

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT**

_____	)	Case No.	17-51160
In Re:	)	Chapter	7
Robert Rossman,	)		
Debtor	)		
_____	)		
Guardian Alarm Services Inc.,	)	Adv. Pro. No.	18-05010
Plaintiff	)		
v.	)		
Robert Rossman,	)		
Defendant	)	ECF Nos.	34, 51, 57
_____	)		

**ORDER DENYING MOTION FOR STAY PENDING APPEAL**

This Adversary Proceeding was filed by Guardian Alarm Services, Inc. (“Guardian”) against Robert Rossman (the “Debtor”) to have a debt owed to it by the Debtor declared nondischargeable. After partial summary judgment entered in Guardian’s favor, the Debtor filed an appeal with the United States District Court for the District of Connecticut. Now before the Court is the Debtor’s Motion for Stay Pending Appeal. ECF No. 34. For the reasons that follow, the motion is **DENIED**.

**Procedural History**

On September 22, 2017, the Debtor filed a voluntary Chapter 7 petition. On March 8, 2018, Guardian initiated this Adversary Proceeding by filing a three-count complaint (the “Complaint”). The Complaint seeks a determination that the Debtor’s debt to Guardian is nondischargeable, in whole or in part, under the provisions of 11 U.S.C. §§ 523(a)(2)(A), 523(a)(4) and or 523(a)(6). Guardian moved for summary judgment on Counts One and Three

of the Complaint on August 3, 2018. ECF No. 14. The Debtor cross-moved for summary judgment on Count One of the Complaint on August 31, 2018. ECF No. 16. After a hearing on the motions, and after the parties filed supplements briefs, the Court issued a Memorandum of Decision on the Motions for Summary Judgment on July 24, 2019 granting Guardian's motion and denying the Debtor's motion. ECF No. 29. The Court found that since there was a Connecticut Superior Court verdict resulting in a final judgment in favor of Guardian on claims of loss of assets, tortious interference, unjust enrichment, and violation of the Connecticut Unfair Trade Practices Act ("CUTPA") (the "Superior Court Judgment"), principles of collateral estoppel applied to support a finding of non-dischargeability under 11 U.S.C. §§ 523(a)(6) and 523(a)(2)(A). Judgment entered in Guardian's favor on Counts One and Three of the Complaint on July 24, 2019. ECF No. 29. Guardian withdrew the second count of the Complaint on August 12, 2019. ECF No. 43.

The Debtor filed a Notice of Appeal of the judgment to the United States District Court for the District of Connecticut on August 5, 2019. ECF No. 33. That same day, he filed the instant Motion for Stay Pending Appeal. ECF No. 34. Guardian filed an objection to the Motion for Stay Pending Appeal on August 26, 2019. ECF No. 51. The Debtor filed a Reply on October 15, 2019. ECF No. 57. The Court held a hearing on the Motion for Stay Pending Appeal on October 24, 2019, at which time the matter was taken under advisement.

### **Discussion**

When deciding a motion for a stay pending appeal, a court must consider four factors:

(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

*In re World Trade Ctr. Disaster Site Litig.*, 503 F.3d 167, 170 (2d Cir. 2007) (footnote omitted) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). The most significant of the four criteria is the likelihood of success on appeal. *In re Taub*, 470 B.R. 273, 278 (E.D.N.Y. 2012). However, “[t]he requisite showing of substantial possibility of success is inversely proportional to the amount of irreparable injury [the movant] will suffer absent the stay.” *Id.* The party seeking the stay pending appeal bears the “heavy burden” of showing entitlement to the stay. *See In Re Barretta*, 560 B.R. 630, 632 (D. Conn. 2016), *aff’d sub nom. Barretta v. Wells Fargo Bank, N.A.*, 693 F. App’x 26 (2d Cir. 2017).

As to the first factor to be considered when analyzing a motion for stay pending appeal, the Court concludes that the Debtor has not established a likelihood of success on the merits. His challenge to the Memorandum of Decision on the Motions for Summary Judgment is barred by the *Rooker-Feldman* doctrine, which provides that the lower federal courts lack subject matter jurisdiction over claims brought by losing parties in state court that invite review and rejection of state court judgments. *Green v. Mattingly*, 585 F.3d 97, 101 (2d Cir. 2009).

The Second Circuit has set forth four requirements that must be met in order for a claim to be barred by the *Rooker-Feldman* doctrine: (1) the plaintiff must have lost in state court, (2) the plaintiff must complain of injuries caused by a state court judgment, (3) the plaintiff must invite district court review and rejection of the state court judgment, and (4) the state judgment must have been rendered before the district court proceedings commenced. *Id.*

Each of the four requirements to bar a claim under *Rooker-Feldman* doctrine are met here. First, the Debtor lost in state court by virtue of the Superior Court Judgment in Guardian’s favor on the loss of assets, tortious interference, unjust enrichment, and CUTPA claims. Second, the Debtor’s appeal complains of injuries caused by the Superior Court Judgment, namely that

the findings upon which the judgment is based result in a finding of nondischargeability of debt in this case. Third, the Debtor's appeal of the Memorandum of Decision on the Motions for Summary Judgment collaterally attacks the Superior Court Judgment and would require the District Court to declare that judgment void in order for the Debtor to prevail on the merits of his appeal. *See Kropelnicki v. Siegel*, 290 F.3d 118, 129 (2d Cir. 2002) (explaining that "adjudication of a claim in federal court [that] would require the court to determine that a state court judgment was erroneously entered or was void ... is precisely the result that the *Rooker-Feldman* doctrine seeks to avoid."). Finally, the Superior Court Judgment entered on July 1, 2016, before the Debtor filed his Chapter 7 case.

The other factors to consider in deciding a motion to stay pending appeal, on balance, do not show entitlement to the stay. Although the Debtor may be harmed if a stay is not granted, this factor is outweighed by the other factors to be considered when deciding a motion for stay pending appeal. *See Thapa v. Gonzales*, 460 F.3d 323, 334-35 (2d Cir. 2006) (discussing weighing of stay factors). Further, the potential harm to the Debtor if a stay is not granted is of a monetary nature. "It is well established that '[m]onetary loss alone will generally not amount to irreparable harm.'" *In re 8 W. 58th St. Hosp., LLC*, No. 14-11524 (SHL), 2016 WL 856800, at \*3 (Bankr. S.D.N.Y. Mar. 4, 2016) (quoting *Borey v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 934 F.2d 30, 34 (2d Cir. 1991)). The third factor weighs against the Debtor because Guardian has not been able to enforce the Superior Court Judgment in its favor. The fourth factor also weighs against the Debtor because there is a public interest in finality of orders. *See In re Turner*, 207 B.R. 373, 379 (B.A.P. 2d Cir. 1997).

### **Conclusion**

After consideration of the arguments raised by the parties, and upon balancing the relevant factors, it is hereby

**ORDERED:** The Motion for Stay Pending Appeal, ECF No. 34, is **DENIED**.

Dated at Bridgeport, Connecticut this 19th day of November, 2019.

*Julie A. Manning*  
Chief United States Bankruptcy Judge  
District of Connecticut

The seal of the District of Connecticut is a circular emblem. It features a central shield with a blue field containing a white star and a red field containing a white anchor. The shield is surrounded by a gold border. The words "DISTRICT OF CONNECTICUT" are inscribed around the perimeter of the seal.