

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT**

In re:)	Chapter 13
)	
LEE MONCHO,)	Case No. 22-50442 (JAM)
)	
Debtor.)	Re: ECF No. 73

APPEARANCES

Lee Moncho
245 High Meadow Road
Southport, CT 06890

Movant Lee Moncho, Debtor, proceeding pro se

Roberta Napolitano
10 Columbus Boulevard, 6th Floor
Hartford, CT 06106

Respondent Roberta Napolitano, Chapter 13 Standing Trustee

Pierre-Yves Kolakowski
Zeichner Ellman & Krause LLP
One Landmark Square, 4th Floor
Stamford, CT 06901

Counsel for Respondent U.S. Bank National Association, as Trustee for J.P. Morgan Mortgage Trust 2005-A7, Creditor

James M. Nugent
Harlow, Adams & Friedman, P.C.
One New Haven Avenue, Suite 100
Milford, CT 06460

Counsel for Respondent Harlow, Adams & Friedman, P.C., Creditor

**MEMORANDUM OF DECISION AND ORDER
DENYING MOTION TO STAY PENDING APPEAL**

Julie A. Manning, United States Bankruptcy Judge

I. INTRODUCTION

Before the Court is the Motion to Stay Pending Appeal (the “Motion to Stay Pending Appeal”) filed by Lee Moncho (the “Debtor”), the debtor in the above-captioned Chapter 13 case. (ECF No. 73.) The Motion to Stay Pending Appeal seeks to stay the Order Granting Trustee’s Motion to Dismiss Chapter 13 Case (the “Dismissal Order”) pending the resolution of the appeal of that order to the United States District Court for the District of Connecticut. *See, generally, In re Moncho*, No. 23-cv-00152 (OAW) (D. Conn. May 5, 2023). For the reasons set forth below, the Motion to Stay Pending Appeal is **DENIED**.

II. BACKGROUND

On August 29, 2022, the Debtor filed his voluntary Chapter 13 petition. (ECF No. 1.) On November 16, 2022, the Debtor filed a complaint against US Bank, commencing the adversary proceeding styled *Moncho v. U.S. Bank National Association (In re Moncho)*, Case No. 22-50442 (JAM), Adv. P. No. 22-05031 (JAM) (Bankr. D. Conn. Jan. 25, 2023) (the “Adversary Proceeding”). In the Adversary Proceeding, the Debtor petitioned the Court to strike U.S. Bank’s Proof of Claim and preclude it from filing an amended Proof of Claim. (Adversary Proceeding, ECF No. 1.)

On November 17, 2022, Roberta Napolitano, in her capacity as Chapter 13 standing trustee (the “Trustee”), filed the Motion to Dismiss Chapter 13 Case (the “Motion to Dismiss”). (ECF No. 28.) The Motion to Dismiss argued, among other things, the Debtor lacked income to fund a confirmable Chapter 13 plan and the plan failed to treat the claim of U.S. Bank as required by the Bankruptcy Code. On December 2, 2022, the Debtor filed an objection to the

Motion to Dismiss. (ECF No. 32.) On December 13, 2022, a hearing was held on the Motion to Dismiss. On January 10, 2023, a continued hearing was held on the Motion to Dismiss. At the conclusion of the continued hearing, the Court took the Motion to Dismiss under advisement.

On January 25, 2023, the Court abstained (the “Abstention Order”) from hearing the Adversary Proceeding due to, among other reasons, (i) the pendency of a foreclosure action (the “Foreclosure Action”) in the Connecticut Superior Court, styled *U.S. Bank Nat’l Ass’n v. Moncho*, Docket No. FBT CV17-6065487-S (Conn. Super. Ct. March 25, 2024), which concerns the Debtor’s principal residence, the real property (the “Property”) commonly known as 245 High Meadow Road, Southport, CT; and (ii) the predominance of issues of state law as opposed to bankruptcy law. (Adversary Proceeding, ECF No. 19.) Subsequently, on that same date, the Dismissal Order entered, granting the Motion to Dismiss. (ECF No. 60.) The Dismissal Order states:

