



## I. BACKGROUND

On August 29, 2022, the Plaintiff filed a Chapter 13 voluntary petition in this Court. (Main Case, [ECF No. 1](#).) In addition to the Motion to Dismiss pending in this adversary proceeding, on November 17, 2022, the Chapter 13 Trustee filed a Motion to Dismiss Case for Failure to Make Plan Payments. (the “Motion to Dismiss,” Main Case, [ECF No. 28](#).) The Plaintiff is proceeding *pro se* in his Chapter 13 Case and in this adversary proceeding.

The Complaint is an objection to the Defendant’s Proof of Claim filed in the Plaintiff’s Chapter 13 case and an objection to the Judgment of Strict Foreclosure entered in the State Court. In the Complaint, the Plaintiff asserts that the Defendant lacks standing to file a Proof of Claim. The Plaintiff also argues at the time the Defendant commenced the foreclosure action currently pending in the Connecticut Superior Court, *U.S. Bank Nat’l Ass’n. v. Moncho*, Docket No. FBT-CV17-6065487 (Conn. Sup. Ct. 2017) (the “Foreclosure Action,”) the statute of limitations on the note securing the mortgage debt listed in the Defendant’s Proof of Claim had expired.

The Defendant asserts in the Motion to Dismiss that it obtained a Judgment of Strict Foreclosure against the Plaintiff in 2019. The Judgment of Strict Foreclosure was subsequently affirmed by the Connecticut Appellate Court in 2021. *U.S. Bank, N.A. v. Moncho*, [203 Conn. App. 28](#), [247 A.3d 161](#) (2021). Accordingly, the Defendant argues the adversary proceeding is an impermissible attempt to re-litigate issues raised, litigated, and rejected in the state courts. The Defendant further argues the Plaintiff is therefore barred from re-litigation by [Fed. R. Civ. P. 12\(b\)\(1\)](#) and (b)(6) for lack of subject matter jurisdiction and failure to state a claim upon which relief may be granted. The Defendant additionally argues that, under the *Rooker-Feldman* doctrine articulated by the United States Supreme Court in *District of Columbia Court of*

*Appeals v. Feldman*, [460 U.S. 462](#) (1983), and *Rooker v. Fidelity Trust Co.*, [263 U.S. 413](#) (1923), the Complaint requests that the Court impermissibly act as an appellate court following the Connecticut Appellate Court affirming the Judgment of Strict Foreclosure. Finally, the Defendant argues this Court is barred from exercising subject matter jurisdiction under the *Younger* doctrine articulated by the United States Supreme Court in *Younger v. Harris*, [401 U.S. 37](#) (1971), and therefore the Plaintiff is both collaterally estopped and barred by res judicata from arguing about the Defendant's standing and whether the Note allonges are valid.

Upon review of the pleadings, the Court has come to the determination that, for the reasons stated below, it should abstain from hearing and determining this adversary proceeding.

## **II. JURISDICTION**

The United States District Court for the District of Connecticut has jurisdiction over the instant proceedings 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\(b\)\(1\)](#) and [157\(b\)\(2\)\(A\)–\(B\)](#) and the District Court's General Order of Reference dated September 21, 1984. The Court's exercise of jurisdiction is not precluded by Constitutional concerns. *Cf. Stern v. Marshall*, [564 U.S. 462, 487–99](#) (2011).

## **III. DISCUSSION**

### **A. Legal Standard For Permissive Abstention**

Pursuant to [28 U.S.C. § 1334\(c\)](#), “courts have broad discretion to abstain from hearing claims arising under Title 11, or arising in or related to a case under Title 11, whenever appropriate ‘in the interest of justice, or in the interest of comity with State courts or respect for State law.’” *Cody, Inc. v. Cnty. of Orange (In re Cody, Inc.)*, [281 B.R. 182, 190](#) (S.D.N.Y 2002) (internal citations omitted) *aff'd in part, appeal dismissed in part*, [338 F.3d 89](#) (2d Cir. 2003). In

considering whether permissive abstention is appropriate under § 1334(c), courts have considered one or more of the following twelve factors:

(1) the effect or lack thereof on the efficient administration of the estate if a [court] recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable state law, (4) the presence of a related proceeding commenced in state court or other non-bankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than the form of an asserted “core” proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of [the court’s] docket, (10) the likelihood that the commencement of the proceeding in a bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of non-debtor parties.

*Cody*, 281 B.R. at 190–91; see *Osuji v. New Century Mortgage Corp. (In re Osuji)*, 564 B.R. 180, 187 (Bankr. E.D.N.Y. 2017); *In re Pers. Comm. Devices, LLC*, 556 B.R. 45, 56–57 (Bankr. E.D.N.Y. 2016).

