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IT IS SO ORDERED.

Dated: March 8, 2023

C. Kathryn Preston
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:	:	
EVERGREEN SITE HOLDINGS, INC.	:	Case No. 22-52799 Chapter 11, Subchapter V
Debtor.	:	Judge Preston

OPINION AND ORDER ON
MOTION OF REG MARTIN FOR RELIEF FROM STAY (DOC. #44)

The *Motion of Reg Martin for Relief from Stay* (Doc. #44) (the "Motion") came on for preliminary hearing on December 6, 2022 and final hearing on February 7, 2023. Evergreen Site Holdings, Inc. ("Debtor") and Timber View Properties, Inc. ("Timber View")[1] filed responses objecting to the Motion (Docs. #59 and #68, respectively). Karry Gemmell filed a *Response in Support and Joinder With Respect to the Motion of Reg Martin for Relief From Stay* (Doc. #59).

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[1]For the convenience of the reader, a glossary of some of the defined terms used in this Opinion is appended to the end of the Order.

At the request of the Court, the parties filed additional memoranda of law on specific issues.[2] Present at the final hearing were John W. Kennedy, Esq representing movant Reg Martin, Denis E. Blasius, Esq., Darlene E. Fierle, Esq. and Beth M. Miller, Esq representing Debtor, Kevin E. Humphreys, Esq representing Timber View, Philip K. Stovall, Esq representing Karry Gemmell, and the SubChapter V trustee Matthew T. Schaeffer, Esq.

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and Amended General Order 05-02 entered by the United States District Court for the Southern District of Ohio, referring all bankruptcy matters to this Court. This is a core proceeding pursuant to 28 U.S.C. Section 157(b)(2)(G).

Based upon arguments presented and evidence submitted at the hearings, the Court makes the following findings and conclusions.

I. Background

The facts relevant to resolving this Motion are largely without serious dispute and may be summarized as follows:[3]

Debtor is the owner of two (2) adjoining parcels of real estate of approximately 142 acres, located on State Route 664 South, Logan, Ohio (the "Property"). Debtor acquired the Property from M&T Property Investments, Ltd. ("M&T"). M&T had financed the Property

[2] At the preliminary hearing, the parties were asked to provide supplemental briefing as to: (a) Debtor's ownership interest in the Property (defined below) after a foreclosure sale; (b) the treatment of Debtor's right of redemption in a Chapter 11 plan; and (c) the applicability of the Rooker-Feldman doctrine in connection with issues raised by parties in this contested matter. The parties filed supplemental materials and the Court is grateful for their assistance. However, notwithstanding the limited issues articulated by the Court, Mr. Humphreys included extensive discussion of issue preclusion and standing in Timber View's brief. The Court will not consider those sections of the brief submitted by Mr. Humphreys.

[3] These facts appear to be uncontested. However, the Court did not take evidence beyond admission of exhibits, and these findings are solely for purposes of deciding the Motion.

through The Citizens Bank of Logan, and granted mortgages on the Property, dated December 2, 2004 (recorded December 13, 2004) and December 13, 2005 (recorded December 16, 2005).

During the time M&T owned the Property, M&T leased part of the Property to Hocking Peaks Park, LLC. Karry Gemmell ("Gemmell") and Mark Anthony ("Anthony") owned the membership interests in Hocking Peaks Park, LLC. In 2013, Gemmell brought suit against Anthony, M&T, Hocking Peaks Adventure Park, LLC, and other parties, a "business divorce" action, in the Hocking County Court of Common Pleas (the "Trial Court"), Case No. 13CV0046 (the "State Court Action").

On or about June 13, 2014, the Trial Court appointed Reg Martin ("Martin") as the receiver ("Receiver") in the State Court Action for Hocking Peaks Adventure Park, LLC (the "Receiver Order"). The Receiver Order did not appoint Martin as a receiver of the Property or any other real estate, but solely for the business Hocking Peaks Adventure Park, LLC. The day after his appointment, the Receiver closed the zipline business and discharged all employees. During his tenure, the Receiver never reopened the zipline business.

On March 21, 2018, the Court rendered a judgment against M&T and others in the State Court Action, awarding Gemmell damages and awarding the Receiver fees and administrative costs (the "2018 Judgment"). Inasmuch as Debtor was not a party to the State Court Action, the 2018 Judgment did not impose any relief against Debtor. Within days, in connection with the 2018 Judgment, Gemmell had the Hocking County Clerk of Courts issue and file a certificate of judgment against M&T (the "2018 Gemmell Judgment Lien"). About a month later, Martin had the Hocking County Clerk of Courts issue and file a certificate of judgment against M&T, among others (the "2018 Martin Judgment Lien"). At the time of entry of the 2018 Judgment,

and issuance of the 2018 Gemmell Judgment Lien and the 2018 Martin Judgment Lien (collectively the "2018 Liens"), M&T still owned the Property.

M&T and others appealed the 2018 Judgment to the Court of Appeals for the Fourth Appellate District (the "Appellate Court"), Case No. 18 CA 008. On February 5, 2019, the Appellate Court entered a Decision and Judgment Entry (the "Appellate Decision") dismissing the appeal for lack of a final appealable order. Debtor acquired the Property from M&T on August 7, 2019, subject to the mortgages granted by M&T. M&T had financed the Property through The Citizens Bank of Logan, and granted mortgages on the Property, dated December 2, 2004 (recorded December 13, 2004) and December 13, 2005 (recorded December 16, 2005). Citizens Bank assigned its mortgages to Timber View.

As a result of the Appellate Decision, the Trial Court rendered a Judgment Entry in the State Court Action on August 29, 2019, which judgment was a final appealable order (the "Final Judgment"). Shortly after entry of the Final Judgment, Gemmell and Martin each obtained another certificate of judgment against M&T dated in September 2019. At the time that the Final Judgment was entered and certificates of judgment were issued, M&T no longer owned the Property. These certificates of judgment are not at issue in determination of the Motion.[4]

At the time of Debtor's acquisition of the Property in 2019, there was no active commercial use of the Property. Remnants of the abandoned adventure park and zipline business (which had been closed since June 2014) were located on portions of the Property. On or about May 1, 2020, Debtor entered into a lease with Eventuresencore, Inc., which lease

[4]Inasmuch as the Final Judgment did not render any judgment against Debtor and the certificates of judgment did not identify Debtor as a judgment debtor, Martin's and Gemmell's 2019 certificates of judgment could not have resulted in judgment liens attaching to the Property.

permitted Eventuresencore to operate a new adventure park and zipline business on specific areas of the Property.

On January 22, 2021, Gemmell initiated a foreclosure action against Debtor and the Property in the Trial Court, Case No. 21CV0004 (the "Foreclosure Action") seeking to foreclose the 2018 Gemmell Judgment Lien. Gemmell named Martin as a party defendant to the Foreclosure Action. Martin filed an answer and cross claim asserting that the 2018 Martin Judgment Lien was a valid lien on the Property. Gemmell also named Timber View a party-defendant as it is the holder of the two mortgages on the Property granted to Citizens Bank and recorded in 2004 and 2005.[5]

On March 3, 2022, the Trial Court granted a partial summary judgment on motion of Gemmell, concluding that the 2018 Gemmell Judgment Lien created a valid lien on the Property in March 2018. On March 18, 2022, the Trial Court granted another partial summary judgment upon motion of Martin, concluding that the 2018 Martin Judgment Lien created a valid lien on the Property in April 2018 (the "2022 Summary Judgment"). Each judgment foreclosed the subject lien and ordered sale of the Property. In each judgment, the Trial Court observed that it "will determine the priority" of all of the liens. However, the Trial Court has not yet made such determination(s).

