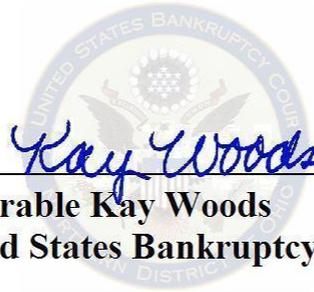


IT IS SO ORDERED.



Dated: November 09, 2007  
11:36:49 AM

Honorable Kay Woods  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

IN RE:

VICTORIA JEAN CHUCK, a/k/a  
VICTORIA JEAN BROWN, a/k/a  
TORI CHUCK,

Debtor.

ANDREW W. SUHAR, Trustee,

Plaintiff,

vs.

HENRY SCHNELL and  
DOUGLAS E. CHUCK,

Defendants.

CASE NUMBER 06-41201

ADVERSARY NUMBER 07-4077

HONORABLE KAY WOODS

MEMORANDUM OPINION REGARDING DEFENDANTS' MOTIONS TO DISMISS AND  
TRUSTEE'S MOTIONS FOR JUDGMENT ON THE PLEADINGS  
Not Intended For National Publication

The following opinion and order are not intended for national publication and carry limited precedential value. The availability of this opinion by any source other than [www.ohnb.uscourts.gov](http://www.ohnb.uscourts.gov) is

not the result of direct submission by this Court. The opinion is available through electronic citation at [www.ohnb.uscourts.gov](http://www.ohnb.uscourts.gov) pursuant to the E-Government Act of 2002 (Pub. L. No. 107-347).

Before the Court is Defendant Henry Schnell's Motion to Dismiss filed August 20, 2007 (Doc. # 16). Although filed separately on August 28, 2007, Defendant Douglas E. Chuck's Motion to Dismiss (Doc. # 28) is, for all practical purposes, identical to Defendant Schnell's motion, and, therefore, both motions ("Motions to Dismiss") are dealt with together herein. In response to the Motions to Dismiss, on August 27, and September 10, 2007, respectively, Plaintiff Andrew W. Suhar, Chapter 7 Trustee ("Trustee") filed Andrew W. Suhar, Trustee's Brief in Opposition to Motion to Dismiss and Cross Motion for Judgment on the Pleadings as to Count III (Doc. # 23) and Andrew W. Suhar, Trustee's Brief in Opposition to Motion to Dismiss and Cross Motion for Judgment on the Pleadings as to Count VII (Doc. # 37).<sup>1</sup>

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and the general order of reference (District Court General Order No. 84) entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A),

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<sup>1</sup>As with the Motions to Dismiss, Trustee's briefs are substantially similar, differing substantively only in their respective cross motions. They are referred to throughout collectively as "Trustee's Briefs in Opposition" or "Trustee's Cross Motions."

(H), (K) and (O). The following constitutes the Court's findings of fact and conclusions of law pursuant to FED. R. BANKR. P. 7052.

### I. FACTS

Debtor Victoria Jean Chuck<sup>2</sup> ("Debtor") was married to Defendant Douglas E. Chuck ("Chuck") for seventeen years. While Debtor and Chuck were married, Defendant Henry Schnell ("Schnell"), Chuck's grandfather, provided funds<sup>3</sup> to Debtor and Chuck, ostensibly to enable them to purchase land and construct a house on property located at 10240 Stookesberry Road, Elkrun Township, Columbiana County, Ohio ("Property"). Debtor and Chuck jointly owned the Property. On December 29, 2003, Debtor and Chuck executed (i) a mortgage deed ("Mortgage") securing the Property, and (ii) a cognovit note ("Note") in the amount of \$336,800 payable to Schnell.

On April 8, 2004, Chuck filed for divorce in the Columbiana County Court of Common Pleas ("Columbiana Court"), Case No. 2004 DR 00201, styled *Chuck v. Chuck* ("Divorce Case"). While the Divorce Case was pending, on December 9, 2004, Schnell took judgment on the Note ("Judgment") in the amount of \$356,453.52, in the Columbiana Court, Case No. 2004 CV 01155. On December 10, 2004, Schnell recorded the Judgment in the judgment lien records for Columbiana

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<sup>2</sup>Debtor's Voluntary Petition also lists alias names of Victoria Jean Brown and Tori Chuck.