Roberta Napolitano, Trustee, (the “Trustee”), filed a Motion to Dismiss the Case pursuant to 11 U.S.C. § 1307(c) dated November 17, 2022, (the “Motion,” ECF No. 28). A continued hearing on the Motion was held on January 10, 2023. The Debtor appeared at the hearing. During the hearing, the Trustee established that cause exists to dismiss the Debtor’s case under Section 1307(c) for several reasons, including that: (i) at the time of the hearing, the Debtor’s First Amended Chapter 13 Plan (ECF No. 39) did not conform to the secured Proof of Claim filed in the Debtor’s case; (ii) in order to treat the secured Proof of Claim filed in the Debtor’s case, the Debtor would have to make monthly payments in excess of \$36,000 for 60 months – much more than the monthly payment of \$75.39 for 36 months proposed by the First Amended Chapter 13 Plan; and (iii) at the time of hearing, the Debtor’s Schedules established that the Debtor has no monthly income and no monthly expenses and therefore is not able to propose a confirmable Chapter 13 Plan (ECF No. 9 Schedules I and J). Accordingly, it is hereby

ORDERED: The Debtor's Chapter 13 Case is **DISMISSED**; and it is further

ORDERED: The Chapter 13 Trustee is directed to submit a Final Report and Account within (150) one hundred fifty days from the date of this Order.

(Id.)

On February 6, 2023, the Debtor filed a notice of appeal regarding the Dismissal Order. (ECF No. 62.) The appeal remains pending in the United States District Court for the District of Connecticut in the action styled *In re Moncho*, No. 23-cv-00152 (OAW) (D. Conn. May 5, 2023).

On February 29, 2024, the Debtor filed the Motion to Stay Pending Appeal. (ECF No. 73.) On March 15, 2024, the Trustee, and U.S. Bank National Association, as Trustee for J.P. Morgan Mortgage Trust 2005-A7 (“US Bank”) filed responses in opposition to the Motion to Stay Pending Appeal. (ECF Nos. 77, 79.) US Bank is the plaintiff in the Foreclosure Action. Also on March 15, 2024, Harlow, Adams & Friedman, P.C. (“Harlow Adams”) filed a response in support of the Motion to Stay Pending Appeal. (ECF No. 78.) Harlow Adams represented the Debtor in the Foreclosure Action. The Debtor did not timely file a reply, D. Conn. L. Civ. R. 7(d), *made applicable by* D. Conn. L. Bankr. R. 1001-1(a), but filed a motion to expedite a hearing on the Motion to Stay Pending Appeal or, alternatively, requesting the Court rule on the Motion to Stay Pending Appeal before April 30, 2024. (ECF No. 80.) The Motion to Stay Pending Appeal is fully briefed.

This matter is ripe for decision.

III. JURISDICTION

The United States District Court for the District of Connecticut has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). This Court has authority to hear and determine this matter pursuant to 28 U.S.C. § 157(a) and the Order of Reference of the United States District Court for the District of Connecticut dated September 21, 1984. The present matter is statutorily core. 28 U.S.C. § 157(b)(2)(A).

Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

IV. LEGAL STANDARD

A motion for stay pending appeal seeking relief under Bankruptcy Rule 8007 is considered under the same standard as a motion for stay pending appeal of a district court order. *In re Adelpia Commc'n Corp.*, 333 B.R. 649, 659 (S.D.N.Y. 2005); *Country Squire Assocs. of Carle Place, L.P. v. Rochester Cmty. Sav. Bank (In re Country Squire Assocs. of Carle Place, L.P.)*, 203 B.R. 182, 183 (2d B.A.P. 1996). A stay pending appeal is an “‘intrusion into the ordinary processes of administration and judicial review,’ and accordingly ‘is not a matter of right, even if irreparable injury might otherwise result to the appellant,’” *Nken v. Holder*, 556 U.S. 418, 427 (2009) (internal citations omitted), but is instead an “exercise of discretion,” *Nken*, 556 U.S. at 433, reviewable for abuse of discretion. *Unif. Fire Officers Ass’n v. de Blasio*, 973 F.3d 41, 48 (2d Cir. 2020) (holding determining whether to grant a stay pending appeal is a matter of judicial discretion); *Andrews v. McCarron (In re Vincent Andrews Mgmt. Corp.)*, 414 B.R. 1, 4 (D. Conn. 2009) (same); *Green Point Bank v. Treston*, 188 B.R. 9, 11 (S.D.N.Y. 1995) (same); *Youssef v. Sally Mae Inc. (In re Homaidan)*, 646 B.R. 550, 575 (Bankr. E.D.N.Y. 2022) (same).

There are four elements that the movant must establish for a stay pending appeal to issue, namely, “the likelihood of success on the merits, irreparable injury if a stay is denied, substantial injury to the party opposing a stay if one is issued, and the public interest.” *Mohammed v. Reno*, 309 F.3d 95, 100 (2d Cir. 2002); *Hirschfeld v. Board of Elections*, 984 F.2d 35, 39 (2d Cir. 1993). The movant carries a “heavy burden” and has the burden as to each element. *Adelpia*, 333 B.R. at 659; see *Barretta v. Wells Fargo, N.A. (In re Barretta)*, 560 B.R. 630, 632 (D. Conn. 2016); *In re 473 W. End Realty Corp.*, 507 B.R. 496, 501–02 (Bankr. S.D.N.Y. 2014). The first two elements are the “most critical.” *Nken*, 556 U.S. at 434.

As is true with the preliminary injunction standard as propounded by the United States Court of Appeals for the Second Circuit, the movant’s burden on the first element – likelihood of success on the merits – varies depending on the strength or weakness of the movant’s argument on the other elements under the specific facts and circumstances of the case. *Reno*, 309 F.3d at 100–01; see *Citigroup Global Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35–38 (2d Cir. 2010) (holding *Jackson Dairy, Inc. v. H.P. Hood & Sons, Inc.*, 596 F.2d 70, 72 (2d Cir. 1979) remains the law of the Second Circuit). In particular, “[t]he probability of success [on the merits] that must be demonstrated is inversely proportional to the amount of irreparable injury” the Debtor establishes he will suffer absent a stay pending appeal. *Leroy v. Hume*, 563 F. Supp. 3d 22, 26 (E.D.N.Y. 2021) (alterations in original) (internal citations omitted).

V. CONCLUSIONS OF LAW

A. Likelihood of Success on the Merits

The Debtor appears to be arguing it is substantially likely (i) the District of Connecticut will determine this Court improperly abstained from hearing the Adversary Proceeding;¹ (ii) the Debtor will prevail in the Adversary Proceeding because the original Proof of Claim filed by US Bank was unsigned; and (iii) upon prevailing in the Adversary Proceeding, the Debtor will be able to propose a confirmable plan because he will not have to treat US Bank’s claim. Harlow Adams, which supports the Motion to Stay Pending Appeal, makes no argument regarding likelihood of success on the merits.

¹ The Court abstained from hearing the Adversary Proceeding under 28 U.S.C. § 1334(c)(1) “in the interest of comity with State courts or respect for State law.” Notwithstanding the Debtor’s arguments, pursuant to 28 U.S.C. § 1334(d), such an abstention order is not appealable because it was not an order denying a motion for abstention under 28 U.S.C. § 1334(c)(2). See *Baker v. Simpson*, 613 F.3d 346, 352 (2d Cir. 2010); see also *Conway v. Smith Dev., Inc.*, 64 F.4th 540, 544–45 (4th Cir. 2023).