On March 28, 2022, the Trial Court entered a Judgment Entry and Decree in Foreclosure (the "Foreclosure Decree") in the Foreclosure Action, ruling that "unless the sums found to be due to Plaintiff . . . be fully paid within three (3) days from the date of the entry of this decree, the equity of redemption in the Property shall be foreclosed and the Property shall be sold free

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[5] As indicated above, the mortgages were originated in a loan transaction between M&T and The Citizens Bank of Logan. Citizens Bank assigned the mortgages to Timber View by assignments recorded on July 1, 2015.

and clear of all interests . . . ." *See* Gemmell Exh. H p. 3. The Foreclosure Action case docket indicates that shortly thereafter, Debtor and Timber View filed a joint notice of appeal. They also sought a stay of the foreclosure sale pending appeal. Although successful, Debtor did not meet the terms of the order conditionally granting the stay. The county sheriff proceeded with a foreclosure sale on August 19, 2022. The successful bidder offered $1,701,100 for the Property, and it appears that the bidder placed a deposit of $10,000 with the appropriate entity. As of the final hearing, it did not appear that the bidder has deposited the remainder of the bid price. Pursuant to Ohio foreclosure procedure, the Trial Court scheduled a hearing for September 23, 2022 to confirm the sale.

Debtor filed a petition for relief under Chapter 11, Subchapter V of the Bankruptcy Code on September 22, 2022, the day before the scheduled hearing to confirm the sale. Upon commencement of this case, the automatic stay intervened, stalling the hearing. As a consequence, the Trial Court has not confirmed the foreclosure sale. The automatic stay also stalled the appeal of the Foreclosure Decree.

Martin filed the Motion in early November.

II. Arguments of the Parties

Martin seeks relief from the automatic stay to allow the Trial Court to proceed with a hearing to confirm the foreclosure sale, and allow the sheriff to collect the bid price and issue to the successful bidder a deed for the Property. Martin's ultimate objective is, of course, to obtain payment for his fees, awarded by the 2018 Judgment and purportedly secured by the Property by virtue of the 2018 Martin Judgment Lien. Martin argues that there exists cause to grant relief from the stay pursuant to 11 U.S.C. §362(d)(1) because he has a lien on the Property, and, inasmuch as a foreclosure sale of the Property was successfully held, the Property is no longer an

asset of Debtor, Debtor's only interest in the Property is the right to redeem the Property under Ohio law, that right to redeem has expired, and the right to redeem is a not a debt or an interest that can be modified or paid over time through a plan of reorganization.

Debtor counters that, contrary to Martin's theory, Debtor remains owner of the Property inasmuch as the Foreclosure Sale has not been confirmed and the Property is property of the bankruptcy estate. More pointedly, Debtor posits that the 2018 Martin Judgment is not a valid lien and/or is void. Accordingly, says Debtor, Martin does not have an interest in the Property nor a claim against Debtor and thus is not entitled to relief from the automatic stay to pursue confirmation of the foreclosure sale. Additionally, Debtor asserts that its right of redemption may be addressed, i.e., paid, through a plan of reorganization. Debtor further posits that, even if Martin does have a valid lien on the Property, the value of the Property provides Martin with sufficient adequate protection of his interest. Timber View also objects to the Motion, adopting the same arguments and adding a theory that the Martin does not have standing to seek relief from the automatic stay.

On the question of Martin's lien, Martin points to the 2022 Summary Judgment, asserting that under the Rooker-Feldman doctrine, this Court cannot give traction to Debtor's theory. Debtor and Timber View disagree that Rooker-Feldman applies.

III. Analysis

Martin seeks relief from the automatic stay pursuant to 11 U.S.C. § 363(d)(1). That section states, in pertinent part:

> (d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay–
> (1) for cause, including the lack of adequate protection of an interest in property of such party in interest[.]

11 U.S.C. § 362(d).

The Bankruptcy Code provides courts with wide latitude to fashion relief from the automatic stay "for cause." *In re Chari*, 262 B.R. 734, 736 (Bankr. S.D.Ohio 2001). However, the Bankruptcy Code does not define what constitutes sufficient cause. "Instead, a bankruptcy court must determine whether sufficient cause exists on a case-by-case basis." *Id*. at 737. The Court must weigh the potential harm to the creditor caused by the stay versus the potential prejudice to the debtor, if any, that would be caused by relief from the stay. *Id*. The term "cause" is a broad and flexible concept that permits the bankruptcy court to respond to the fact-sensitive issues before it. *In re Indian River Estates*, 293 B.R. 429, 432 (Bankr. N.D. Ohio 2003).

A. Martin Has Standing to Seek Relief from the Automatic Stay

Standing is a threshold issue. Timber View asserts that Martin does not have standing because Martin has no interest in the Property.

The Court in *Junk v. Citimortgage, Inc. (In re Junk)*, 512 B.R. 584, 605-06 (Bankr. S.D. Ohio 2014) addressed the issue of contested standing. In *Junk*, the debtors contested the lien of their home mortgage holder. Prior to their bankruptcy proceeding, the debtors had been involved in long and torturous litigation with the mortgage holder, as have the parties in this case with respect to the judgment lien holders. In deciding a motion for relief from the automatic stay, the debtors in *Junk* raised standing of the mortgage holder, based on their theory that the mortgage holder did not have a valid lien on the debtors' home. This Court cannot say it better than the Court did in *Junk*:

> Section 362(d)(1) permits relief from stay to be requested by a "party in interest." 11 U.S.C. § 362(d)(1). A creditor of the debtor is a party in interest in a Chapter 11 case. See 11 U.S.C. § 1109(b). The term creditor includes an entity holding a

> prepetition "claim against the debtor[,]" 11 U.S.C. § 101(10)(A), and a "'claim against the debtor' includes [a] claim against property of the debtor[.]'" 11 U.S.C. § 102(2).
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> . . .
>
> In addition, the term claim means both "right to payment" and "right to an equitable remedy for breach of performance if such breach gives right to a right to payment," in both instances whether or not such right is disputed or undisputed. 11 U.S.C. § 101(5)(A) and (B). The "right to foreclose on the mortgage can be viewed as a 'right to an equitable remedy' for the debtor's default on the underlying obligation." *Johnson v. Home State Bank*, 501 U.S. 78, 84, 111 S. Ct. 2150, 115 L. Ed. 2d 66 (1991). The Junks have objected to CitiMortgage's claim, including its right to foreclose. But because the term "claim" includes a right to payment or right to an equitable remedy whether or not such right is disputed, courts have held that a claim confers creditor status on the claimant despite the disputed nature of the claim. See *Johnston v. JEM Dev. Co. (In re Johnston)*, 149 B.R. 158, 161 (B.A.P. 9th Cir. 1992) ("[T]he purchasers are creditors pursuant to § 101(10)(A) because they are the holders of a right to payment. This right, although in dispute, is nevertheless a claim. Accordingly, the holder of this claim is a creditor of the debtor.")."