<sup>3</sup>Whether this money was a gift or loan is disputed by Trustee and Defendants. This disputed fact is not relevant to the Court's decision on the Motions to Dismiss.

County.

On March 6, 2006, Debtor and Chuck filed written stipulations ("Stipulations") in the Divorce Case, wherein they stipulated:

[Debtor] shall quit claim her interest in [the Property to Chuck] and he shall retain exclusive possession and ownership of [the Property] free and clear of claim of the [Debtor]. [Debtor] disclaim[s] any [equity] interest in [the Property to the extent] any such equity interest may exist[.] . . . In addition, [Chuck] shall be responsible for attempting to reconstitute the [Mortgage] indebtedness so as to remove [Debtor] from any liability on same.

(Compl. Ex. 4.) On March 17, 2006, the Columbiana Court issued a Judgment Entry of Divorce in the Divorce Case, specifically incorporating the Stipulations. On June 1, 2006, Debtor executed a quit claim deed ("Deed") transferring ownership of the Property to Chuck. The Deed was not recorded in the Columbiana County Recorder's Office, however, until March 2, 2007.

Debtor filed her voluntary petition pursuant to chapter 7 of the Bankruptcy Code on August 7, 2006; she was granted a discharge on December 4, 2006 (Doc. # 21). On June 19, 2007, Trustee filed Adversary Proceeding to Determine the Validity, Priority or Extent of a Lien or Other Interest in Property; To Avoid a Fraudulent or Preferential Transfer; To Recover Money or Property; To Obtain a Declaratory Judgment Relating to the Foregoing and Other Relief ("Complaint"). The Complaint seeks: (i) to avoid the transfer of the Debtor's interest in the Property as fraudulent, (ii) to compel Schnell and Chuck to return the value of Debtor's interest in the

Property to Debtor's estate, and (iii) punitive damages. After the motions and briefs outlined above were filed, on September 7, 2007, Trustee filed an amended Complaint ("Amended Complaint") adding "Count V-Fraudulent Transfer Federal Law-Deed" (Doc. # 33, ¶¶ 43-48).<sup>4</sup>

## II. ANALYSIS

### A. Defendants' Motions to Dismiss

#### 1. Subject Matter Jurisdiction and the Rooker-Feldman Doctrine

Rule 12(b)(1) of the Federal Rules of Civil Procedure, made applicable to this adversary proceeding by FED R. BANKR. P. 7012(b), permits a court to dismiss a complaint for lack of subject matter jurisdiction. Lack of subject matter jurisdiction "may be raised at any time, by any party, or even *sua sponte* by the court itself." *Superior Bank, FSB v. Boyd (In re Lewis)*, 398 F.3d 735, 739 (6th Cir. 2005); see also FED. R. CIV. P. 12(h)(3). Any ruling made by a court lacking subject matter jurisdiction is void *ab initio*. The parties themselves cannot consent to subject matter jurisdiction, "nor can it be waived." *Alongi v. Ford Motor Co.*, 386 F.3d 716, 728 (6th Cir. 2004). "[I]f jurisdiction is lacking, dismissal is mandatory." *Campanella v. Commerce Exch. Bank*, 137 F.3d 885, 890 (6th Cir. 1998).

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<sup>4</sup>The addition of Count V appears to be the only change from the Complaint.

Where a defendant challenges a court's subject matter jurisdiction, the plaintiff has the burden of proving jurisdiction exists. *Rogers v. Stratton Indus., Inc.*, 798 F.2d 913, 915 (6th Cir. 1986). There are two ways in which subject matter jurisdiction may be challenged: (i) facially, where defendant challenges the sufficiency of the pleadings and (ii) factually. 2 JAMES WM. MOORE ET AL., *MOORE'S FEDERAL PRACTICE* § 12.30[4] (3d ed. 2002). A facial challenge to subject matter jurisdiction provides plaintiff "safeguards similar to those provided in opposing a Rule 12(b)(6) motion. . . . When the attack is factual, however, 'the trial court may proceed as it never could under [Rule] 12(b)(6) or [Rule] 56.'" *Id.* (alterations in original).