“Permissive abstention is warranted when it is more appropriate to have a State court hear a particular matter of State law.” *Coker v. Pan Am. World Airways, Inc. (In re Pan Am. Corp.)*, 950 F.2d 839, 846 (2d Cir. 1991). “Permissive abstention under Section 1334(c)(1) is within the sound discretion of the bankruptcy court.” *Abir v. Malky, Inc. (In re Abir)*, Case No. 09-CV-2871 (JF), 2010 WL 1169929, at \*7 (E.D.N.Y. Mar. 22, 2010).

#### **B. Permissive Abstention Is Warranted in This Adversary Proceeding**

Permissive abstention is warranted in this adversary proceeding based upon the presence of the following factors: (i) the Chapter 13 Trustee has moved to dismiss the case for failure to propose a feasible plan; (ii) there is a pending foreclosure action in the Connecticut Superior Court; (iii) state law predominates over bankruptcy law; and (iv) there is no jurisdictional basis for this adversary proceeding other than 28 U.S.C. § 1334.

As noted above, the Plaintiff's Chapter 13 case is subject to a pending Motion to Dismiss filed by the Chapter 13 Trustee. The Chapter 13 Trustee has moved to dismiss the case for several reasons, including that the Plaintiff has no monthly income and therefore is not able to propose a confirmable Chapter 13 Plan. Keeping the Chapter 13 case open to hear and determine the present adversary proceeding has a negative impact on the efficient administration of the estate and burdens the Court's docket. *See Cody*, [281 B.R. at 190–91](#).

Furthermore, there is already a final judgment in the Foreclosure Action. The Foreclosure Action concerns the same debt and real property at issue in this adversary proceeding. The first Judgment of Strict Foreclosure was entered in 2019. *See Judgment of Strict Foreclosure, Moncho*, Docket No. FBT-CV17-6065487-S (Conn. Sup. Ct. 2019). Shortly thereafter, the Plaintiff appealed the Judgment of Strict Foreclosure to the Connecticut Appellate Court, which affirmed the judgment. *Moncho*, [203 Conn. App. 28, 247 A.3d 161](#). The Plaintiff again appealed the Judgment of Strict Foreclosure to the Connecticut Supreme Court, but certification was denied. *U.S. Bank, N.A. v. Moncho*, [336 Conn. 935](#) (2021). Therefore, the Judgment of Strict Foreclosure is a final judgment.

The Connecticut Superior Court is the proper forum in which to litigate the issues in this adversary proceeding, *see Pan Am. Corp.*, [950 F.2d at 846](#); *Cody*, [281 B.R. at 190–91](#). In fact, the issues the Plaintiff raises regarding the Defendant's standing and the validity of the Defendant's claim as assignee have already been raised, addressed, and determined in favor of the Defendant in both the Superior Court of Connecticut and the Connecticut Appellate Court. *See U.S. Bank, Nat'l Ass'n v. Moncho*, No. CV176065487S, [2019 WL 5172231](#), (Conn. Super. Ct. Sept. 17, 2019), *aff'd and remanded*, [203 Conn. App. 28, 247 A.3d 161](#) (2021). The parties, therefore, should return to the Foreclosure Action to litigate any issues that remain.

The Complaint does not raise issues of bankruptcy law. Accordingly, the issues raised and determined in the Foreclosure Action, in which Connecticut law applies, predominate over issues of bankruptcy law. *See Cody*, [281 B.R. at 190–91](#).

Finally, the only jurisdiction this Court has over this adversary proceeding is pursuant to [28 U.S.C. § 1334](#). *See id.*

#### **IV. CONCLUSION & ORDER**

The underlying issues were jurisdictionally and properly determined by the Connecticut state courts, and the Foreclosure Action is properly before the Connecticut Superior Court. The Court finds it appropriate to exercise its discretion and permissively abstain under [28 U.S.C. § 1334\(c\)\(1\)](#).

For the foregoing reasons, it is hereby

**ORDERED:** Pursuant to [28 U.S.C. § 1334\(c\)\(1\)](#), the Court hereby abstains from hearing and determining this adversary proceeding; and it is further

**ORDERED:** The above-captioned adversary proceeding shall be closed; and it is further

**ORDERED:** At or before 5:00 p.m. on January 25, 2023, the Clerk's Office shall serve this Order upon Mr. Lee Moncho via first class mail at 245 High Meadow Road, Southport, CT 06890, which is the address listed on his Chapter 13 petition, and on any email address Mr.

Moncho may have provided to the Clerk's Office; and it is further

**ORDERED:** The Pre-Trial Conference presently scheduled on January 31, 2023 at 2:00 p.m. will not be held in light of the entry of this Order.

Dated at Bridgeport, Connecticut this 25th day of January, 2023.

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