Junk v. Citimortgage, Inc. (In re Junk), 512 B R 584, 605-06 (Bankr. S.D. Ohio 2014).

Clearly, Martin, having asserted a lien on the Property, bolstered by an order of the Trial Court, has standing to ply his Motion.

B. Debtor's Right of Redemption Has Not Expired

At the final hearing on the Motion, Martin conceded, as he must, that Debtor's right of redemption has not yet expired. The Ohio Revised Code §2329.33 states in pertinent part:

> [I]n sales of real estate on execution or order of sale, at any time before the confirmation thereof, the debtor may redeem it from sale by depositing in the hands of the clerk of the court of common pleas to which such execution or order is returnable, the amount of the judgment or decree upon which such lands were sold, with all costs, including poundage, and interest at the rate of eight per cent per annum on the purchase money from the day of sale to the time of such deposit.

Ohio Rev. Code § 2329.33. Martin himself acknowledged in the Motion that "the statute fixes no specific period for redemption" and that the right of redemption "is cut off when a foreclosure sale is confirmed," citing *In re Thomas*, 59 B.R. 758, 760 (Bankr. N.D. Ohio 1986).

Section 108 provides in pertinent part:

> (b) [I]f applicable nonbankruptcy law . . . fixes a period within which the debtor . . . may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act, and such period has not expired before the date of the filing of the petition, the trustee may only file, cure, or perform, as the case, may be, before *the later of* –
> (1) the end of such period . . . ; or
> (2) 60 days after the order for relief.

11 U.S.C. §108(b) (emphasis added).

As noted above, there is no deadline articulated by the Ohio Revised Code for a judgment debtor to exercise its right of redemption other than confirmation of the foreclosure sale. In the instant case, there has been no hearing to confirm the foreclosure sale and no order entered by the Trial Court confirming the sale. There having been no confirmation of the sale, the right of redemption had not expired at the time of commencement of this case. Thus, by the terms of §108 and the Ohio Revised Code, there has been no deadline established for Debtor to exercise its right to redeem the Property.

C. Debtor Remains Owner of the Property

Martin posits that Debtor has no interest in the Property beyond the statutory right of redemption. Martin cited a string of cases for that proposition. In short, some, but not all of those cases appear to stand for the proposition that if a judgment debtor files a bankruptcy petition after foreclosure sale but before any right of redemption expires, the real property subject of the foreclosure sale does not become property of the judgment debtor's bankruptcy estate. However, none of the cases which specifically so rule were decided under Ohio law.

"Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding." *Butner v. United*

States, 440 U.S. 48, 55 (1979). Once property rights are determined under state law, federal bankruptcy law will control as to what extent the debtor's interest is property of the estate. *Town Center Flats, LLC v. ECP Commercial II LLC*, 855 F.3d 721, 724 (6th Cir. 2017). *See also Tidewater Fin. Co. v Curry (In re Curry)*, 347 B.R. 596, 602 (6th Cir. B.A.P. 2006).

In determining issues of state law, federal courts look to the final decision of that state's highest court. *Conlin v. Mortg. Elec. Registration Sys., Inc.*, 714 F.3d 355, 358 (6th Cir. 2013). If there is no decision directly on point, federal courts must attempt to discern to how that state's highest court would rule when presented with the issue. *Id*. at 358-59; *Town Center Flats*, 855 F.3d at 724. In making this determination, federal courts may look to decisions of intermediate state appellate courts as persuasive authority "unless it is shown that the state's highest court would decide the issue differently." *Conlin*, 714 F.3d at 359 (internal quotation marks omitted).

Under Ohio law, after a foreclosure sale is conducted, but before the sale is confirmed, title remains with the property owner until the sale is consummated or the property owner's right to redeem is extinguished. *In re White*, 216 B.R. 232, 234 (Bankr. S.D. Ohio 1997) (citing *Hausman v. City of Dayton*, 73 Ohio St.3d 671, 653 N.E.2d 1190, 1194 (1995), reconsideration denied, 74 Ohio St.3d 1423, 655 N.E.2d 742 (1995). *See also Chase Mortg. Serv., Inc. v. Latsa*, 2005 WL 3029011, at *3 (Ohio Ct. App. Nov. 5, 2005).

This only makes sense. Who else would own the property? In most cases, including this one, the purchaser at the foreclosure sale does not deposit with the sheriff or the clerk the full amount of the successful bid immediately following the foreclosure sale. In Ohio, the deed will not be issued to the successful bidder until the sale is confirmed by order of the Trial Court, and then only if the bidder comes forward with the full purchase price. A purchaser at the foreclosure sale acquires no vested rights until after the sale is confirmed. *Ohio Savings Bank v.*

Ambrose, 56 Ohio St. 3d 53, 56, 563 N.E.2d 1388 (1990); *Reed v. Radigan*, 42 Ohio St. 292 (1884); *Gorrell v. Kelsey*, 40 Ohio St. 117 (1883); *Citizens Loan & Savings Co. v. Stone*, 1 Ohio App. 2d 551, 206 N.E.2d 17 (Ohio Ct. App. 1965). In reality, a foreclosure sale is akin to a real estate purchase contract, in which the prospective buyer makes an offer to purchase the subject real estate, which is accepted by the seller; the prospective buyer has only a contractual right to purchase the real estate; the buyer acquires no rights to the real estate until closing of the transaction. Under these circumstances, it is only logical that Debtor remains owner of the Property after a foreclosure sale.

While not directly on point, the *Hausman v. City of Dayton* case decided by the Ohio Supreme Court is strongly persuasive authority for purposes of this Court's analysis on this question. In *Hausman,* BancOhio filed a foreclosure action on its mortgage encumbering certain property and obtained a foreclosure decree in which the court found that BancOhio's mortgage was a valid and subsisting first and best lien. At foreclosure sale, there were no bidders and the property was never sold. In the meantime, the property suffered looting, vandalism and arson. Additionally, the property was found to be contaminated with environmentally hazardous materials. All of this led the city of Dayton ("Dayton") to declare the property a public nuisance. Dayton's Nuisance Appeals Board concluded that the property was a public nuisance, found BancOhio, along with others, to be an owner of the property pursuant to Dayton's municipal code and liable for the costs of abatement of the nuisance. The trial court agreed, holding that the default of the mortgage made BancOhio the owner of the mortgaged property. The Ohio Supreme Court reversed, and flatly stated that "title remains in the mortgagee until the mortgagee forecloses on the mortgage *and the sale is consummated. . . .*" *Hausman*, 73 Ohio St. 3d at 676. This affirmed long standing Ohio law on the status of a property owner's interest

after foreclosure sale and before confirmation of the sale. See *Reed v. Radigan,* 42 Ohio St. 292 (1884). As stated by an Ohio appellate court in *Citizen's Loan & Sav. Co. v. Stone*, "the right to retain ownership of . . . property is clearly a substantial right, and it is the confirmation order which operates to divest [the property owner] of that right." *Citizens Loan & Savings Co. v. Stone*, 1 Ohio App. 2d 551, 552, 206 N.E.2d 17 (Ohio Ct. App. 1965) (citing *Reed v. Radigan*).

