IT IS ORDERED as set forth below:

Date: May 16, 2016

W. Homer Drake
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

IN THE MATTER OF:	:	**CASE NUMBER**
JAMES P. VANBROCKLIN,	:	15-11761-WHD
Debtor.	:	
BANK OF NORTH GEORGIA, A DIVISION OF SYNOVUS BANK,	:	CONTESTED MATTER
Movant,	:	
v.	:	
JAMES P. VANBROCKLIN,	:	IN PROCEEDINGS UNDER, CHAPTER 7 OF THE BANKRUPTCY CODE
Defendant.	:	

ORDER

Before the Court is the Motion Confirming the Automatic Stay Is Not in Effect As to Pending State Court Litigation filed by the Bank of North Georgia

(hereinafter "BNG"). As this matter touches on the automatic stay provided by § 362 of the Bankruptcy Code,[1] it constitutes a core proceeding. *See* 11 U.S.C. § 157(b)(2).

Background

The legal proceedings between BNG and the Debtor began on August 3, 2015. On that day, BNG initiated a lawsuit in the State Court of Coweta County, Georgia (hereinafter the "State Court"), against Axiom Laboratories, LLC (hereinafter "Axiom Labs"), Axiom Real Estate Holdings, LLC (hereinafter "Axiom Real Estate"), Axiom Nutraceuticals, LLC (hereinafter "Axiom Nutraceuticals"), James Connaughton, Ray Caron, and the Debtor. The suit seeks recovery on four notes. BNG is attempting to hold Axiom Real Estate and Axiom Labs principally liable on the notes, and the other entities, including the Debtor, are allegedly liable as guarantors.

On August 17, 2015, the Debtor filed his voluntary petition under Chapter 7 of the Bankruptcy Code. On Schedule F, he listed BNG as holding a contingent,

[1] 11 U.S.C. § 101 *et seq*.

unliquidated, disputed claim for $1,211,012.70.

On November 17, 2015, BNG initiated an adversary proceeding, 15-1061-WHD, against the Debtor in this Court, contesting the dischargeability of the debt. In that proceeding, BNG alleges that the Debtor, as member and manager of Axiom Labs, has sold Axiom Labs's property that was subject to a security interest held by BNG and misappropriated the proceeds. BNG asserts that the Debtor transferred property to a company called USA Labs Direct, LLC (hereinafter "USA Labs").

In the course of prosecuting its State Court action, and after the Debtor had filed his bankruptcy petition, BNG served subpoenas on Elite Bio Labs, LLC (hereinafter "Elite"). The subpoenas requested that Elite divulge information relating to its receipt of equipment from any of the defendants in the state court action, including the Debtor, or from USA Labs. After the Debtor became aware of these subpoenas, he filed an Emergency Motion for Protective Order and to Enforce the Automatic Stay as to Debtor in the State Court on February 12, 2016. The Debtor alleged that the subpoenas were directed at pursuing BNG's claim

against him, and that this violated the automatic stay provisions of the Bankruptcy Code.[2]

On February 22, 2016, BNG filed a response to the Debtor's emergency motion, contending that the automatic stay did not bar its discovery requests. That same day, the State Court issued an order granting the Debtor's motion. The State Court directed that all proceedings in the State Court were stayed as to the Debtor, BNG must cease and desist pursuing discovery in connection with its claims against the Debtor, and that BNG must provide the Debtor with any responses it had received in response to its subpoenas. The State Court explicitly includes the subpoenas served on Elite in its list of prohibited discovery against the Debtor. On March 11, 2016, BNG filed a motion to reconsider in the State Court.

A day before filing its motion to reconsider, BNG filed the instant motion in this Court. BNG requests an order confirming that the automatic stay does not apply to its discovery requests in the State Court action. In support, BNG asserts that its discovery requests were aimed at prosecuting its claims against the non-

[2] *See* 11 U.S.C. § 362(a).

debtor State Court defendants. It argues that it is seeking discovery from Elite regarding transfers of property in an attempt to locate and recover the property that served as the collateral for its loans.

On his part, the Debtor maintains that BNG's discovery requests were related to pursuing claims against him, specifically arguing that because BNG is trying to discover information relating to USA Labs and the transfer of property, it must be looking for information related to the adversary proceeding. Additionally, the Debtor states that even if the subpoenas are related to prosecuting claims against the non-debtor defendants in State Court, the Debtor's relationship with Axiom Real Estate, Axiom Labs, and Axiom Nutraceuticals is such that it creates an "unusual circumstance" whereby the automatic stay protects those entities as well as the Debtor.

