

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

Case No. 6:06-BK-02044-ABB
Chapter 13

RICHARD J. DEMPSEY,

Debtor.

RICHARD J. DEMPSEY,

Plaintiff,

vs.

Adv. Pro. No. 6:06-ap-00148-ABB

MARK S. PETERS, ESQUIRE, MICHAEL
HARDICK, SR., RUDOLPH HARDICK,
R.D.M.H., INC., a dissolved Florida corporation,
CENTRAL FLORIDA MORTGAGE
INVESTMENT INC., a dissolved Florida
corporation, SURF N' SUN APTS, INC.,
ATLANTIC TRADERS, and BANANA RIVER
FINANCIAL, INC., a Florida corporation.

Defendants.

ORDER

This matter came before the Court on a Motion to Dismiss ("Motion") (Doc. No. 9) filed on December 4, 2006 by defendants Mark S. Peter, Michael Hardick, Sr., Rudolph Hardick, R.D.M.H., Inc., Central Florida Mortgage Investment, Inc., Surf 'N Sun Apts, Inc., Atlantic Traders, and Banana River Financial, Inc., herein ("Defendants"). Plaintiff Richard Dempsey, herein ("Plaintiff"), filed a Response to Motion to Dismiss and Memorandum of Law (Doc. No. 18) on December 18, 2006. A hearing on the Motion was held on June 4, 2007 at which the Plaintiff, representing himself, and counsel for the Defendants appeared. The Court makes the following findings and conclusions after reviewing the pleadings and evidence, hearing live argument, and being otherwise fully advised in the premises.

The Plaintiff filed a compliant (Doc. No. 1) ("Complaint") initiating this adversary proceeding on October 30, 2006. The Complaint essentially requests this Court issue a declaratory judgment and damages based on a contested decision from the Circuit Court of the Eighteenth Judicial Circuit in and

for Brevard County, Florida ("State Court Judgment"). The Plaintiff, although he has appealed in the state court system, seeks this Court vacate the State Court Judgment on the basis of fraud.

The *Rooker-Feldman* doctrine, as articulated by the Eleventh Circuit Court of Appeals in Wood v. Orange County, 715 F.2d 1543, 1547 (11th Cir. 1983), prevents this Court from acting in an appellate manner with regards to the state court decisions. The Supreme Court addressed the doctrine recently in Exxon Mobil v. Saudi Basic Indust., Corp., 544 U.S. 280, 283-285, 125 S. Ct. 1517, 1521-22, 161 L.Ed.2d 454 (2005) explaining the doctrine ". . . is confined to cases . . . brought by state-court losers complaining of . . . state court judgments rendered before the [federal] proceedings commenced and inviting [federal court] review and rejection of those judgments. *Rooker-Feldman* does not otherwise . . . allow federal courts to stay or dismiss proceedings in deference to state court actions." See also Noel v. Hall, 341 F.3d 1148, 1155 (9th Cir. 2003) (explaining that the doctrine prevents a "party disappointed by a decision of a state court" from appealing to a federal district court.).

This Court is barred from vacating or challenging the State Court Judgment by the *Rooker-Feldman* doctrine. The appropriate arena for such challenges is the state court system, not the bankruptcy court system. This Court cannot resolve the Plaintiff's disagreements with the State Court Judgment and the Plaintiff's claims requesting the Court vacate or challenge the State Court Judgment are due to be dismissed.

Federal Rule of Civil procedure 12(b)(6), made applicable to bankruptcy proceedings through Federal Rule of Bankruptcy Procedure 7012, requires dismissal where a claimant has failed to state a claim upon which relief can be granted. Dismissal is appropriate where "it is clear the plaintiff can prove no set of facts in support the claims in the complaint." South Fla. Water Mgmt. Dist. V. Montalvo, 84 F.3d 402, 406 (11th Cir. 1996). Stated another way, dismissal is appropriate when "on the basis of a dispositive issue of law, no construction of the factual allegations will support the cause of action." Marshall County Bd. of Educ. V. Marshall County Gas Dist., 992 F.2d 1171, 1174 (11th Cir. 1993). A complaint in which the claimant fails to state a claim upon which relief can be granted will result in dismissal pursuant to Rule 12(b)(6). Daewoo Motor Am., Inc. v. General Motors Corp., 459 F.3d 1249, 1271 (11th Cir. 2006); Snow v. DirecTV, Inc., 450 F.3d 1314 (11th Cir. 2006);

Davila v. Delta Air Lines, 326 F.3d 1183, 1185 (11th Cir. 2003).

The Complaint does not include any claim upon which relief can be granted as required by Rule 12(b)(6). The Plaintiff requests, through the Complaint, this Court vacate the State Court Judgment. The Bankruptcy Court is precluded from doing so by the *Rooker-Feldman* Doctrine. The Plaintiff fails to state a claim upon which relief can be granted by this Court and the Complaint is thereby due to be dismissed.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Defendants' Motion (Doc. No. 9) is hereby **GRANTED** and the Plaintiff's Complaint (Doc. No. 1) is **DISMISSED**.

Dated this 6th day of July, 2007.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Court