Consistent with Ohio law on the subject, this Court has repeatedly held that, if a mortgagor files a bankruptcy petition before confirmation of a foreclosure sale, the subject real estate becomes property of the bankruptcy estate. *In re White*, 216 B.R. 232, 234 (Bankr. S.D. Ohio 1997); *Federal Nat'l. Mortgage Ass'n v. Million (In re Million)*, 39 B.R. 136, 139 (Bankr. S.D. Ohio 1984). *See also In re Best*, No. 14-30692, 2014 WL 3700698, at *5 (Bankr. N.D. Ohio July 24, 2014).

D. The Rooker-Feldman Doctrine Precludes This Court's Rejection of the Trial Court's Judgments

Debtor and Timber View posit that the 2018 Martin Judgment Lien was not based on a final judgment, and therefore is not a valid lien and/or is void. Accordingly, says Debtor, Martin does not have an interest in the Property and thus is not entitled to relief from the automatic stay to pursue confirmation of the foreclosure sale.

In March 2022, in the Foreclosure Action, the Trial Court entered the 2022 Summary Judgment, in which the Trial Court expressly found that the Certificate of Judgment obtained and filed by Martin in April 2018 (the 2018 Martin Judgment Lien) created a valid lien on the Property. The court noted that the lien had not been vacated, withdrawn, or satisfied. Gemmell Exh. G, p. 1. The court went on to find that the judgment lien was foreclosed and ordered that the Property be sold. The Trial Court entered a similar Judgment Entry as to Gemmell's

Certificate of Judgment filed in 2018 (the 2018 Gemmell Judgment Lien). The Trial Court followed with the Foreclosure Decree, again directing that the Property be sold by the county sheriff pursuant to Ohio foreclosure procedures. Debtor and Timber View dispute that Martin has a judgment lien by virtue of the 2018 Martin Judgment Lien and insist that this Court so find. In defense of Martin's Motion, they assert that Martin and Gemmell do not have an interest (i.e., a judgment lien) on the Property that can be foreclosed, that the Foreclosure Decree and the foreclosure sale were improper, and as a result, Martin is not entitled to relief from the automatic stay in order to advance confirmation of the foreclosure sale. In light of the Rooker-Feldman doctrine, the Court has significant reservations about its authority to scrutinize and question the judgments of the Trial Court.

The Rooker-Feldman doctrine takes its name from the United States Supreme Court decisions of *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). The decisions "generally provide[] that lower federal courts may not engage in appellate review of state-court decisions." *Isaacs v. DBI-ASG Coinvestor Fund, III, LLC (In re Isaacs)*, 895 F.3d 904, 912 (6th Cir. 2018) (citation omitted). The parties do not dispute that the Rooker-Feldman doctrine applies to interlocutory orders, as well as final orders. *See RLR Invs., LLC v. City of Pigeon Forge*, 4 F.4th 380 (6th 2021).

Under the Rooker-Feldman doctrine, "a party losing in state court is barred 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." *Johnson v. De Grandy*, 512 U.S. 997, 1005-06 (1994) (citing *Feldman*, 460 U.S. at 482 and *Rooker,* 263 U.S. at 416). As the Supreme Court explained in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp*., 544 U.S. 280 (2005), the "Rooker-Feldman Doctrine is confined to cases of

the kind from which it acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the federal district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon*, 544 U.S. at 284. To be sure, the Rooker-Feldman doctrine does not prohibit federal court consideration of all issues that are somehow related to a prior state court decision. The question is the source of the injury. If the injury is the state court decision, then the Rooker-Feldman doctrine would preclude a federal court from asserting jurisdiction. If there is some other source of injury, then the complaining party asserts an independent claim.

The Sixth Circuit Court of Appeals has reiterated this principle, observing:

> In the wake of Exxon Mobil Corp., we recently adopted a Fourth Circuit rule to differentiate between claims attacking state-court judgments, which are barred by Rooker-Feldman, and independent claims, over which lower federal courts have jurisdiction. The focus, we held, must be on . . . the source of the injury that the plaintiff alleges in the federal complaint. If the source of the injury is the state court decision, then the Rooker-Feldman doctrine would prevent the district court from asserting jurisdiction. If there is some other source of injury, such as a third party's actions, then the plaintiff asserts an independent claim. *McCormick [v. Braverman*], 451 F.3d [382, 393 [(6th. Cir. 2006)]. Thus, a complaint in which the plaintiff contends he was injured by the defendants, rather than by the state court decision itself, is not barred by Rooker-Feldman, even if relief is predicated on denying the legal conclusion reached by the state court.

Hohenstein v. MGC Mortg., Inc., 2012 U.S. Dist. LEXIS 12110 at *11-12 (S.D. Ohio Feb. 1, 2012) (alterations in original).

Although in a procedurally different posture, the issue in this case is very similar to that in *Isaacs*, 895 F.3d at 912. In *Isaacs*, the Sixth Circuit cogently found: "Isaacs's alternate claim—that DBI lacks an enforceable mortgage because its lien never attached—is barred by Rooker-Feldman because it requires federal appellate review of the state court's foreclosure

judgment. . . . The source of the plaintiff's injury may in turn be determined by examining the request for relief." *Id.*

Timber View cites numerous cases in support of its theory that it and Debtor are asserting independent claims. Indeed, each of the cases confirm that the federal courts have jurisdiction over independent claims for alleged nefarious conduct of some party or entity involved in the litigation, which ultimately resulted in a state court judgment. However, the courts rejected any claim that required reversal of the state court decision as barred pursuant to the Rooker-Feldman doctrine. *See Hughes v. Deutsche Bank Nat'l Trust Co*., 2019 U.S. Dist. LEXIS 173763, *16-17 (N.D. Ohio Oct. 7, 2019) ("Count 9—solely seeks to 'transfer the Property back to the Plaintiffs and to remove any and all clouds on the title to and interest in the Property.' . . . Plaintiffs' allegations make it clear that they are attacking the validity of the transfer of the Property away from them, which is a direct result of the state court foreclosure judgment. . . . [P]ursuant to the Rooker-Feldman doctrine, this Court has no jurisdiction over Count 9."); *Talbot v. United States Bank Nat'l Ass'n*, 2019 U.S. Dist. LEXIS 149287, *10-12 (E.D. Mich. September 3, 2019) (In an action for damages, the Court observed "In the foreclosure context, the Sixth Circuit repeatedly has held that a suit premised on independently fraudulent conduct by a defendant, not comprising a direct attack on the judgment of possession, is not barred by Rooker-Feldman. . . . Those cases stand in contrast with suits where the plaintiffs seek directly or by implication to overturn the state court judgment, which Rooker-Feldman does prohibit."); *Hammond v. Citibank*, *N.A.*, 2011 U.S. Dist. LEXIS 109818, at *10 (S.D. Ohio Sept. 27, 2011) (plaintiff asserted his injury arose from alleged fraud perpetrated in a state court foreclosure proceeding by the filing of a false affidavit but did not oppose the state court judgment itself). *See also Martin v. Bank of N.Y. Mellon Corp.*, 2020 U.S. Dist. LEXIS 55843, at *10-11 (S.D. Ohio 2020)

(distinguishing between cases where plaintiffs seek monetary damages as opposed to reversal of the state court judgment, which would be barred by Rooker-Feldman).

