

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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In re)	
)	
THE 283 BAYOU CIRCLE TRUST)	Case No. 6:13-bk-04561-KSJ
DATED OCTOBER 6, 2011,)	Chapter 7
)	
Debtor.)	
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SAM ZALLOUM,)	
)	
Plaintiff,)	
vs.)	Adversary No. 6: 13-ap-00124-KSJ
)	
RIVER OAKS COMMUNITY SERVICES)	
ASSOCIATION INC.,)	
)	
Defendant.)	
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ORDER DENYING DEFENDANT’S MOTION TO DISMISS

Plaintiff in this adversary proceeding, Sam Zalloum, filed his complaint¹ to determine the nature, extent, and validity of a lien held by Defendant, River Oaks Community Services Association Inc., on the real property jointly owned by Zalloum and the Debtor, The 283 Bayou Circle Trust Dated October 6, 2011. Defendant filed a motion to dismiss the complaint,² arguing the *Rooker-Feldman* doctrine and the Plaintiff’s failure to initiate statutorily required presuit mediation mandates dismissal. After reviewing the motion and complaint, the Court denies the motion to dismiss.

Debtor jointly owns a parcel of real estate with the Plaintiff, Zalloum. In this adversary

¹ Doc. No. 1.

² Doc. No. 4.

proceeding, the issue is whether unpaid homeowners association dues constitute a lien against the jointly owned property pursuant to Section 720.3085 of the Florida Statutes. Zalloum's complaint challenges the validity of this lien.

In its motion to dismiss, the Defendant first argues that the *Rooker-Feldman* doctrine precludes this Court from ruling on the dispute because state court already has determined that the Defendant's interest is superior to Zalloum's. Indeed, in a Partial Final Judgment, a state court has held that the Defendant holds a lien in the property superior to Zalloum's interest.³ But, the *Rooker-Feldman* doctrine is inapposite to the facts of this case.

In general terms, the *Rooker-Feldman* doctrine bars lower federal courts from reviewing state court decisions.⁴ However, the Supreme Court repeatedly has emphasized the doctrine's limited scope.⁵ More importantly, *Rooker-Feldman* only applies where the state proceedings have "ended."⁶ The Eleventh Circuit explicitly held that "state proceedings have not ended for purposes of *Rooker-Feldman* when an appeal from the state court judgment remains pending at the time the plaintiff commences federal court action that complains of injuries caused by the state court judgment and invites review and rejection of that judgment."⁷

In this case, the state court proceedings have not "ended." Zalloum appealed the state court judgment, but the Circuit Court dismissed his appeal as premature, without prejudice until final judgment was entered in the state court case.⁸ Until a further and final judgment is entered in the state court case, or the issues are resolved in this adversary proceeding, the *Rooker-*

³ See Partial Final Judgment Against Defendant Sam Zalloum a/k/a Osama Zalloum, Ex. A to Doc. No. 4.

⁴ *Nicholson v. Shafe*, 558 F.3d 1266, 1270 (11th Cir. 2009).

⁵ See *Lance v. Dennis*, 546 U.S. 459, 464, 126 S. Ct. 1198, 163 L. Ed. 2d 1059 (2006); *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 125 U.S. 280, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005).

⁶ *Nicholson*, 558 F.3d at 1275 ("Exxon Mobil clarified that the federal action must be filed after state proceedings have ended, which, in turn, begs the question: when have state proceedings ended?").

⁷ *Id.* at 1279.

⁸ *Zalloum v. River Oaks Community Services Assoc., Inc.*, No. 13, Case No. 2013-10032 APCC (Fla. 7th Cir. Ct., August 19, 2013).

Feldman doctrine simply does not apply.⁹

Next, the Defendant argues that Zalloum's complaint should be dismissed for failure to initiate presuit mediation, as required by Section 720.311(2) of the Florida Statutes, for certain suits against homeowners' associations by its members. First, this argument is largely moot. The Parties participated in mediation on October 17, 2013; it was unsuccessful.¹⁰ Second, Zalloum challenges both the Defendant's status as a homeowners' association and his membership. So, the applicability of that statute is directly at issue.

Accordingly, it is

ORDERED:

1. Defendant's Motion to Dismiss the Plaintiff's Complaint to Determine the Nature, Extent and Validity of Lien (Doc. No. 4) is denied.
2. Defendant is directed to file an Answer by **January 10, 2014**.
3. A further pretrial conference in this adversary proceeding is scheduled for **11:00 a.m. on January 28, 2014**, in Courtroom A, Sixth Floor, 400 West Washington Street, Orlando, Florida 32801.

DONE AND ORDERED in Orlando, Florida, on December 3, 2013.

A handwritten signature in black ink, appearing to read "Karen S. Jennemann" with the initials "K.O." written to the right of the signature.

KAREN S. JENNEMANN
Chief United States Bankruptcy Judge

Barry A. Postman, Esq., Attorney for Defendant, River Oaks Community Services Association, Inc., is directed to serve a copy of this Order on interested parties and file a proof of service within 3 days of entry of the Order.

⁹ The Court notes, as stated by the Eleventh Circuit, "[t]he *Rooker-Feldman* doctrine does not 'supplant' preclusion law or 'augment' other doctrines related to deference to state court actions. Rather, 'disposition of the federal action, once the state-court adjudication is complete, would be governed by preclusion law.'" *Nicholson*, 558 F.3d at 1278 (citing and quoting *Exxon Mobil*).

¹⁰ Doc. No. 33 in Main Case No. 6:13-bk-04561-KSJ.