In reviewing a facial attack, a trial court accepts the allegations in the complaint as true. On the other hand, when a court reviews a complaint under a factual attack, the allegations have no presumptive truthfulness, and the court that must weigh the evidence has discretion to allow affidavits, documents, and even a limited evidentiary hearing to resolve disputed jurisdictional facts.

*Id.* See also *The Ohio Nat'l Life Ins. Co. v. United States*, 922 F.2d 320, 325 (6th Cir. 1990) (A reviewing court takes the allegations as true in a facial attack but no presumption of truthfulness applies in a factual attack). Thus, unlike a Rule 12(b)(6) motion converted to a motion for summary judgment, the existence of disputed material facts does not preclude a court from dismissing a complaint for lack of subject matter jurisdiction.

## 2. Defendants' Argument

In their Motions to Dismiss, Defendants argue that the *Rooker-Feldman* doctrine divests this Court of jurisdiction because “[t]he Bankruptcy Court lacks subject matter jurisdiction to review and void previously issued state court decisions involving Victoria Chuck and Henry Schnell.” (Schnell Mot. to Dismiss at 1; Chuck Mot. to Dismiss at 1.) While Defendants are correct that the *Rooker-Feldman* doctrine prohibits the losing party in state court from seeking appellate review of the state court judgment by a United States district court, they have misinterpreted the doctrine’s application to the facts of this case.

In *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005), the Supreme Court clarified the application of the *Rooker-Feldman* doctrine. The Court noted “th[is] doctrine has sometimes been construed to extend far beyond the contours of the *Rooker* and *Feldman* cases, overriding Congress’ conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts, and superseding the ordinary application of preclusion law pursuant to 28 U.S.C. § 1738.” *Id.* at 283. The Supreme Court held:

The *Rooker-Feldman* doctrine . . . is confined to cases of the kind from which the doctrine acquired its name: 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. *Rooker-Feldman* does not otherwise override or

supplant preclusion doctrine or augment the circumscribed doctrines that allow federal courts to stay or dismiss proceedings in deference to state-court actions.

\* \* \*

If a federal plaintiff "present[s] 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 . . . , then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion."

*Id.* at 284, 293 (quoting *GASH Assocs. v. Rosemont*, 995 F.2d 726, 728 (7th Cir. 1993)(alterations in second paragraph in original). See also *Johnson v. DeGrandy*, 512 U.S. 997, 1005-06 (1994)(*Rooker-Feldman* doctrine bars "a party losing in state court . . . from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights[,]" but the doctrine does not apply to nonparties to the state suit).

Defendants claim that "*Trustee's* Complaint, under a variety of asserted theories, seeks to void the Schnell judgement [sic] in order to attack his promissory note, mortgage and judgment lien." (Schnell Mot. to Dismiss at 8; see also Chuck Mot. to Dismiss at 9)(emphasis added). However, Trustee was not a party to any of the cases in the Columbiana Court.

A litigant who was not a party to the state court litigation, and therefore was unable to appeal the judgment in state court, is not precluded under the *Rooker-Feldman* doctrine

from filing suit in federal district court on the same issue. The Rooker-Feldman doctrine assumes that the proper recourse for an unsuccessful party in state court litigation is to appeal the adverse judgment through the state court system, with discretionary Supreme Court review as the sole possible opportunity for federal review. Thus, it is axiomatic that non-parties in the state court action, with no ability to appeal the state court decision, cannot be bound by the Rooker-Feldman doctrine.

18 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 133.30[3][c][iii] (3d ed. 2002). See also *Exxon Mobil*, 544 U.S. at 284 (Rooker-Feldman doctrine only applies to "cases brought by state court losers."); see also *United States v. Owens*, 54 F.3d 271, 274 (6th Cir. 1995) ("Clearly, a party cannot be said to be appealing a decision by a state court when it was not a party to the case. 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."). Because Trustee was not a party to the state court actions, Defendants cannot claim he is now barred by the *Rooker-Feldman* doctrine from bringing this adversary proceeding.