Debtor and Timber View have tried mightily to convince the court that Rooker-Feldman does not apply, because they are asking the Court to adjudicate independent claims. Debtor and Timber View insist that they are not seeking appellate review or reversal of the Trial Court's judgment finding that Martin has a lien as of April 2018. But that is exactly what they are doing. Although they did not use the words "reverse" or "review," they demand that this Court deny the Motion on the basis that Martin does not have a judgment lien, in direct contravention of the Trial Court's 2022 Summary Judgment. Debtor's claim invites review and rejection of the 2022 Summary Judgment. The source of Debtor's injury is the Trial Court's 2022 Summary Judgment, and Debtor has not asserted an independent claim could render Rooker-Feldman inapplicable.[6]

Debtor and Timber View then assert that, notwithstanding the strictures of Rooker-Feldman doctrine, the Sixth Circuit Court of Appeals has held that the doctrine does not apply if the state court judgment was "procured through fraud, deception, accident, or mistake[.]" *In re Sun Valley Foods Co.,* 801 F.2d 186, 189 (6th Cir. 1986) (quoting *Resolute Ins. Co. v. State of North Carolina*, 397 F.2d 586, 589 (4th Cir. 1968)). In the event of fraud, etc., Debtor and Timber View argue that this Court can disregard the 2022 Summary Judgment and the Foreclosure Decree. Debtor suggests that the orders rendered in the Foreclosure Action "may" have been procured by fraud, accident, or mistake.

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[6]The Court notes that there are no other proceedings or contested matters presently before the Court, such as objections to claims or adversary proceedings to determine extent and validity of liens.

While the Sixth Circuit did indeed recognize such an exception, the *Sun Valley* decision predated the Supreme Court's *Exxon* decision. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp*., 544 U.S. 280 (2005). After *Exxon*, numerous courts have questioned the continuing validity of the fraud exception articulated in *Sun Valley*. *Kinney v. Anderson Lumber Co. (In re Kinney)*, 2020 Bankr. Lexis 3619, 2021 WL 161956 (Bankr. E.D. Tenn. Jan. 13, 2021); *Iannucci v. Michigan*, 2016 U.S. Dist. Lexis 100606, 2016 WL 4089215 (E.D. Mich. Aug. 2, 2016); *Dale v. Selene Fin. LP*, 2016 U.S. Dist. Lexis 39474, 2016 WL 1170772 (N.D. Ohio Mar. 25, 2016). The *Ianucci* court explained: [T]he Sixth Circuit's more recent, post-*Exxon* decisions applying the doctrine make clear that the sole 'inquiry . . . is the source of the injury plaintiff alleges in the federal complaint.' *McCormick v. Braverman,* 451 F.3d 382, 393 (6th Cir. 2006). . . . *Whether the state-court judgment was improperly obtained is no longer a factor*." *Iannucci*, 2016 U.S. Dist. LEXIS 100606 at *11 (emphasis added).

The case of *Kinney*, 2020 Bankr. LEXIS 3619 is especially instructive. In *Kinney*, the debtors commenced an adversary proceeding seeking to set aside a default judgment entered in the Tennessee state court, alleging various frauds and fraud upon the court, and attempting to press other causes of action relating to the state court judgment. In deciding a motion to dismiss by defendants, the *Kinney* court engaged in an extensive, very complete analysis of Rooker-Feldman, its progeny and recent developments. The Court here will not repeat the *Kinney* court's well articulated and extensive reasoning. Suffice it to say that the *Kinney* court noted that Rooker-Feldman applies when a state court wrongfully entered its judgment, and there is a Rooker-Feldman issue if the federal suit alleges that a defect in the state proceedings invalidated

the state judgment,[7] that *Sun Valley's* continuing validity has been questioned, and that "several more recent circuit courts have declined to follow *In re Sun Valley Foods* and/or to adopt the fraudulent-procurement 'exception.'"[8] The *Kinney* court quoted *Ianucci*, where that court boldly and expressly stated, "Simply put, under the most recent on-point holdings of the Supreme Court and Sixth Circuit, a plaintiff may not avoid application of the Rooker-Feldman doctrine merely by alleging that the state-court judgment under attack was procured by fraud." *Id*. Based on its analysis, the *Kinney* court concluded that extrinsic fraud does not provide basis for federal court review or reversal of a state court judgment. *Kinney* applied Rooker-Feldman to bar consideration of the debtor's claims relating to validity of a state court judgment. This Court adopts the reasoning and conclusions of the *Kinney* court.

Additionally, this Court doubts that the Sixth Circuit intended the broad interpretation that Debtor and Timber View urge. The statement was made without any elaboration, discussion or analysis. The Fourth Circuit case which the Sixth Circuit cited, *Resolute Insurance Company v. State of North Carolina*, 397 F. 2d 586 (1968), similarly failed to engage in any discussion or analysis. More importantly, in *Rooker*, the Supreme Court specifically stated that the federal courts are to honor state court decisions, <u>even if they are wrong</u>. The Rooker Court stated: "If the constitutional questions stated in the bill actually arose in the cause, it was the province and duty of the state courts to decide them; and their decision, <u>whether right or wrong,</u> was an exercise of jurisdiction. . . . Unless and until so reversed or modified, it would be an effective

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[7]*Kinney*, 2020 Bankr. LEXIS 3619, at *31-32 (citing and quoting *Telos Ventures Grp., PLLC v. Short (In re Short)*, 2020 Bankr. LEXIS 3052, 2020 WL 6877152, at *4 (Bankr. D. Utah Oct. 30, 2020).

[8]*Kinney*, 2020 Bankr. LEXIS 3619, at *32 (quoting *Iannucci v. Michigan*, 2016 U.S. Dist. LEXIS 100606, 2016 WL 4089215, at *4 (E.D. Mich. Aug. 2, 2016), *aff'd*, 2017 U.S. App. LEXIS 17814, 2017 WL 3951849 (6th Cir. 2017) (citations omitted).

and conclusive adjudication." *Rooker*, 263 U.S. at 415-16 (emphasis added). In this vein, the Supreme Court did not countenance review and reversal of the state court rulings in *Rooker* or *Feldman*, even when the complaining party asserted that the decision was unconstitutional. This Court finds that the better approach is a narrow interpretation of the Sixth Circuit's intent consistent with the many cases applying the Rooker-Feldman doctrine: that independent actions against other parties are not barred by Rooker-Feldman, but that this Court cannot reverse or reject the Trial Court's ruling.

In this case, Debtor is a state court loser, complaining of the Trial Court's 2022 Summary Judgment and the Foreclosure Decree. Debtor is not asserting any independent claim. Debtor's claim (or in this case, defense to the Motion) is not directed at another's wrongful or fraudulent conduct in obtaining the 2022 Summary Judgment. While Debtor may have a claim for injuries due to the conduct of other parties to this matter, it is the 2022 Summary Judgment that exacts the injury on Debtor of which Debtor complains at this time.[9] Debtor is attacking the 2022 Summary Judgment granted to Martin by the Trial Court – asking this court to reject that judgment and deny that Martin has a judgment lien. The Court concludes that it cannot review and reject the 2022 Summary Judgment and cannot hold that Martin does not have a judgment lien.

Even if Rooker-Feldman does not bar this Court's consideration of Debtor's theory that the 2018 Martin Judgment Lien is invalid, this case may be appropriate for absention on the issue of the validity of the 2018 Martin Judgment Lien. In the alternative, or in conjunction with

[9]Debtor also asserts that the Rooker-Feldman doctrine doesn't apply because Debtor was not a party in the State Court Action. This argument is a red herring. The State Court Action is not the case in which the 2022 Summary Judgment order was entered finding that Martin has a lien - the 2022 Summary Judgment was rendered in the Foreclosure Action, in which Debtor is a defendant.

abstention, if the Court so rules, it may be appropriate to grant relief from the automatic stay to allow the appeal of the Foreclosure Decree to go forward. The Court explores these options below.

