UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW MEXICO

In re: RICHARD JARAMILLO, No. 22-10509-j13

Debtor.

MEMORANDUM OPINION AND ORDER DENYING CREDITOR'S MOTION FOR SUMMARY JUDGMENT

Bank of New York Mellon f/k/a The Bank of New York as Trustee for First Horizon Alternative Mortgage Securities Trust 2004-AA& Mortgage Pass-Through Certificates, Series 2004-AA&, its assignees and/or successors, by and through its servicing agent Nationstar Mortgage, LLC ("Creditor") requests the Court to enter summary judgment granting Creditor relief from the automatic stay.[1] Creditor asserts that a judgment entered in its favor in state court is entitled to preclusive effect under the doctrines of *Rooker-Feldman*, claim preclusion, and issue preclusion, preventing Debtor from contesting its Motion for Relief from Stay.[2] As explained below, *Rooker-Feldman* is inapplicable, and Creditor has not satisfied the elements required for application of issue preclusion or claim preclusion. The Court, therefore, will deny the Motion for Summary Judgment.

SUMMARY JUDGMENT STANDARDS

Summary judgment is appropriate when the movant demonstrates that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a), made applicable to adversary proceedings by Fed. R. Bankr. P. 7056. "[A] party seeking summary judgment always bears the initial responsibility of informing the . . . court of the basis for its motion, and . . .[must] demonstrate the absence of a genuine issue of material

[1] *See* Motion for Summary Judgment – Doc. 73.
[2] *See* Motion for Relief from Stay and Co-Debtor Stay and to Abandon Property Located at 215 Calle Roble, Santa Fe, NM 87501 ("Motion for Relief from Stay" – Doc. 25).

fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Under New Mexico Local Bankruptcy Rule 7056-1(c), the party filing a motion for summary judgment must number all material facts the moving party asserts are not in genuine dispute. NM LBR 7056-1(a). Similarly, the local rules require the party opposing summary judgment to number each fact the responding party contends is in genuine dispute and identify by number each of the movant's alleged facts that is disputed. NM LBR 7056-1(b).

The Court must "examine the factual record and reasonable inferences therefrom in the light most favorable to the party opposing summary judgment" when determining whether summary judgment should be granted. *Wolf v. Prudential Ins. Co. of Am.*, 50 F.3d 793, 796 (10th Cir. 1995) (quoting *Applied Genetics Int'l, Inc. v. First Affiliated Sec., Inc.*, 912 F.2d 1238, 1241 (10th Cir. 1990)). Even so, "[a]ll facts in movant's statement of facts that are properly supported shall be deemed admitted unless respondent specifically controverts them." NM LBR 7056-1(b). The Court must independently determine whether, as a matter of law, the movant is entitled to summary judgment even if no facts are in genuine dispute and regardless of whether the party opposing summary judgment filed a response. *See Reed v. Bennett*, 312 F.3d 1190, 1195 (10th Cir. 2002) (explaining that even if no response to a motion for summary judgment is filed, the court must nevertheless evaluate whether the moving party has "met its initial burden of demonstrating that no material issues of fact remain for trial and the moving party is entitled to judgment as a matter of law.").

DEBTOR'S RESPONSE AND CREDITOR'S MOTION TO STRIKE THE RESPONSE

Debtor filed his response to the Motion for Summary Judgment on January 14, 2023.[3] Because Debtor filed the Response after the deadline fixed in the Court's Order Granting Debtor

[3] *See* Debtor's Response in Opposition for Summary Judgment ("Response" – Doc. 101). Creditor also filed a Reply in Support of Motion for Summary Judgment ("Reply" – Doc. 107).

and Extension of Time to Respond to Motion for Summary Judgment (Doc. 97), Creditor filed a motion to strike the Response as untimely.[4] At a preliminary hearing held January 24, 2023, counsel for Creditor agreed to withdraw the Motion to Strike.[5] To date, Creditor has not withdrawn its Motion to Strike. Consistent with Creditor's commitment to withdraw its Motion to Strike, the Court will deny the Motion to Strike and consider Debtor's Response (and Creditor's Reply) in ruling on the Motion for Summary Judgment.