The Trustee and US Bank both argue that the Debtor has no possibility of success on appeal because he does not have regular income and cannot file a confirmable plan in a Chapter 13 case. Additionally, (i) the Trustee argues this Court has no jurisdiction under the *Rooker-Feldman* doctrine to hear the issues the Debtor raises in the Adversary Proceeding; and (ii) US Bank argues the Debtor makes procedural – rather than substantive – objections to its Proof of Claim, which would not result in ultimate disallowance of its claim.

The Court agrees with the Trustee and US Bank. The Trustee is correct the *Rooker-Feldman* doctrine would preclude the Court affording the Debtor the relief he seeks in the Adversary Proceeding. After issuing a memorandum of decision on September 17, 2019, on October 17, 2019, the Connecticut Superior Court entered a judgment of strict foreclosure (the “Foreclosure Judgment”) against the Debtor in favor of US Bank, finding Debtor has no equity in the Property because the value of the Property is \$1,000,000.00 and the debt owed is \$1,680,038.17. (*U.S. Bank Nat’l Ass’n v. Moncho*, Docket No. FBT CV17-6065487-S (Conn. Super. Ct. Oct. 17, 2019), Entry Nos. 149, 152.) The Connecticut Appellate Court upheld the Foreclosure Judgment. *U.S. Bank Nat’l Ass’n v. Moncho*, 247 A.3d 161 (Conn. App. Ct. 2021). The Connecticut Supreme Court denied the Debtor’s petition for *certiorari*. *U.S. Bank Nat’l Ass’n v. Moncho*, 248 A.3d 708 (Conn. 2021). The Foreclosure Judgment is final. The Debtor has exhausted his right to appeal. This Court cannot overturn or change the Foreclosure Judgment issued and affirmed by the Connecticut state courts. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). This Court is not a court of appeals. *Lance v. Dennis*, 546 U.S. 459, 460 (2006) (explaining the *Rooker-Feldman* doctrine is founded on principle that lower federal courts cannot serve as courts of appeal to state courts); *In re Conrad*, 614 B.R. 20, 26 (Bankr. D. Conn. 2020); *In re Burgos*,

294 B.R. 210, 212 n. 4 (Bankr. D. Conn. 2003) (citing *Kropelnicki v. Siegel*, 290 F.3d 118, 128 (2d Cir. 2002)). Any determination this Court were to make regarding US Bank's Proof of Claim would not and could not affect the findings by the Connecticut Superior Court regarding US Bank's interest in the Property.

Furthermore, US Bank is correct that the Debtor's objection to its Proof of Claim in the Adversary Proceeding is procedural rather than substantive. Even if the *Rooker-Feldman* doctrine did not bar this Court from hearing the Adversary Proceeding, the Court could not afford the relief the Debtor believes would allow him to file a confirmable plan. US Bank's apparent failure to sign its original Proof of Claim is a procedural defect that US Bank has timely remedied by filing an amended Proof of Claim. Fed. R. Bankr. P. 9011(a). Failure to sign a Proof of Claim is not a substantive basis to deny a Proof of Claim. 11 U.S.C. § 502(b); see *In re Porter*, 374 B.R. 471, 480 (Bankr. D. Conn. 2007).

Finally, regarding the Debtor's last argument, even assuming that *Rooker-Feldman* did not bar this Court from hearing the Adversary Proceeding and the Adversary Proceeding were decided in the Debtor's favor, the Debtor still would be unable to propose a confirmable plan. First, a debtor is required to have regular income to proceed in Chapter 13. 11 U.S.C. §§ 101(30), 109(e); *In re Taneja*, 789 F. App'x 907, 909 (2d Cir. 2019) (collecting cases). The Debtor has no income, let alone regular income. (ECF No. 9.) Second, even if US Bank's claim were disallowed, disallowance of a secured creditor's claim for non-substantive reasons does not void that creditor's lien. 11 U.S.C. § 506(d); see *Johnson v. Home State Bank*, 501 U.S. 78, 82–83 (1991). Applicable non-bankruptcy law governs the substance of creditor's claims – here, Connecticut property law. 11 U.S.C. § 502(b)(1); *Travelers Cas. & Surety Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 450–51 (2007). As discussed above, the Connecticut state courts

have entered and affirmed the Foreclosure Judgment, resolving the substance of US Bank's claim. Hence, the Debtor would need to treat US Bank's claim, if he wished to remain in the house.