E. Debtor Cannot Restructure or Modify the Right of Redemption in a Plan of Reorganization

Martin is correct that Debtor's options for "reorganizing" the right of redemption through a Chapter 11 plan are limited. The right to redeem is not a restructureable debt. *See In re Glenn*, 760 F.2d 1428, 1445-43 (6th Cir. 1985). Nor is it a property right. *Wayne Sav. & Loan Co. v. Young*, 49 Ohio App. 2d 35, 37 (Ohio Ct. App. 1976); *In re Newburn*, 2001 Bankr. Lexis 762 *11 (Bankr. N.D. Ill. Feb. 8, 2001). It has been described as a personal privilege,[10] an option,[11] and an equitable right.[12] "The right of redemption is not a debt owed to the [lienholder] by the [property owner], but rather is a [property owner's] right to take prescribed action to satisfy a debt secured by a [lien]." *Hausman*, 73 Ohio St. 3d at 677. In the instant case, Martin's interest is an alleged judgment lien.

Debtor points to 11 U.S.C. §1123, interpreting that provision to grant Debtor broad authority to restructure the right of redemption. Indeed, §1123 does set broad parameters for a plan of reorganization. A chapter 11 debtor's authority to provide for payment of a right of redemption over time through a plan of reorganization has not been directly addressed by the Sixth Circuit Court of Appeals. However, the Court is guided by the case of *In re Glenn*, 760 F.2d 1428 (6th Cir. 1985).

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[10] *Wayne Sav. & Loan Co.*, 49 Ohio App. 2d at 37.

[11] *In re Stage I Land Co.*, 60 B.R. 539, 542 (Bankr. D. Minn. 1986).

[12] *Trumbull Twp. Bd of Trs. v. Rickard,* 2019 Ohio App. LEXIS 2607, at *34 (Ohio Ct. App. June 24, 2019); *In re White,* 216 B.R. 232 (Bankr. S.D. Ohio 1997).

In *Glenn*, the issues presented, among others, were a Chapter 13 debtor's right to cure a default of a real estate mortgage on their personal residence, after a foreclosure sale of the property, but before the right of redemption expired, and the ability to pay the redemption amount through the Chapter 13 Plan. As observed by the Sixth Circuit Court of Appeals, bankruptcy and district court decisions strike a broad range of rulings on the question of when a bankruptcy debtor loses the ability to retain (or redeem) real estate during the foreclosure process. *Glenn*, 760 F.2d at 1435.

Glenn was decided under §1322 of the Bankruptcy Code as it existed in the early 1980's. At that time, the statute provided in pertinent part:

> (b) Subject to subsections (a) and (c) of this section, the plan may --
> . . .
> (2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims;
> (3) provide for the curing or waiving of any default;
> . . .
> (5) notwithstanding paragraph (2) of this subsection, provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due[.]

11 U.S.C. §1322 (1984).

Before addressing the issue of payment of the redemption amount, the Sixth Circuit discussed tolling or suspension of the redemption period and limitations on reinstatement of a mortgage in Chapter 13 (including, specifically, after a foreclosure sale of the mortgaged property). In deciding the latter issue, the Sixth Circuit delved deeply into the legislative history of §1322, and engaged in a robust review of the policies underlying Congress' competing interests of (a) assisting financially challenged wage earners in their quest for relief under Chapter 13 of the Bankruptcy Code, and (b) ameliorating any adverse effects of bankruptcies on

the market for homes. The Court recognized that neither the statutory language nor the legislative history of §1322 stated a definitive point at which a debtor loses the right to reinstate a foreclosed mortgage. The Court concluded:

> The result we reach here is, therefore, a pragmatic one – one that we believe not only works the least violence to the competing concerns evident in the language of the statute but also one that is most readily capable of use. The event we choose as the cut-off date of the statutory right to cure defaults is the sale of the mortgaged premises.

Glenn, 760 F.2d at 1435. The *Glenn* court went on to articulate a host of reasons for its selection of that date:

> (a) The language of the statute is, to us, plainly a compromise [between providing relief to chapter 13 debtors, especially allowing them to save their homes from foreclosure, and the stability of the market for homes] . . . . Picking a date between the two extremes, is likewise a compromise of sorts.
>
> (b) The sale of the mortgaged property is an event that all forms of foreclosure, however denominated, seem to have in common. Whether foreclosure is by judicial proceeding or by advertisement, and regardless of when original acceleration is deemed to have occurred, the date of sale is a measurable, identifiable event of importance in the relationship of the parties. It is at the heart of realization of the security.
>
> (c) Although the purchaser at the sale is frequently the security holder itself, the sale introduces a new element -- the change of ownership and, hence, the change of expectations -- into the relationship which previously existed.
>
> (d) The foreclosure sale normally comes only after considerable notice giving the debtor opportunity to take action by seeking alternative financing or by negotiating to cure the default or by taking advantage of the benefits of Chapter 13. Therefore, setting the date of sale as the cut-off point avoids most of what some courts have described as the "unseemly race to the courthouse." Concededly no scheme can avoid that possibility altogether, but the time and notice requirements incident to most sales at least provide breathing room and should deter precipitate action that might be expected if the cut-off date were measured by the fact of notice of acceleration or the fact of filing suit.
>
> (e) Any earlier date meets with the complaint that the rights conferred by the statute upon debtors to cure defaults have been frustrated.

> (f) Any later date meets with the objection that it largely obliterates the protection Congress intended for mortgagees of private homes as distinguished from other secured lenders.
>
> (g) Any later date also brings with it the very serious danger that bidding at the sale itself, which should be arranged so as to yield the most attractive price, will be chilled; potential bidders may be discouraged if they cannot ascertain when, if ever, their interest will become finalized.

Glenn, 760 F.2d at 1435-36.

As in the instant case, the debtors in *Glenn* insisted that they could spread payment of the redemption amount over the life of their Chapter 13 plan. The Sixth Circuit disagreed. The court ruled that the redemption amount may not be paid over the life of a plan, relying on the same reasons that it had held that a mortgage cannot be reinstated after foreclosure sale. The court also observed that to allow payment of the redemption amount over the life of a plan would be the same as suspension of the redemption period, which it had found untenable.[13]

Debtor distinguishes *Glenn* from the instant case in that *Glenn* was decided under Chapter 13 of the Bankruptcy Code (rather than Chapter 11), involved residential real estate (rather than commercial real estate), and involved a mortgage (rather than a judgment lien). Debtor further notes that any plan of reorganization proposed by Debtor would not shorten or lengthen the redemption period inasmuch as the redemption period has no deadline under Ohio law (other than the hearing to confirm the foreclosure sale).

The content of the Chapter 11 plan of a subchapter V debtor is governed by, among others, 11 U.S.C. §1123 (except subsection (a)(8)). Section 1123 provides in pertinent part:

> (b) Subject to subsection (a) of this section, a plan may—

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[13]Earlier in the *Glenn* opinion, the Sixth Circuit held that a redemption period is not tolled or suspended by §362 of the Bankruptcy Code, that §108(b) of the Code supports this determination, and that §105 cannot be invoked to suspend a redemption period.