Debtor's Response does not comply with the requirements of NM LBR 7056-1(b) inasmuch as it fails to identify which of Creditor's numbered facts Debtor contends are in genuine dispute. Nevertheless, Debtor's Response does not contest the fact that Creditor obtained a judgment in state court before Debtor filed his bankruptcy petition. Rather, Debtor contests the facts underlying that judgment, whether he is bound by the judgment, and whether Creditor has standing to seek relief from the automatic stay.[6] Creditor's request for summary judgment is premised on the effect of the prior state court judgment, a legal issue rather than a factual one, apart from what transpired in the state court. Even though Debtor does not contest the existence of the state court judgment, the Court must independently determine whether, as a matter of law, Creditor is entitled to summary judgment.

[4] *See* Motion to Strike Untimely Response to the Bank of New York's Motion for Summary Judgment ("Motion to Strike"– Doc. 104).
[5] *See* Minutes from Preliminary Hearing held January 24, 2023 (Doc. 108).
[6] *See* Response – Doc. 101.

FACTS NOT SUBJECT TO GENUINE DISPUTE[7]

1. On August 1, 2016, Creditor filed a Complaint for Foreclosure in the First Judicial District Court, State of New Mexico, County of Santa Fe as Case No. D-101-CV-2016-01827 (the "State Court Action") seeking to foreclose its interest in property located at 215 Calle Robles, Santa Fe, New Mexico. Affidavit – Exhibit D.

2. On or about August 4, 2016, the summons and complaint in the State Court Action were served on Debtor as "Occupants of the Property." Affidavit – Exhibit E.

3. Creditor filed a motion for summary judgment and for default judgment in the State Court Action on or about May 11, 2018. Affidavit – Exhibits F and G.

4. Debtor filed a Motion for Leave to Intervene and Emergency Motion to Dismiss the Case with Prejudice ("Motion to Intervene") in the State Court Action on February 25, 2019. Affidavit – Exhibit H.

5. Debtor filed an Amended Expedited Motion of Richard Jaramillo for Leave to Intervene and Respond to Plaintiff's Motion for Summary Judgment and to Dismiss the Case with Prejudice for Lack of Standing ("Amended Motion to Intervene") in the State Court Action on May 31, 2019. Affidavit – Exhibit I.

[7] The facts not subject to genuine dispute are taken from the Motion for Summary Judgment, the Declaration/Affidavit in Support of Motion for Summary Judgment ("Affidavit" – Doc. 73-1), and the exhibits attached to the Affidavit (Docs.73-2, 73-3, 73-4, and 73-5). Creditor's numbered facts include the following:

> On or about November 28, 2012, the Mortgage and Note were assigned to Creditor and Creditor is the holder of the Note.

Motion for Summary Judgment, ¶ 3.
Because Creditor's request for summary judgment is premised solely on the preclusive effect of the judgment entered in the state court foreclosure action, this fact is not material to the Court's decision.

6. Creditor filed motions to strike the Motion to Intervene and the Amended Motion to Intervene in the State Court Action on or about September 6, 2019. Affidavit, ¶12 and Exhibit K.[8]

7. The state court granted Creditor's Motion to Strike Amended Motion to Intervene on or about March 26, 2020. Affidavit – Exhibit L. The order granting the motion to strike stated that the court granted the motion because it was filed in violation of the automatic stay,[9] and because the Amended Motion to Intervene was cumulative and duplicative of the original motion. *Id*.

8. Creditor filed a request for hearing on its pending motion for summary judgment and for default judgment in the State Court Action on October 19, 2021. Affidavit – Exhibit M.

9. Debtor filed a response in opposition to Creditor's request for hearing in the State Court Action on November 8, 2021. Affidavit – Exhibit N.

10. On April 4, 2022, the state court entered an *In Rem* Stipulated, Summary and Default Judgment (the "State Court Judgment") in the State Court Action. Affidavit – Exhibit P. Debtor did not stipulate to the State Court Judgment. *Id*.

11. Debtor filed a renewed motion to intervene ("Renewed Motion to Intervene") in the State Court Action on April 14, 2022. Affidavit, ¶ 19.[10]

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[8] Paragraph 12 of the Affidavit states that a copy of the Creditor's Motion to Strike Jaramillo's Motion to Intervene filed in the State Court Action on September 6, 2019 is attached to the Affidavit as Exhibit J. Exhibit J is a copy of A Notice of Order Granting Relief from Bankruptcy Stay filed in the State Court Action on September 6, 2019.

[9] Creditor's motion to strike (Affidavit – Exhibit K) recites that Thomas and Connie Young, named Defendants in the State Court Action, filed a chapter 11 bankruptcy petition on May 21, 2019.

