguing for the application of judicial estoppel, Movants seek to prevent the Debtor from receiving any recovery from the state court judgment as a surplus distribution in his bankruptcy case. For the reasons given below, the Movants' motion is denied.

Application of the Rooker-Feldman Doctrine

M. To begin, this Court lacks jurisdiction pursuant to the *Rooker-Feldman* doctrine. As explained by the United States Supreme Court, the *Rooker-Feldman* doctrine is a statutory-based doctrine which stands for the proposition that lower federal courts cannot sit in direct review of state court decisions. *see District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, (1923). The doctrine divests the court of subject matter jurisdiction and may be raised at any time by either party or by the court sua sponte. *Desi's Pizza, Inc. v. City of Wilkes-Barre*, 321 F.3d 411, 419 (3d Cir. 2003); *Nesbit v. Gears Unlimited, Inc.*, 347 F.3d 72, 77 (3d Cir. 2003). "Under the Rooker-Feldman doctrine, a district court is precluded from entertaining an action, that is, the federal court lacks subject matter jurisdiction, if the relief requested effectively would reverse a state court decision or void its ruling." *Taliaferro v. Darby Township Zoning Bd.*, 458 F.3d 181, 192 (3d Cir. 2006). "[A]pplication of the *Rooker-Feldman* doctrine is necessarily limited to '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.’” *Taliaferro*, 458 F.3d at 192 (quoting *Exxon Mobile Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005)).

N. The *Rooker-Feldman* doctrine bars review by the federal court when four requirements are met: (1) the federal plaintiff lost in state court; (2) the plaintiff complains of injuries caused by the state-court judgment; (3) the judgment was rendered before the federal lawsuit was filed; and (4) the plaintiff is inviting the district court to review and reject the state judgment. *Great W. Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 166 (3d Cir. 2010). *Rooker-Feldman* will bar a claim if the federal claim was actually litigated in state court before the filing of a federal action or if the federal claim is "inextricably intertwined with the state adjudication." *In re Madera*, 586 F. 3d 228, 222 (3d Cir. 2009). If the relief sought in federal court demands a determination that the state court's decision was wrong or the federal court's relief would void the state court's ruling, then the claims are inextricably intertwined, and the federal claim cannot proceed. *ITT Corp. v. Intelnet Int'l*, 366 F.3d 205, 211 (3d Cir. 2004).

O. In this case, all four requirements of the *Rooker-Feldman* doctrine are met, and this Court is without standing to reconsider the Movants’ judicial estoppel argument. First, the Movants in this matter lost the State Court Action² and their post-trial Remittitur Motion was denied. Second, the Movants are dissatisfied with the state court jury verdict which resulted in a \$5,000,000 judgment. Third, the jury verdict was returned on June 20, 2018, nearly two months before the filing of the August 13th motion to judicially estop the Debtor from receiving any distribution. Finally, the Movants are, through their Motion, essentially

² Pertinently, Movants included in their answer in the State Court Action a fourth affirmative defense of “estoppel”, while also filing (and ultimately withdrawing) a summary judgment motion specifically bottomed on the judicial estoppel defense.

asking this Court to reconsider the jury's verdict in the State Court Action. Furthermore, this dispute was fully litigated through trial by jury at the state court level, and relief in this Court would necessitate revisiting the jury's findings. Therefore, all four requirements under the *Rooker-Feldman* Doctrine are satisfied, the claim before this Court is the same claim that was "actually litigated" and inextricably intertwined with in the State Court Action.

Application of the Collateral Estoppel Doctrine

- P. To the extent that the *Rooker-Feldman* Doctrine does not apply, the issue presented to this Court is likewise precluded by the doctrine of collateral estoppel.
- Q. This doctrine precludes relitigation of the questions put in issue and determined adversely to the party against which the estoppel is asserted. *N.J.-Phila. Presbytery of the Bible Presbyterian Church v. N.J. State Bd. of Higher Educ.*, 654 F.2d 868, 876 (3d Cir.1981) (quoting *City of Plainfield v. Public Serv. Gas and Elec.*, 82 N.J. 245, 412 (1980)). For collateral estoppel to apply, the following four elements must be satisfied:

- (1) the identical issue was previously adjudicated;
- (2) the issue was actually litigated;
- (3) the previous determination was necessary to the decision; and
- (4) the party being precluded from relitigating the issue was fully represented in the prior action.