> (1) impair or leave unimpaired any class of claims, secured or unsecured, or of interests;
> . . .
> (3) provide for—
> (A) the settlement or adjustment of any claim or interest belonging to the debtor or to the estate;
> . . .
> (5) modify the right of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence . . . .

11 U.S.C. §1123(b).

Although *Glenn* was decided in the context of a Chapter 13 case rather than a Chapter 11 case, the issues are largely the same as they pertain to the impact of addressing payment of a right of redemption in a plan of reorganization. So to is the application of pertinent statutory law. Chapter 13 and Chapter 11 of the Bankruptcy Code have the same goal: allowing the debtor an opportunity and providing the tools to reorganize the debtor's financial affairs. Both chapters' goals are effectuated through a plan which can provide for payment of debt and adjustment of interests over time. Many of the statutory provisions of each chapter pertaining to the content of a plan are the same or substantially the same. *See, e.g.*, 11 U.S.C. §1322(b)(1) (permitting the plan to designate a class or classes of unsecured claims, as provided in §1122); §1322(b)(2) (allowing plan to modify rights of holders of secured claims other than a claim secured only by a security interest in real property that is the debtor's principal residence–same language in §1123(b)(5), *supra)*; §1322(b)(2) and §1123(b)(1) (plan may impair or leave unimpaired (unaffected) the rights of holders of any class of claims); §1322(b)(7) and §1123(b)(2) (plan may provide for the assumption, rejection, or assignments of any executory contract or unexpired lease of the debtor not rejected under §365). And none of the parties have suggested that a right of redemption of commercial property in Ohio differs from the right of redemption for residential property.

Careful review of the factors that the Sixth Circuit set forth in *Glenn* reveal that almost all of them apply equally in the chapter 11 context and support the proposition that a Chapter 11 debtor may not propose payment of a redemption amount over the life of a plan. This Court can discern no reason why the considerations articulated by the Glenn court would not apply in this Chapter 11 case. Debtor suggests that it seemed important to the *Glenn* court that the real estate at issue was residential property. Indeed, the *Glenn* court spent a great deal of time reviewing the provisions of Chapter 13 and Congress' policies particular to residential property. However, that court did not differentiate between residential and commercial properties in its ultimate conclusion that a right of redemption is not susceptible to plan treatment or in most of the reasons therefor enumerated in *Glenn*. Moreover, the Court is not persuaded that Congress is any more fervent in its policy of preserving the market for homes than in its policy of preserving the commercial real estate market. While difficult to quantify Congress' enthusiasm for its policies on each market segment, it is easy to discern Congress' focus on protections of parties secured by commercial real estate in various provisions of the Bankruptcy Code: §1111(b), §1129(b)(2)(A), the single asset real estate provisions in §101(51B), §1182(1), and §362(d)(3).

Simply put, "[a] right of redemption cannot be transformed through the mere filing of a bankruptcy petition into a restructureable debt. It remains, after filing, a right without obligation, and it is either exercised or it is lost." *In re Stage I Land Co.*, 60 B.R. 539, 542 (Bankr. D. Minn. 1986). *See also Agee v. Fenton Poured Walls, Inc. (In re Agee)*, 330 B.R. 561 (E.D. Mich. 2005) (ruling that Chapter 13 debtor cannot pay the redemption amount for nonresidential property over the life of the Chapter 13 plan, because the plan cannot extend the redemption period, citing *In re Glenn*, 760 F.2d 1428 (6th Cir. 1985)); *In re De Mers*, 853 F.2d 605 (8th Cir. 1988) (holding that a Chapter 11 plan providing for payment of the redemption amount over 20 years is

not a redemption under South Dakota law, which requires payment of a lump sum, and the Bankruptcy Code does not authorize bankruptcy courts to suspend the redemption period.). While not binding authority on the redemption issue, this Court believes *Glenn* to be compelling evidence of how the Sixth Circuit Court of Appeals would decide if presented the issue. Therefore, the Court is persuaded to follow the Sixth Circuit's guidance set forth in *Glenn*.

But while Martin prevails on this particular point, it does not avail him in this case at the present time. Although Debtor may not propose for payment of the amount required to redeem the Property over time through a plan of reorganization, Debtor may propose in its plan another mechanism to reorganize its financial affairs. Such as refinancing the debt encumbering the Property. Or immediate payment of the redemption amount by way of capital infusion. Or sale of the Property. At this stage of the case, the Court will not assume that Debtor will limit its proposal for reorganization to attempting payment of the redemption amount over a span of time. This case was commenced in late September 2022. The purpose of a Chapter 11 proceeding is to allow the debtor an opportunity to reorganize its financial affairs. Debtor should be allowed an opportunity to propose an acceptable plan of reorganization. *See In re Energy Conversion Devices, Inc.*, 474 B.R. 503, 507-08 (Bankr. E.D. Mich. 2012)(citing *In re Texaco, Inc.*81 B.R. 806, 809 (Bankr. S.D.N.Y. 1998)(citing H.R. Rep. No. 595, 95th Cong., 2d Sess. 221-22, reprinted in 1978 U.S.C.C.A.N. 5787)).

F. Potential Harm to Martin from the Automatic Stay is Outweighed by Harm or Prejudice to Debtor That Would Be Caused by Relief from the Stay

This brings us back to the Motion. Having determined that Debtor owns the Property and that Debtor's right of redemption has not expired but that Debtor may not provide for payment of the redemption amount over time through a plan of reorganization, the question now is

whether Martin has illustrated cause sufficient to obtain relief from the automatic stay. The Court's task now is to balance the potential harm to each party.

Martin states in the Motion that he seeks only to allow the Trial Court to proceed with the confirmation of the foreclosure sale. That, of course, would cut off Debtor's right of redemption.

Martin points out that he has had a lien on the Property and has been awaiting payment for four years. Martin has illustrated no other harm. Even assuming that Martin has a judgment lien on the Property and would be entitled to share in the foreclosure sale proceeds, it would be some time before funds could be distributed to all lien holders. The Foreclosure Decree did not determine the priority of the liens on the Property or the amounts due lien holders. Those matters must be determined before there can be any distribution.

On the other hand, the Property is Debtor's primary asset and the sole source of Debtor's income. Martin states in the Motion that he seeks relief from the stay only to allow the Trial Court to confirm the foreclosure sale. Confirmation of the sale would have the effect of cutting off Debtor's right of redemption. Any hope of reorganization would be lost.

Martin is not without adequate protection for his interest, if any, in the Property. The foreclosure sale is the best indicator of the minimum value of the Property. The successful bid was $1,700,100. There appear to be no ad valorem taxes outstanding, as the county treasurer did not file a claim and Debtor did not list a debt to the treasurer or any real estate tax claims in its Schedules. Timber View filed a proof of claim asserting an amount due under its mortgages of approximately $834,580. Gemmell filed a proof of claim asserting an outstanding balance just shy of $556,650. Martin asserts a balance due of approximately $243,240. Thus, encumbrances

total around $1,634,470. There is sufficient value in the Property to provide adequate protection for any lien held by Martin for the time being.

Under these circumstances, the balance weighs in favor of Debtor. The Court will not authorize Martin to pursue confirmation of the foreclosure sale at this time.