For all these reasons, the Court concludes the Debtor has minimal chance of success on appeal. This element tips decidedly against the Debtor.

B. Irreparable Injury to the Debtor

The Debtor argues he would be irreparably injured absent a stay because US Bank has moved in the Connecticut Superior Court to reset the law day in the Foreclosure Action. Harlow Adams makes no argument regarding whether there would be irreparable injury to the Debtor, but instead argues it will be harmed absent a stay because it will not be paid for the services it rendered to the Debtor in the Foreclosure Action.

The Trustee argues, insofar as the Debtor lacks any equity in the property, a foreclosure would not injure him. US Bank argues, while the Debtor may be injured by the rescheduled law day, such injury is mitigated because the Debtor has exhausted his appeals.

This element tips in favor of the Debtor. Loss of real property is not necessarily irreparable injury where it is compensable by money damages. *See In re Sabine Oil & Gas Corp.*, 551 B.R. 132, 143–44 (Bankr. S.D.N.Y. 2016). However, despite lacking equity in the Property, the Debtor remains in possession of the Property. After any rescheduled law day passes, and if the Debtor fails to exercise his right of redemption, US Bank can then move to evict the Debtor if he fails to surrender the property. Unlike loss of an investment property, eviction from a principal residence is irreparable injury not compensable by money damages. *See Sabine Oil*, 551 B.R. at 144 n. 137 (citing *Pelfresne v. Williams Bay*, 865 F.2d 877, 883 (7th Cir. 1989)).

C. Substantial Injury to Respondents

Although the Debtor makes the conclusory statement that no party will suffer substantial injury, the Debtor argues that US Bank would benefit from denial of the Motion to Stay Pending Appeal. Harlow Adams, for its part, asserts the value of the Property is increasing and argues, based on this contention, a stay pending appeal presents no harm to US Bank.

The Trustee and US Bank argue US Bank would be harmed by a stay pending appeal because the Debtor (i) has no equity in the Property and that US Bank's position is "underwater"; (ii) US Bank has obtained a final judgment of foreclosure, entered in 2019 and upheld on appeal in 2021, which judgment it seeks to execute; (iii) the Debtor has not made mortgage payments in over fifteen (15) years; and (iv) the Debtor's debt to US Bank continues to accrue, relating to, among other things, property tax assessments.

The Court agrees with the Trustee and US Bank. US Bank would be harmed by a stay pending appeal US Bank's interest in the Property is substantially underwater. Based on the fourth judgment of strict foreclosure entered on March 25, 2024, the Connecticut Superior Court has determined the value of the Property to be \$1,525,000.00 and the debt owed to US Bank to be \$1,967,389.82. (*U.S. Bank Nat'l Ass'n v. Moncho*, Docket No. FBT CV17-6065487-S (Conn. Super. Ct. March 25, 2024), Entry No. 180.50.) There is no evidence in the record suggesting that the value of the property is currently increasing. Moreover, the debt owed US Bank continues to accrue on a daily basis. US Bank has suffered significant delay, at significant cost, in seeking to execute the judgment of strict foreclosure in its favor. Continued delay would be substantial injury to US Bank. *Vincent Andrews Mgmt. Corp.*, 414 B.R. at 7.

D. Public Interest

The Debtor argues granting the Motion to Stay Pending Appeal would support the public's interest in affording litigants the opportunity to appeal judgments entered by courts and the public's interest in preventing bankruptcy fraud. Harlow Adams argues that the interest of creditors other than US Bank must also be protected and, unless the Debtor succeeds on appeal and is able to reorganize under Chapter 13, unsecured creditors will realize nothing.