The Court held a hearing on BNG's motion on April 6, 2016. At the hearing, the Court raised questions about its jurisdiction to enter an order in this matter and requested supplemental briefing from the parties. Having considered the arguments contained in the parties' briefs and those presented at the hearing,

the Court concludes as set forth below.

Discussion

It is axiomatic that a court must always determine whether it has jurisdiction to decide a given case. *E.g.*, *Stewart v. Kutner (In re Kutner)*, 656 F.2d 1107, 1110 (5th Cir. 1981). In the case at bar, BNG is requesting what is colloquially referred to as a "comfort order" that it can take to the State Court in order to convince that court that, contrary to that court's own conclusions, the automatic stay does not bar BNG's discovery efforts. Thus, BNG is effectively asking this Court to overrule a decision of the State Court. This raises potential issues with the jurisdictional concept known as the *Rooker-Feldman* doctrine. That doctrine provides that "a United States District Court has no authority to review final judgments of a state court in judicial proceedings." *Powell v. Powell*, 80 F.3d 464, 466 (11th Cir. 1996). Only the Supreme Court may review those judgments. *Id.* Courts have interpreted this doctrine to "preclude[] federal action if the relief requested would effectively reverse the state court decision or void its ruling." *In re Glass*, 240 B.R. 782, 785 (Bankr. M.D. Fla. 1999).

In determining whether the doctrine applies, a federal court must answer two questions in addition to whether it is being asked to overrule a state court: (1) did the state court have authority to enter its judgment; and (2) is the state court action "ended." The first question is important because a federal court may review a case where a state court's judgment is a legal nullity, as such judgments are void *ab initio*. *Id.* at 785-86. As for the second question, a state court proceeding must have "ended" because the doctrine "is confined to cases…brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). The Eleventh Circuit has held that a state court action has not ended where an appeal in the state court remains pending. *See Nicholson v. Shafe*, 558 F.3d 1266, 1276 (11th Cir. 2009) ("As such, because an appeal remained pending in the state court action at the time the Appellants filed the instant case, the state court proceedings had not ended for the purposes of *Rooker-Feldman* as clarified by *Exxon Mobil*."); *see also McSparin v. McSparin*, 489 F.

App'x 348, 350 (11th Cir. 2012) (applying doctrine where Florida Supreme Court had already dismissed appeal); *Butler v. Wood*, 383 F. App'x 875, 876 (11th Cir. 2010) (applying doctrine where Georgia Supreme Court had already decided the plaintiff's case). However, the Eleventh Circuit has expressly rejected an interpretation of the doctrine that would only apply the doctrine to state appellate judgments. *Nicholson*, 558 F.3d at 1277 n. 11. Consequently, even in a situation in which a state-court loser merely allows the time to appeal to expire, the doctrine may apply. *See id.* (citing *Bear v. Patton*, 451 F.3d 639, 642-43 (10th Cir. 2006)).

Here, the State Court had jurisdiction to enter this judgment regarding the application of the automatic stay. "It is well settled that state courts have concurrent jurisdiction with bankruptcy courts to determine the applicability of the automatic stay." *In re Cummings*, 201 B.R. 586, 588 (Bankr. S.D. Fla. 1996); *accord Overstreet v. Overstreet (In re Rogers)*, 164 B.R. 382, 391 (Bankr. N.D. Ga. 1994) (Drake, J.) ("It is settled law that bankruptcy courts do not have exclusive jurisdiction in determining the applicability of the automatic stay."). However, the state court proceeding has not ended, as there is, as of the receipt of

the supplemental briefs from the parties, a motion for reconsideration pending in the state court. If a pending appeal before the state's highest court means that a state court proceeding has not ended, then certainly a motion for reconsideration before the rendering court would do the same. Consequently, the *Rooker-Feldman* doctrine, as announced by the Supreme Court and the Eleventh Circuit, does not apply to this case.

Nevertheless, there is another jurisdictional concept that may bar this Court's exercise of authority over this case: res judicata, or claim preclusion. "The general principle of res judicata prevents the relitigation of issues and claims already decided by a competent court." *Community State Bank v. Strong*, 651 F.3d 1241, 1263 (11th Cir. 2011). In analyzing whether a given judgment has preclusive effect, a federal court adopts the preclusion law of the jurisdiction that rendered the judgment. *Id.*; *Lusk v. Williams (In re Williams)*, 282 B.R. 267, 271-72 (Bankr. N.D. Ga. 2002) (Mullins, J.). Here, the State Court is a Georgia court, so Georgia law applies.