As this issue is resolved because Trustee was not a party to any of the suits in Columbiana Court, it is not necessary to discuss the separate and independent nature of Trustee's claims.

#### **B. Trustee's Cross-Motions for Judgment on the Pleadings**

Judgment on the pleadings is governed by FED. R. CIV. P. 12(c), which is made applicable to this proceeding pursuant to FED. R. BANKR. P. 7012. Rule 12(c) provides, in pertinent part: "After the

*pleadings are closed* but within such time as not to delay the trial, any party may move for judgment on the pleadings." FED. R. CIV. P. 12(c)(West 2007)(emphasis added).

Judgment on the pleadings is proper, therefore, when all parties have answered, but it is premature prior to such time. See 2 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 12.38 (3d ed. 2002); see also *Habeeba's Dance of the Arts, Ltd. v. Knoblauch*, 2006 U.S. Dist. LEXIS 18114, \*5 (S.D. Ohio 2007)("Courts having addressed this issue have held that 'closed' means every defendant must file an answer before a *Rule 12(c)* motion can be filed. . . . Thus, the pleadings are not closed until all defendants have filed an answer, even when one defendant has filed a motion to dismiss instead of answering."). Based on specific facts, some courts will consider motions for judgment on the pleadings prior to all defendants having answered;<sup>5</sup> however, the circumstances of this case do not warrant such consideration. Neither Schnell nor Chuck has filed an answer to Trustee's Amended Complaint;<sup>6</sup> therefore, Trustee's Cross Motions for Judgment on the Pleadings are denied as premature.

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<sup>5</sup>See, e.g., *Noel v. Hall*, No. CV-99-649-AS, 2005 WL 2007876, \*2 (D. Or. 2005)(Court considered a Rule 12(c) motion where two defendants had not filed an answer five years after being served with complaint because the motion "does not seek to dismiss any claims nor is it based on a factual dispute."); see also, e.g., *Moran v. Peralta Cmty. College Dist.*, 825 F. Supp. 891, 894 (N.D. Cal. 1993)(Where defendant has not been served, and thus "is not yet a party," the disposition of a Rule 12(c) motion "can have no effect on them.").

<sup>6</sup>Chuck filed Answer of the Defendant Douglas E. Chuck (Doc. # 26) to Trustee's original Complaint.

### III. CONCLUSION

Because Trustee was not a party to the lawsuits in Columbiana Court, the *Rooker-Feldman* doctrine does not apply and Defendants' Motions to Dismiss are denied. Because not all parties have answered Trustee's Amended Complaint, Trustee's Cross Motions for Judgment on the Pleadings are also denied.

An appropriate Order will follow.

# # #

IT IS SO ORDERED.



Dated: November 09, 2007  
11:36:49 AM

Honorable Kay Woods  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

IN RE:	*	
	*	
VICTORIA JEAN CHUCK, a/k/a	*	
VICTORIA JEAN BROWN, a/k/a	*	CASE NUMBER 06-41201
TORI CHUCK,	*	
	*	
Debtor.	*	
	*	
*****		
ANDREW W. SUHAR, Trustee,	*	
	*	ADVERSARY NUMBER 07-4077
	*	
Plaintiff,	*	
	*	
vs.	*	HONORABLE KAY WOODS
	*	
HENRY SCHNELL and	*	
DOUGLAS E. CHUCK,	*	
	*	
Defendants.	*	
	*	

\*\*\*\*\*  
ORDER DENYING DEFENDANTS' MOTIONS TO DISMISS AND PLAINTIFF'S  
CROSS MOTIONS FOR JUDGMENT ON THE PLEADINGS ON COUNTS III AND VII  
\*\*\*\*\*

For the reasons set forth in this Court's Memorandum Opinion  
Regarding Defendants' Motions to Dismiss and Trustee's Motions for  
Judgment on the Pleadings entered this date, Defendant Henry

Schnell's Motion to Dismiss and Defendant Douglas E. Chuck's Motion to Dismiss are denied. Andrew W. Suhar, Trustee's Cross Motion for Judgment on the Pleadings as to Count III and Andrew W. Suhar, Trustee's Cross Motion for Judgment on the Pleadings as to Count VII are likewise denied.

# # #