



IT IS ORDERED as set forth below:

Date: May 6, 2014

**Barbara Ellis-Monro
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:

TYRONE SHANKS,

Debtor.

LEXINGTON ON THE GREEN, LLC, D/B/A
LEXINGTON ON THE GREEN
APARTMENTS,

Movant,

v.
TYRONE SHANKS,

Respondent.

CASE NO. 14-52925-BEM

CHAPTER 7

Contested Matter

ORDER DENYING MOTION TO SET ASIDE JUDGMENT

This case is before the Court for consideration of a “Motion To Set Aside Judgment and Brief To Support” (the “Motion”) [Doc. No. 30], filed by Tyrone Shanks, *pro se* debtor herein (“Debtor”). In the Motion, Debtor requests that the Court set aside a judgment entered by the Magistrate Court of DeKalb County, Georgia, because Debtor asserts, it is void

for lack of subject matter jurisdiction. Debtor argues that the magistrate court was without jurisdiction because he tendered rent to Movant and Movant did not accept said rent. Debtor argues further that because the judgment is void this Court must set it aside pursuant to Federal Rule of Civil Procedure 60(b)(4).¹

Pursuant to O.C.G.A. § 15-10-2(6), the magistrate court of each county has the subject matter jurisdiction to enter judgment in dispossessory proceedings as provided in Articles 3 and 4 of Chapter 7 of Title 44. *See* O.C.G.A. § 15-10-2; *See also, Atlanta J's, Inc. v. Houston Foods, Inc.*, 237 Ga. App 415, 417 (1999). Debtor has not challenged, either in the Motion, prior pleadings filed in this Court or at the hearing held on March 4, 2014, that he had notice of the trial date in the magistrate court and that a default judgment in the amount of \$1,009.00 and a writ of possession were entered by the magistrate court. Rather, Debtor stated that he missed the February 6, 2014, trial and acknowledged in his written response filed on February 28, 2014, that a judgment was entered. *See* Doc. No. 25. Thus, the magistrate court had both subject matter and personal jurisdiction in the underlying dispossessory action.

Lower federal courts lack jurisdiction to exercise appellate review of a state court order; only the Supreme Court has such authority. *See*, 28 U.S.C. §1257(a). The Rooker-Feldman doctrine reinforces this limitation on jurisdiction and “[g]enerally speaking . . . recognizes that federal district courts do not have jurisdiction to act as appellate courts and precludes them from reviewing final state court decisions.” *Paletti v. Yellow Jacket Marina, Inc., et. al.*, 3905 Fed.Appx. 549, 553 (citing, *Green v. Jefferson Cnty. Comm’n*, 563 F.3d 1243, 1249 (11th Cir. 2010), cert. denied, 558 U.S. 874, 130 S. Ct. 199, 175 L. Ed. 2d 127 (2009)). The Rooker-Feldman doctrine applies only to cases that are "brought by state-court losers

¹ Federal Rule of Civil Procedure 60 is applicable in this Court pursuant to Federal Rule of Bankruptcy Procedure 9024.

complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Id.* at 553 (citing, *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284, 125 S. Ct. 1517, 1521-22, 161 L. Ed. 2d 454 (2005); see also *Nicholson v. Shafe*, 558 F.3d 1266, 1272-74, 1278-79 (11th Cir. 2009)).

Here, the magistrate judgment and writ were entered on February 6, 2014, and this case was filed on February 14, 2014. The original matter Debtor contested in this Court was the applicability of the exception to the automatic stay contained in 11 U.S.C. § 362(b)(22) based upon the entry, prior to the filing of his bankruptcy petition, of the magistrate judgment.² Clearly Debtor was a "state court loser" who seeks a different result, that is, review of the state court order. This Court does not have jurisdiction to adjudicate Debtor's request. Thus, no matter how wrong the Debtor believes the magistrate judgment is, this Court cannot review set it aside.

Moreover, as set forth in this Court's March 12, 2014, Order Confirming No Stay Is In Effect, because there is no right under Georgia law to cure a monetary default under a lease after issuance of the writ of possession by the magistrate court, there is no right to cure under 11 U.S.C. § 362(l) and the exception to the automatic stay of 11 U.S.C. 362(a) set forth at § 362(b)(22) applies. *See* Doc. No. 32. Consequently, there is no automatic stay in place. As discussed herein, this Court is without authority to review the magistrate court judgment for which there was actual notice of the action and statutory authority to enter a judgment, it is hereby

ORDERED that the Motion is DENIED.

END OF ORDER

² "A judgment is final when it disposes of the entire controversy, leaving nothing for the trial court to do in the case." *See Atlanta J's* at 218, citing *Levingston v. Crable*, 203 Ga. App. 16, 18 (1992). Here, both the issue of possession and rent due were adjudicated and the judgment was final.

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