

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**
Bankruptcy Judge Joseph G. Rosania, Jr.

In re:

Robert John Hopp, Jr.,
SSN: xxx-xx-0746

Debtor.

Case No. 13-20838-JGR
Chapter 7

Robert John Hopp, Jr.,

Plaintiff,

v.

State of Colorado ex rel. Cynthia H.
Coffman, Attorney General for the State
of Colorado,

Defendant.

Adv. Pro. No. 18-01303-JGR

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

This matter comes before the Court on the Motion to Dismiss (Doc. 5; the "Motion") filed by the State of Colorado, *ex rel.* Cynthia H. Coffman, Attorney General for the State of Colorado (the "State"). The threshold issue is whether the *Rooker-Feldman* Doctrine prohibits this Court from determining the dischargeability of a certain judgment for attorney's fees and costs, and mandates dismissal of the within adversary proceeding. The Court has jurisdiction to adjudicate the Motion pursuant to 28 U.S.C. §§ 157(b)(1), 157(b)(2)(I), and 1334.

BACKGROUND

The pertinent facts are undisputed. Robert John Hopp, Jr. ("Debtor") is an attorney. At all times relevant to this proceeding, the Debtor owned and operated two law firms, Robert J. Hopp & Associates, LLC and The Hopp Law Firm, LLC (collectively, the "Law Firms"), and had an indirect ownership interest in a title agency, National Title, LLC.

I. The Bankruptcy Case

The Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on June 25, 2013. The Debtor's Schedule F listed the "Colorado Attorney General" (i.e., the State) as a general unsecured creditor of "Hopp Law Firm" for notice purposes (Case No. 13-20838-JGR; Doc. 1 at 37). The State was also listed in the Debtor's Creditor Matrix to receive notice (*Id.* at 90). The deadline to object to discharge and dischargeability was September 30, 2013. The State did not object to discharge or dischargeability in the Debtor's bankruptcy case. An Order Discharging Debtor was entered on February 10, 2014, and the Debtor's bankruptcy case was subsequently closed.

II. The State Court Proceedings

Thereafter, on December 19, 2014, the State filed suit against, *inter alia*, the Debtor, the Law Firms, and National Title, LLC, on behalf of the State of Colorado and the Administrator of the Uniform Consumer Credit Code in the District Court for the City and County of Denver, Case No. 2014-CV-34780 (the "State Court Case"). By the State Court Case, the State alleged that the Debtor and other defendants violated the Colorado Consumer Protection Act ("CCPA") and the Colorado Fair Debt Collection Practices Act ("CFDCPA") by overcharging for foreclosure commitments. After a bench trial, the District Court found in favor of the State, imposed civil penalties on the defendants, and awarded the State attorney's fees and costs (Doc. 13, Ex. 1).

In a post-trial motion, the Debtor moved to amend the findings and conclusions and accompanying judgment to bar the State's recovery of attorney's fees and costs against him personally, based upon his bankruptcy discharge (Doc. 13, Ex. 2). However, the District Court declined to address his argument and ultimately awarded the State \$711,015.47 in attorney's fees and costs in connection with the State Court Case (the "Fees Judgment").

a. The Fees Judgment Appeal

The Debtor appealed the Fees Judgment to the Colorado Court of Appeals, Case No. 2017-CA-0303 (the "Fees Judgment Appeal"), arguing that although the bankruptcy discharge did not preclude the award of civil penalties issued in the underlying judgment, it did preclude the Fees Judgment against the Debtor personally. Specifically, the Debtor argued that 11 U.S.C. § 524 "voids any judgment at any time obtained, to the extent such judgment is a determination of the debtor's personal liability with respect to a debt discharged under 11 U.S.C. § 727" (Doc. 13, Ex. 7). The State argued that the Fees Judgment was non-dischargeable as to the Debtor under 11 U.S.C. § 523(a)(7), as a debt for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, that is not compensation for actual pecuniary loss (Doc. 13, Ex. 8).

On May 17, 2018, the Court of Appeals affirmed the District Court in a 19-page opinion, reported at *State ex rel. Coffman v. Robert J. Hopp & Assocs., LLC*, 422 P.3d 617 (Colo. App. 2018), and explicitly found that the Fees Judgment was non-dischargeable as to the Debtor under 11 U.S.C. § 523(a)(7) (Doc. 13, Ex. 9). The Court

of Appeals reasoned as follows:

Hopp contends the trial court erred when it imposed an award of attorney fees and costs against him because it was precluded from doing so by his discharge of debts in bankruptcy. We disagree.

Hopp filed for bankruptcy on January 25, 2013, and obtained a discharge on February 10, 2014. Plaintiffs' enforcement action was filed ten months later, on December 19, 2014. Plaintiffs contend Hopp failed to preserve the issue of the effect of his bankruptcy discharge in the trial court because he raised this issue "for the first and only time" in his C.R.C.P. 59 motion after trial. Plaintiffs further argue that a C.R.C.P. 59 motion, which contemplates amending a judgment or seeking a new trial, was not the proper procedural avenue for raising a bankruptcy discharge.

Hopp argues that he preserved his bankruptcy argument at numerous points in the proceedings. First, Hopp contends that he asserted in his answer to plaintiffs' complaint that his bankruptcy discharge barred, at least in part, some of plaintiffs' claims against him. He did not provide any further details about his bankruptcy in the answer. After trial, in his C.R.C.P. 59 motion to amend the court's findings and conclusions, Hopp argued that his bankruptcy discharge precluded the trial court's award of attorney fees against him because they were awarded to compensate the state for its actual pecuniary loss. The trial court declined to address this argument in the context of Hopp's C.R.C.P. 59 motion because it held Hopp had presented no evidence of his bankruptcy at trial. Hopp does not dispute the trial court's finding that he presented no evidence of his bankruptcy during the trial.