[10] Paragraph 19 of the Affidavit states that a copy of the Renewed Motion to Intervene is attached to the Affidavit as Exhibit Q. Exhibit Q appears to be a copy of an envelope addressed to McCarthy & Holthus reflecting Rick Jaramillo as the sender. The remaining pages of Exhibit Q are various documents Debtor filed in the State Court Action, including an Expedited Request for Hearing on a Motion to Intervene by Richard Jaramillo filed in the State Court Action on

12. The state court denied the Renewed Motion to Intervene. Affidavit, ¶ 20.[11]

DISCUSSION

A. The *Rooker-Feldman* doctrine is inapplicable

Creditor asserts that the *Rooker-Feldman* doctrine bars Debtor from collaterally attacking the State Court Judgment in defending Creditor's Motion for Relief from Stay. "The *Rooker-Feldman* doctrine precludes a losing party in state court who complains of injury caused by the state-court judgment from bringing a case seeking review and rejection of that judgment in federal court." *In re Miller*, 666 F.3d 1255, 1261 (10th Cir. 2012) (citing *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 291-92 (2005)).

Creditor, as the party seeking relief from the automatic stay in this Court, was the "winner" in the State Court Action, not the state court "loser." *Rooker-Feldman* is inapplicable where party seeking to invoke the doctrine was the prevailing party in the prior state court action. *Hanover Packard Group, LLC v. Blackwell (In re Blackwell)*, No. 7-08-14402 JA, 2010 WL 3037583, at *5 (Bankr. D.N.M. July 29, 2010). Consequently, *Rooker-Feldman* simply is inapplicable. *See Miller*, 666 F.3d at 1262 (declining to apply the *Rooker-Feldman* doctrine offensively even though a state a court loser attempted to raise similar defenses in a subsequent stay relief action).

As the Tenth Circuit explained, "attempts merely to relitigate an issue determined in a state case are properly analyzed under issue or claim preclusion principles rather than *Rooker-Feldman* . . . . because . . . preclusion in federal court on the basis of a state-court judgment is determined by state law, not a federally-specified doctrine [like *Rooker-Feldman*]." *Miller*, 666

April 5, 2022. None of the documents in Exhibit Q appear to be the Renewed Motion to Intervene.

[11] Creditor did not attach a copy of the order entered in the State Court Action denying Debtor's Renewed Motion to Intervene.

F.3d at 1261. A federal court thus applies state preclusion law to determine the preclusive effect of a state court judgment.

Under the Full Faith and Credit Statute, 28 U.S.C. § 1738, "a federal court must give to a state-court judgment the same preclusive effect as would have been given that judgment under the law of the State in which the judgment was rendered." *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984). *See also Strickland v. City of Albuquerque,* 130 F.3d 1408, 1411 (10th Cir. 1997) ("[F]ederal courts . . . give the same preclusive effect to state court judgments that those judgments would be given in the state courts from which they emerged."). The State Court Judgment was entered by a New Mexico state district court. The Court will, therefore, apply New Mexico preclusion law. [12]

B. Claim preclusion does not apply because the second suit involves a different claim

"Under New Mexico law there are four requisite elements for res judicata [claim preclusion]: (1) the same party or parties in privity; (2) the identity of capacity or character of persons for or against whom the claim is made; (3) the same subject matter; and (4) the same cause of action in both suits." *Strickland*, 130 F.3d at 1411 (citing *Myers v. Olson*, 1984-NMSC-015, ¶ 9, 100 N.M. 745, 747, 676 P.2d 822, 824); *see also Moffat v. Branch*, 2005-NMCA-103, ¶ 11, 138 N.M. 224, 228, 118 P.3d 732, 736 ("Four elements must be met for claim preclusion to bar a claim. The two actions (1) must involve the same parties or their privies, (2) who are acting in the same capacity or character, (3) regarding the same subject matter, and (4) must involve the same claim."); *Potter v. Pierce*, 2015-NMSC-002, ¶ 10, 342 P.3d 54, 57 ("A party asserting . . .