The Trustee argues that denying the Motion to Stay Pending Appeal would support the public's interest in ensuring that bankruptcy is a process for the honest but unfortunate debtor and in Chapter 13 specifically being for hard-working debtors who have fallen behind. The Trustee further asserts the Debtor's case, where there is no income and the Debtor has no income and has failed to pay his mortgage for fifteen (15) years, subverts these core bankruptcy policy concerns. US Bank argues that bankruptcy proceedings are intended to be expeditiously administered and are not intended to thwart creditors' rights and to retain property without satisfying obligations as required by the Bankruptcy Code and applicable non-bankruptcy law.

The arguments advanced by the Debtor and Harlow Adams are unpersuasive. First, the public's interest in the Debtor's right to appeal is, on the present facts and circumstances, minimal. The Debtor makes no arguments regarding the rationale of the Dismissal Order. He does not argue that he has regular income and can propose a confirmable plan. Instead, he makes arguments regarding US Bank's Proof of Claim, attempting to collaterally attack a final judgment of strict foreclosure entered by the Connecticut Superior Court. He has already exhausted his right to appeal that judgment. This Court does not provide him another opportunity for appellate review. *Conrad*, 614 B.R. at 26

Second, there is no indication of bankruptcy fraud. US Bank failed to sign its original Proof of Claim. It timely filed an amended Proof of Claim and corrected its mistake.

Third, unsecured creditors would be unlikely to recover in the Debtor's case, even if the Debtor succeeds on appeal. For the reasons set forth in the Dismissal Order, the Debtor has demonstrated an inability to reorganize his debts and propose or fund a confirmable plan. Even if the Debtor could propose and fund a confirmable plan, unless US Bank consents to different treatment, its debt would likely need to be paid in full. 11 U.S.C. §§ 725, 726, 1322(b)(2), 1325(a)(5). Given the size of the debt owed US Bank – more than \$1.8 million – it is unlikely that general unsecured creditors would receive a distribution, even if the Debtor could pay US Bank in full.

The Court agrees with the Trustee and US Bank. Bankruptcy proceedings are intended for the honest but unfortunate debtor with the ability to meet the requirements of the requisite chapter of the Bankruptcy Code to obtain the “fresh start” provided by that chapter. *See Grogan v. Garner*, 498 U.S. 279, 286–87 (1991). The Debtor's case was dismissed because he does not meet the requirements for being in Chapter 13 and cannot propose or fund a confirmable plan. 11 U.S.C. §§ 101(30), 109(e); *Taneja*, 789 F. App'x at 909. As stated above, the Motion to Stay Pending Appeal does not contest these findings, but instead seeks to collaterally attack a final judgment of the Connecticut Superior Court. The only purpose for the appeal is continued delay and abuse of the bankruptcy process. The Debtor has neither the ability nor the intent to meet the requirements of Chapter 13.

VI. CONCLUSION AND ORDER

On balance, considering the irreparable harm demonstrated by the Debtor, he nevertheless fails to meet his burden to establish the requisite likelihood of success on appeal to

warrant a stay pending appeal. *See Reno*, 309 F.3d at 100–01. Moreover, the substantial injury a stay pending appeal would cause US Bank and the public’s interest both weigh against granting the Motion to Stay Pending Appeal. Accordingly, it is hereby

ORDERED: The Motion to Stay Pending Appeal (ECF No. 73) is **DENIED**; and it is further

ORDERED: The Motion to Expedite Hearing (ECF No. 80) is **DENIED** as moot, due to the entry of this Order; and it is further

ORDERED: At or before 5:00 p.m. on April 2, 2024, the Clerk of Court shall serve this Order on the Debtor at the address listed on his petition.

Dated at Bridgeport, Connecticut this 2nd day of April, 2024.

Julie A. Manning
United States Bankruptcy Judge
District of Connecticut