In Georgia, res judicata is codified:

> A judgment of a court of competent jurisdiction shall be conclusive between the same parties and their privies as to all matters put in issue or which under the rules of law might have been put in issue in the cause wherein the judgment was rendered until the judgment is reversed or set aside.

O.C.G.A. § 9-12-40. In addition to the statute, Georgia courts have added the reasonable requirement that the judgment must be final. *See Bhindi Bros. v. Patel*, 619 S.E.2d 814, 816 (Ga. Ct. App. 2005); *CS-Lakeview At Gwinnett, Inc. v. Retail Dev. Partners*, 602 S.E.2d 140, 142 (Ga. Ct. App. 2004). "A judgment is final when it disposes of the entire controversy, leaving nothing for the trial court to do in the case." *Levingston v. Crable*, 416 S.E.2d 131, 132 (Ga. Ct. App. 1992); *see also* O.C.G.A. § 5-6-34(a)(1) (allowing appeal of "[a]ll final judgments, that is to say, where the case is no longer pending in the court below"). The Eleventh Circuit, applying Georgia law, has measured finality against appealability—a judgment that can be appealed is a final judgment. *Community State Bank*, 651 F.3d at 1265.

In the case at bar, all of the requirements for application of res judicata are

present.[3] There is a judgment entered by a court of competent jurisdiction, as explained above. The parties are the same. The matter at issue (whether the automatic stay applies) is the same. Finally, the judgment that the automatic stay applies to BNG's discovery requests is a final one for the purposes of res judicata because it finally resolves that discrete issue. This is true despite the motion for reconsideration, which, under Georgia law, did not toll the time to file an appeal. *See Jones v. Walker*, 433 S.E.2d 726, 728 (Ga. Ct. App. 1993) (quoting *Cleveland v. Fulton Cnty.*, 396 S.E.2d 2, 4 (Ga. Ct. App. 1990); *see also* O.C.G.A. § 15-7-43(a) ("The general laws and rules of appellate practice and procedure which are applicable to cases appealed from the superior courts of this state shall be applicable to and govern appeals from the state courts."); O.C.G.A. § 5-6-38 ("A notice of appeal shall be filed within 30 days after entry of the appealable decision

[3] BNG contends that res judicata should not apply because the State Court's order was not the result of a full adjudication. BNG's argument is based on the fact that the State Court's order was filed with the clerk of that court a mere nine minutes after BNG submitted its response to the Debtor's motion. While the Court understands BNG's frustrations, it is not convinced that there has not been a full adjudication merely because the State Court acted swiftly.

or judgment complained of….”). Therefore, because the judgment of the State Court is a valid, final judgment under Georgia law, res judicata bars the re-litigation of the claim it addresses, namely, whether the automatic stay bars BNG’s discovery requests.

Before concluding, the Court emphasizes that nothing in this Order should be construed as preventing BNG from continuing to pursue relief from the judgment in the State Court, or to request relief from the automatic stay in this Court, which maintains exclusive jurisdiction over enforcement of the automatic stay. *See Pope v. Wagner (In re Pope)*, 209 B.R. 1015, 1020 n.6 (Bankr. N.D. Ga. 1997) (Drake, J.) (noting that though a state court may make determinations of the automatic stay’s application, “only the bankruptcy court may grant relief from its terms”); *see also Baker v. Gen. Motors Corp.*, 522 U.S. 222, 236 (1998) (“Sanctions for violations of an injunction, in any event, are generally administered by the court that issued the injunction.”).

Conclusion

In accordance with the foregoing, BNG's motion is hereby **DENIED**.

END OF DOCUMENT

DISTRIBUTION LIST

Debtor
James P. VanBrocklin
422 White Oak Dr.
Newnan, GA 30265

Debtor's Counsel
Brandi J. Hillewaert
Hillewaert Law Firm
4994 Lower Roswell Road
Suite 27
Marietta, GA 30068

Creditor's Counsel
David C. Whitridge
Thompson, O'Brien, Kemp & Nasuti, P.C.
40 Technology Parkway South, Suite 300
Norcross, GA 30092

Chapter 7 Trustee
Griffin E. Howell, III
Griffin E. Howell, III & Associates, Ltd.
127 1/2 East Solomon Street
PO Box 551
Griffin, GA 30224

U.S. Trustee
Office of the United States Trustee
362 Richard Russell Building
75 Ted Turner Drive, SW
Atlanta, GA 30303