[12] The Court notes that New Mexico and federal preclusion law principles are, for the most part, the same. *See Moffat v. Branch*, 2005-NMCA-103, ¶ 11, 138 N.M. 224, 118 P.3d 732 ("Federal law and New Mexico law are not divergent on claim preclusion doctrine . . . ."); *Deflon v. Sawyers,* 2006-NMSC-025, ¶ 13, 139 N.M. 637, 643, 137 P.3d 577, 583 (finding "little difference between federal and state law on the collateral estoppel elements important to this case . . . .").

claim preclusion must establish that (1) there was a final judgment in an earlier action, (2) the earlier judgment was on the merits, (3) the parties in the two suits are the same, and (4) the cause of action is the same in both suits." (citing *Kirby v. Guardian Life Ins. Co. of Am.,* 2010-NMSC-014, ¶ 61, 148 N.M. 106, 124, 231 P.3d 87, 105). In addition, before claim preclusion can bar a subsequent claim, the party to be precluded must have had a "full and fair" opportunity to litigate the claim in the prior action. *Bank of Santa Fe v. March Plaza Assocs.*, 2002-NMCA-014, ¶ 14, 131 N.M. 537, 540, 40 P.3d 442, 445.

Claim preclusion bars subsequent litigation of not only the claims actually asserted in the first action, but also claims that could have been asserted even if they were not. *See MACTEC, Inc. v. Gorelick*, 427 F.3d 821, 831 (10th Cir. 2005) ("[C]laim preclusion . . . prevent[s] a party from relitigating a legal claim that was or could have been the subject of a previously issued final judgment."); *Brown v. Felson*, 442 U.S. 127, 131 (1979) ("Res judicata [claim preclusion] prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding."); *In re Lopez,* No. 21-10836-J13, 2022 WL 1160607, at *3 (Bankr. D.N.M. Apr. 19, 2022) *(*"[C]laim preclusion . . . bar[s] subsequent litigation of not only the claims actually asserted in the first action, but also all claims arising out of the same transaction or occurrence that could have been asserted even if they were not . . . . ").

Creditor cannot satisfy the "same claim" requirement. The "claim" upon which Creditor requests summary judgment is its request for relief from the automatic stay. Creditor could not have asserted a claim for relief from the automatic stay in the State Court Action. A claim for relief from the automatic stay only exists after a debtor files a voluntary petition for relief under the Bankruptcy Code. Debtor commenced this bankruptcy case after the state court entered the

State Court Judgment. Because stay relief is not a claim that Creditor could have raised in the State Court Action, claim preclusion does not apply. *See In re Jacobs*, No. 19-12591-j11, 2021 WL 408973, at *5 (Bankr. D.N.M. Feb. 4, 2021) (determining that claim preclusion did not apply to subsequent claim for relief from automatic stay because a request for relief from the automatic stay did not exist until after debtor filed his bankruptcy petition); *Potter*, 2015-NMSC-002 at ¶ 15, 342 P.3d at 59 ("Even if two actions are the same under the transactional test and all other elements are met, res judicata [claim preclusion] does not bar a subsequent action unless the plaintiff could have and should have brought the claim in the former proceeding.").[13]

C. Issue preclusion[14] does not apply because the issues were not "actually litigated"

Issue preclusion differs from claim preclusion in that issue preclusion bars issues that were actually and necessarily determined even if the issue is not based upon the same claim. *See Deflon v. Sawyers*, 2006-NMSC-025, ¶ 13, 139 N.M. 637, 642, 137 P.3d 577, 582 (a difference between claim preclusion and issue preclusion is that the latter does not require that both suits be based on the same cause of action); *Lopez*, 2022 WL 1160607, at *3 ("[I]ssue preclusion only bars relitigation of issues and facts actually litigated, but applies even if the subsequent action involves a different claim."). Issue preclusion under New Mexico law requires satisfaction of the following elements: 1) the parties in the first suit must be the same or in privity with the parties in the second suit; 2) the second suit asserts a different cause of action than the first suit; 3) the issue or fact was "actually litigated" in the first suit; and 4) the issue was necessarily determined

[13] To the extent the State Court Action involves the same claim in the sense that defenses to Creditor's foreclosure action were or could have been raised in the State Court Action and are the same defenses Debtor now seeks to raise in defense of the Motion for Relief from Stay, Creditor has not satisfied other requirements for application of claim preclusion, as explained in part D. of this Memorandum Opinion.
[14] Creditor mentions issue preclusion in its Motion for Summary Judgment and identifies the "issues" that were already decided in the State Court action, but only stated and applied the elements of claim preclusion in its Motion for Summary Judgment.