IV. Should the Court Abstain or Grant Relief from Stay for the Appeal to Proceed?

Since the inception of this contested matter, the Court has been concerned that this matter has Rooker-Feldman written all over it. In light of the Rooker-Feldman doctrine, the Court has some significant reservations about the Court's authority to scrutinize and question the orders of the Trial Court. However, Debtor and Timber View have raised some serious questions regarding the validity of the Trial Court's judgments in the Foreclosure Action and the foreclosure sale of the Property. As mentioned above, Debtor and Timber View have already filed an appeal of the Foreclosure Decree, which is currently pending in the Appellate Court.

The Court has reduced the statement of facts above to those necessary to its determination of the Motion. But there has been much more litigation not detailed above. The Trial Court and the Appellate Court have been the site of additional complaints surrounding the Property, extensive motion practice and other appeals.

There are few parties in interest beyond those involved in the proceedings on the Motion. Debtor has few creditors. Only two were listed on Debtor's Schedule D, and nine were listed in Debtor's Schedules E/F. (See Doc. #25.) Debtor listed only Timber View and the Hocking County Treasurer as secured creditors on Schedule D. The Hocking County Treasurer did not file a proof of claim. Timber View did. Of the seven unsecured creditors, Debtor listed IRS and Ohio Department of Taxation with a balance outstanding of $0. IRS filed a proof of claim for $400. Debtor listed General Electric, Killbarger Companies, Penzoil Company as unsecured

creditors on Schedule E/F, each with a balance due of "Unknown"; none of them filed a proof of claim. Debtor's special counsel's law firm, Fisher Skrobot & Sheraw, was also listed on Schedule E/F, but waived any claim as a condition of employment as special counsel for the bankruptcy estate. The remaining three creditors listed as unsecured are Gemmell, Martin and the Brunner Quinn law firm. Each filed proofs of claim (Gemmell filed two proofs of claim for the same debt). Additionally, David Stemen and Eventursencore, Inc., who may have leasehold interests in the Property, filed proofs of claim but did not claim any amount, simply stating that any claim is unliquidated and based on litigation pending in the State Court. In summary, there are in reality seven claimants in this case, one of which is minimal (IRS), two of which do not claim any amount at present, and three of which are involved in the proceedings presently before this Court. There is only one creditor of any consequence not involved in the disputes surrounding the Property.

Debtor has little in the way of assets other than the Property, those assets consisting of rents due from lessees of Property, a mobile home used as an office, and some office furniture of little value.

This case seemingly presents a four or five party version[14] of a classic two party dispute. Litigation surrounding the Property has been on-going for ten years. The issues that are currently placed before this Court involve state real estate law and litigation procedure under Ohio law – both areas of law squarely within the Trial Court's and the Appellate Court's wheelhouse. This case has all the appearances of forum shopping by Debtor. No one has

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[14]The number of parties here depends on whether M&T is counted.

requested the Court to abstain. However, for the reasons articulated above and other considerations, it appears to the Court that this is an appropriate case for abstention.

The Court can raise abstention on its own, so long as the Court provides the parties with an opportunity to be heard. 28 U.S.C. §1334(c)(1); *Brothers v. Tremaine (In re Tremaine)*, 188 B.R. 380, 384 (Bankr. S.D. Ohio 1995). In considering abstention, the Court is guided by the factors enunciated by the court in *Junk v. Citimortgage, Inc. (In re Junk)*, 512 B.R. 584, 616-17 (Bankr. S.D. Ohio 2014).

In the alternative, for the same reasons that abstention may be appropriate and in the interest of judicial economy, it may also be appropriate to allow the parties to prosecute the appeal of the Foreclosure Decree. At the final hearing, both the Court and the Subchapter V trustee suggested this. The Court will allow the parties a period of time to file memoranda commenting on whether the Court should abstain from further proceedings to determine the validity of the 2018 Martin Judgment Lien or whether the Court should modify the automatic stay to allow prosecution of the appeal of the Foreclosure Decree in the Appellate Court.

V. Conclusion

The Court has found that (1) Martin has standing to seek relief from the automatic stay; (2) Debtor's right of redemption has not expired; (3) Debtor remains the owner of the Property; (4) Martin has a judgment lien on the Property according to the Trial Court; (5) the Rooker-Feldman doctrine bars this Court from consideration of Debtor's theory that the 2018 Martin Judgment Lien is invalid; (6) Debtor may not restructure or modify its right of redemption in a plan of reorganization; and (7) the potential harm to Martin from the automatic stay is outweighed by the harm or prejudice to Debtor that would result from the granting of the requested relief from stay. Accordingly, it is:

ORDERED and ADJUDGED that the *Motion of Reg Martin for Relief from Stay* (Doc. #44) is DENIED. It is further

ORDERED and ADJUDGED that the parties shall file no later than March 31, 2023, memoranda commenting on whether the Court should abstain from further proceedings to determine the validity of the 2018 Martin Judgment Lien or whether the Court should modify the automatic stay to allow prosecution of the appeal of the Foreclosure Decree in the Appellate Court.

IT IS SO ORDERED.

COPIES TO:

Default List Plus Top 20

Philip Stovall, attorney for Karry Gemmell, via CMECF service

Kevin Humphreys, attorney for Timber View Properties, Inc., via CMECF service

GLOSSARY

The following is a partial list of defined terms used in this Opinion. The page number following the definition of the term is the page where the term is defined in the text of the Opinion. In the event of a discrepancy between the definition here and the definition in the text of the Opinion, the text in the Opinion shall prevail.

Term	Definition
"Anthony"	Mark Anthony (page 3)
"Gemmell"	Karry Gemmell (page 3)
"Final Judgment"	The final judgment entered August 29, 2019 in the State Court Action (page 4)
"Foreclosure Action"	The foreclosure action commenced by Gemmell against Debtor and the Property in the Trial Court, Case No. 21CV0004 (page 5)
"Foreclosure Decree"	The Judgment Entry and Decree in Foreclosure entered in the Foreclosure Action on March 28, 2022 (page 5)
"M&T"	M&T Property Investments, Ltd. (page 2)
"Martin"	Reg Martin (page 3)
"Property"	Real estate located on State Route 664 South, Logan, Ohio, owned by Debtor, which is the subject of the Foreclosure Action (page 2)
"Receiver"	Reg Martin as court appointed receiver of Hocking Peaks Adventure Park (page 3)
"State Court Action"	Gemmell suit against Anthony, M&T, and others, Hocking County Court of Common Pleas, Case No. 13CV0046 (page 3)
"Timber View"	Timber View Properties, Inc. (page 1)
"Trial Court"	Hocking County Court of Common Pleas (page 3)
"2018 Judgment"	The judgment rendered on March 21, 2018 in the State Court Action awarding damages to Gemmell and receivership fees to Martin (page 3)
"2018 Gemmell Judgment Lien"	The certificate of judgment against M&T obtained by Gemmell in connection with the 2018 Judgment (page 3)

"2018 Martin Judgment Lien" The certificate of judgment against M&T and others obtained by Martin in connection with the 2018 Judgment (page 3)

"2018 Liens" The 2018 Judgment, 2018 Gemmell Judgment Lien and 2018 Martin Judgment Lien, collectively (page 4)

"2022 Summary Judgment" The partial summary judgment regarding the 2018 Martin Judgment Lien entered March 18, 2022 by the Trial Court in the Foreclosure Action (page 5)