Howard Hess Dental Labs. Inc. v. Dentsply Int'l, Inc., 602 F.3d 237, 247–48 (3d Cir. 2010) (quoting *Szehinskyj v. Att'y Gen.*, 432 F.3d 253, 255 (3d Cir. 2005)). The Third Circuit set out the proper method for determining whether collateral estoppel applies in a bankruptcy case in *Haize v. Hanover Ins.*, 536 F.2d 576, 579 (3d Cir.1976). Whether the standard for collateral estoppel is satisfied requires a determination be made in the first instance by the bankruptcy judge, after careful review of the record of the prior case, the making of

findings of fact and conclusions of law, and a hearing at which the parties can offer evidence. *Id.*

R. Here, all of the elements of collateral estoppel are present, thus the Movants are precluded from relitigating the issue of judicial estoppel. The affirmative defense of “estoppel” was included in the filed answer and “judicial estoppel” was more pointedly addressed as part of a summary judgment motion brought by Movants and subsequently withdrawn. The issue was actually litigated and considered by the jury and then subsequently by the judge when he heard and decided Movants’ Remittitur Motion. The previous determination was necessary to the decision, and the jury’s refusal to accept that argument contributed to the \$5,000,000 judgment in favor of the Trustee. The Movants were the defendants in the State Court Action, and, as such, they were the original parties to have litigated this issue, and they were fully represented in the prior proceeding. The parties have had ample opportunity in the pending Motion to offer evidence and have filed objections, memos, briefs, supplemental briefs, letters, responses, along with a host of exhibits. Therefore, the elements of collateral estoppel have been satisfied and the Court has considered its applicability in keeping with the *Haize* decision. Movants are collaterally estopped from having the issue of judicial estoppel revisited by this Court.

Application of U.S. Supreme Court Decision in Law v. Siegel

S. While the Court could end its analysis at this juncture, the interest of the parties are better served by also undertaking an analysis of the merits. Indeed, to the extent the Court were to bypass the Rooker-Feldman doctrine and collateral estoppel doctrines, the Motion would nevertheless be denied on its merits because Movants’ request exceeds the equitable authority granted bankruptcy judges under § 105 of the Bankruptcy Code. “It is hornbook

law that § 105(a) ‘does not allow the bankruptcy court to override explicit mandates of other sections of the Bankruptcy Code.’” *Law v. Siegel*, 571 U.S. 415, 421 (2014) (citing 2 Collier on Bankruptcy ¶ 105.01[2], p. 105–6 (16th ed. 2013)). Section 105(a) authorizes the court to implement the provisions of the Code, but it is quite impossible to do that by taking action that controverts the Code. “That is simply an application of the axiom that a statute's general permission to take actions of a certain type must yield to a specific prohibition found elsewhere.” *Siegel*, 571 U.S. at 421. The equitable powers that remain in bankruptcy courts must be exercised within the confines of the Bankruptcy Code. *Id.*

T. In the present case, the Movants are essentially asking the Court to use its equitable powers under § 105 to contravene the Code. The Court is not permitted to employ § 105 to circumvent the statutory distribution scheme laid out in § 726. Pursuant to § 726, any funds that remain after all creditors and administrative expenses have been paid must be returned to the Debtor. § 726(a)(6); *see also e.g., In re Hart*, 478 B.R. 710, 715 (Bankr. W.D. Pa. 2012) (holding that the Bankruptcy Code mandated return of any surplus funds to the debtor). Therefore, the surplus funds must be paid to the Debtor and the Movants’ motion must be denied.

Application of the “Unclean Hands” Doctrine

U. Finally, even if all of the above were overcome, this Court would not be inclined to grant equitable relief to Movants given their prior adjudicated duplicity, which resulted in a \$5,000,000 judgment.

V. The doctrine of unclean hands will deny equitable relief “when the party seeking relief is guilty of fraud, unconscionable conduct, or bad faith directly related to the matter at

issue that injures the other party and affects the balance of equities.” *Saudi Basic Indus. Corp. v. ExxonMobil Corp.*, 401 F.Supp.2d 383, 386 (D.N.J. 2005) (citing *Paramount Aviation Corp. v. Agusta*, 178 F.3d 132, 147 n. 12 (3d Cir.1999)). The maxim of unclean hands mandates that “he who comes into equity must come with clean hands.” *MedPointe Healthcare Inc. v. Hi-Tech Pharmacal Co.*, 380 F.Supp.2d 457, 463 (D.N.J. 2005) (citing *Precision Inst. Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814 (1945)).

W. The Movants wrongfully withheld proceeds from the sale of Access, which should, by rights, have gone to the Debtor. Thus, their prior conduct was unconscionable, and their hands are unclean. The Court, therefore, cannot in good conscious grant the requested equitable relief.