in the first suit. *Blea v. Sandoval*, 1988-NMCA-036, ¶ 18, 107 N.M. 554, 559, 761 P.2d 432, 437; *Sergejev v. Alderman (In re Alderman)*, No. 19-12626-j7, 2021 WL 866691, at * 5 (Bankr. D.N.M. Mar. 8, 2021) ("Under New Mexico law, the party asserting issue preclusion must establish the following: 1) the parties in the first suit must be the same or in privity with the parties in the second suit; 2) the first and second suit assert different causes of action; 3) the issue or fact was actually litigated in the first suit; 4) the issue was necessarily determined in the first suit in a final judgment; and 5) the party against whom issue preclusion is asserted must have had a full and fair opportunity to litigate the issues.") (citations omitted).[15]

"Neither New Mexico nor Tenth Circuit law gives issue preclusive effect to default judgments." *Welch v. Giron (In re Giron)*, 610 B.R. 670, 676 (Bankr. D.N.M. 2019); *Blea*, 1988-NMCA-036 at ¶ 14, 107 N.M. at 558, 761 P.2d at 436 ("[W]e hold that a default judgment has no collateral estoppel [issue preclusive] effect."); *Grove v. Beaver (In re Beaver)*, 437 B.R. 410, 411 (Bankr. D.N.M. 2010) ("In New Mexico, default judgment do not have [issue] preclusive effect.") (citing *Blea v. Sandoval*, 1988-NMCA-036 at ¶ 13, 107 N.M. at 558, 761 P.2d at 436); *see also* Restatement (Second) of Judgments § 27, comment e. (1982) (default judgments are not entitled to preclusive effect). The reason default judgments do not have issue preclusive effect is because issues decided by default have not actually been litigated.[16] *See Giron*, 610 B.R. at

[15] The general rule of issue preclusion is subject to certain well-known exceptions. *B & B Hardware, Inc. v. Hargis Indus., Inc.,* 575 U.S. 138, 148 (2015).

[16] An exception to the general rule that default judgments are not entitled to issue preclusive effect exists when a court enters a default judgment against a litigant as a sanction for obstructive litigation. *See Melnor, Inc. v. Corey (In re Corey)*, 394 B.R. 519, 528 (10th Cir. BAP 2008) ("[T]here is an exception [to not giving default judgments issue preclusive effect under federal issue preclusion principles] where the losing party has had a full and fair opportunity to participate in the previous litigation, but has engaged in serious obstructive conduct resulting in a default judgment." (quoting *McCart v. Jordana (In re Jordana)*, 216 F.3d 1087 (10th Cir. 2000) (unpublished))), *aff'd,* 583 F.3d 1249 (10th Cir. 2009). The facts not subject to genuine dispute do not support a finding that the State Court Judgment was entered against Debtor by default as a sanction for obstructive litigation tactics.

("The reason for the refusal [to give issue preclusive effect to default judgments] is that the relevant issues were not 'actually litigated.'" (citing Restatement (Second) of Judgments § 27, comment e. (1982))).

The State Court Judgment is titled "*In Rem Stipulated, Summary and Default Judgment Order"* and states that it is a "Default Judgment *In Rem* as to Defendants First American Bank and Occupants of the Property."[17] Debtor is the unnamed "Occupants of the Property." Thus, as to Debtor, the State Court Judgment constitutes a default judgment. Because the State Court Judgment is in the nature of a default judgment with respect to Debtor, Creditor has not satisfied the "actually litigated" requirement for application of issue preclusion to Debtor.

D. Additional requirements common to both issue preclusion and claim preclusion have not been satisfied

1. *Same Party/Party in Privity*

Creditor asserts that the State Court Action that resulted in the entry of the State Court Judgment involved the same parties as the Motion for Relief from Stay.[18] However, the Complaint for Foreclosure filed in the State Court Action does not identify Debtor as a named defendant; it identifies him as "Occupants of the Property."[19] Nothing in the documents Creditor offered to the Court in support of its Motion for Summary Judgment reflect that Debtor was made a party to the State Court Action or substituted in the caption as a named defendant in place of "Occupants of Property" after his name as occupant became known, that Debtor participated in the State Court Action as a party, or that he was permitted to so participate. Further, Creditor has not made any argument that that Debtor is in privity with a party in the

[17] Affidavit – Exhibit P.
[18] *See* Motion for Summary Judgment, p. 8, ¶ 3 ("The *In Rem* Stipulated and Default Judgment involved the same parties as the Motion for Relief filed in this present action. Creditor and Jaramillo. Jaramillo was personally involved in the State Court Action as a *pro se* litigant.").
[19] Affidavit - Exhibit D.

State Court Action nor has Creditor explained how Debtor may be in privity with one or more of the named defendants in the State Court Action.

Debtor argues in his Response that he "was not in the [State Court Action] until the last hearing, where the Judge recanted his previous orders and statements concerning Debtor's participation in the case[,]" and that "the [state court] Judge is on the record stating that Debtor was not served properly and was not in the case because the Parties named in the case did not include Debtor's name as required by law and Debtor's constitutional rights." Response, ¶ 7. The Court will not consider these statements in Debtor's Response because they were not presented in an admissible evidentiary form. *See* Fed. R. Civ. P. 56(c), made appliable to contested matters by Fed. R. Bankr. P. 9014(c) and 7056.

Based on the record on summary judgment, Creditor has not established that Debtor was a party or in privity with a party to the State Court Action. Alternatively, even if the Court could conclude as a matter of law that Debtor was a party or in privity with a party to the State Court Action, Creditor has failed to satisfy at least one other element of both issue preclusion and claim preclusion.

2. *Full and Fair Opportunity to Litigate*

Both claim preclusion and issue preclusion require that the party to be precluded in the subsequent suit have had a full and fair opportunity to litigate the claim or issue in the first suit. *See Potter v. Pierce*, 2015-NMSC-002 at ¶ 15, 342 P.3d at 59 ("[A] party's full and fair opportunity to litigate is the essence of res judicata [claim preclusion]." (quoting *Brooks Trucking Co. v. Bull Rogers, Inc.*, 2006-NMCA-025, ¶ 11, 139 N.M. 99, 102, 128 P.3d. 1076, 1079); *Shovelin v. Central New Mexico Elec. Co-Op., Inc.*, 1993-NMSC-015, ¶ 10, 115 N.M. 293, 297, 850 P.2d 996, 1000 ("If the movant introduces sufficient evidence to meet all of the

elements of this test, the trial court must then determine whether the party against whom estoppel [issue preclusion] is asserted had a full and fair opportunity to litigate the issue in the prior litigation." (citing *Silva v. State*, 1987-NMSC-107, ¶ 12, 106 N.M. 472, 476, 745 P.2d 390, 394 (1987))).[20]

Creditor asserts that Debtor had a full and fair opportunity to litigate in the State Court Action because he participated in the State Court Action as a *pro se* litigant. However, The facts not subject to genuine dispute do not demonstrate that Debtor had a full and fair opportunity to litigate matters in the State Court Action. To the contrary, the facts not subject to genuine dispute indicate that Debtor was prevented from having any meaningful participation in the State Court Action. All of his attempts to intervene in the State Court Action were denied or stricken.[21] The state court struck Debtor's Amended Motion to Intervene because the state court determined it was filed in violation of the automatic stay of other defendants in the State Court Action who had filed a voluntary petition for bankruptcy.[22] Creditor has offered no evidence in support of its request for summary judgment that the reason Debtor was not allowed to intervene in the State Court Action was because he was already a party to the State Court Action. Nor has Creditor offered any evidence that Debtor was permitted during the course of the State Court Action to participate as a party.

In sum, Creditor is not entitled to summary judgment on its request for relief from the automatic stay because it has failed to satisfy one or more of the required elements necessary to

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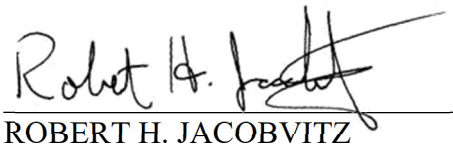
[20] *See also Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 481 n. 22 (1982) ("While our previous expressions of the requirement of a full and fair opportunity to litigate have been in the context of collateral estoppel or issue preclusion, it is clear from what follows that invocation of res judicata or claim preclusion is subject to the same limitation."); Charles Alan Wright, *Law of Federal Courts*, § 100A (4th ed. 1983) ("Neither claim preclusion nor issue preclusion can apply unless the party against whom preclusion is asserted had a 'full and fair opportunity' to litigate the claim or issue in the first action.").
[21] *See* Affidavit, ¶ 20 and Exhibit L.
[22] Affidavit – Exhibit L.

apply claim preclusion and/or issue preclusion and because the *Rooker-Feldman* doctrine is inapplicable.

WHEREFORE, IT IS HEREBY ORDERED that the Motion for Summary Judgment is DENIED.



ROBERT H. JACOBVITZ
United States Bankruptcy Judge

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