...

Even assuming that Hopp properly preserved the consideration of the effect of his bankruptcy discharge on any attorney fees award in the trial court, we reject Hopp's arguments on the merits.

Hopp argues that the district court was precluded from awarding fees and costs against him by Bankruptcy Code § 727, which prohibits any attempt to collect from the debtor a debt that has been discharged. 11 U.S.C. § 727 (2012). He contends that the bankruptcy discharge applies to any claim for attorney fees and costs that could have been fairly or

reasonably contemplated during the bankruptcy case. We are not persuaded.

Bankruptcy Code § 524(a)(1) voids any judgment at any time obtained for a determination of a personal liability of the debtor for a debt discharged, as relevant here, under § 727, 11 U.S.C. § 524(a)(1) (2012). A debt is not dischargeable, however, for “a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty.” 11 U.S.C. § 523(a)(7) (2012). The fine, penalty, or forfeiture may be criminal or civil in nature. *In re Jensen*, 395 B.R. 472, 480 (Bankr. D. Colo. 2008). We review whether a particular debt meets the elements of § 523(a)(7), which is a question of law, de novo. *Id.*

First, Hopp argues that, under *In re Castellino Villas, A. K. F. LLC*, 836 F.3d 1028 (9th Cir. 2016), the attorney fees award constitutes a prepetition debt which was fairly contemplatable prior to the bankruptcy discharge, and therefore is subject to the discharge.

...

Castellino Villas is inapposite here. The claims underlying the attorney fees award in *Castellino Villas* arose out of dischargeable debts. That is not true in this case. Hopp concedes that the award of penalties under the CCPA and CFDCPA is nondischargeable. The United States Bankruptcy Court for the District of Colorado has held that a civil penalty imposed under the CCPA is a nondischargeable penalty within the meaning of § 523(a)(7). *Jensen*, 395 B.R. at 482. Federal courts are divided on the issue of whether an award of attorney fees and costs may be held nondischargeable under § 523(a)(7). However, the bankruptcy courts look to state law to reach this determination. *Id.* at 487.

The Bankruptcy Court for the District of Colorado has considered the CCPA’s attorney fees provision and noted that Colorado cases hold it serves both punitive and deterrent purposes. *Id.* (citing *Hall v. Walter*, 969 P.2d 224, 231 (Colo. 1998)). The fact that such an award also serves to enable enforcement by defraying the government’s expenses did not change the primary purpose of the provision. *Id.* at 487-88. Accordingly, the Bankruptcy Court concluded that an award of attorney fees made under the CCPA’s mandatory provision was sufficiently penal to constitute a “fine, penalty or forfeiture” under § 523(a)(7) and was not dischargeable. *Id.* at 488. We are persuaded by the Bankruptcy Court’s

interpretation of the CCPA's attorney fees provision and apply it here.

We further note that there is no reason to believe that the subsections of the CFDCPA allowing an award of attorney fees and costs payable to the administrator do not serve the same penal purposes as the CCPA. The CFDCPA serves a similar purpose as the CCPA, namely consumer protection. *See Flood v. Mercantile Adjustment Bureau, LLC*, 176 P.3d 769, 773 (Colo. 2008) (The FDCPA has the "remedial purpose of protecting consumers against debt collection practices that take advantage of gullible, unwary, trustful, or cowed persons who receive a debt collection communication."). Thus, we conclude that the trial court's attorney fees awards made under the CCPA and the CFDCPA are not dischargeable, and we decline to order that they be vacated as void under 11 U.S.C. § 524.

(*Id.* at 8-14) (emphasis added).

The Debtor declined to seek rehearing or file a petition for writ of certiorari with the Colorado Supreme Court in the Fees Judgment Appeal, and the order affirming the Fees Judgment became a final order after expiration of the time periods set forth in C.A.R. 52(b)(1).

b. The Merits Judgment Appeal

Contemporaneously with the Fees Judgment Appeal, the Debtor appealed the District Court's ruling on the merits of the State Court Case to the Colorado Court of Appeals, Case No. 2016-CA-1983 (the "Merits Judgment Appeal"). On May 17, 2018, the Court of Appeals issued an opinion affirming the District Court on the merits (Doc. 13, Ex. 10). At the time of filing the instant proceeding, the time period within which the Debtor could file a petition for writ of certiorari with the Colorado Supreme Court in the Merits Judgment Appeal had not yet expired.

III. The Adversary Proceeding

More than four years after the entry of discharge in his bankruptcy case, the Debtor commenced this adversary proceeding on September 18, 2018, seeking a determination that the Fees Judgment is dischargeable under 11 U.S.C. § 523(a)(7). The State moved to dismiss the proceeding by way of the Motion, and the Debtor responded (Doc. 6). The Court heard oral argument on the matter on December 4, 2018.

The State asserted that the Colorado Court of Appeals properly exercised its concurrent jurisdiction to determine that the Fees Judgment was non-dischargeable under 11 U.S.C. § 523(a)(7). Thus, the State argued that because the Court of Appeals considered the Debtor's arguments, reached the merits, and concluded that the Fees Judgment was non-dischargeable, the *Rooker-Feldman* Doctrine bars the Debtor's request for a determination of the dischargeability of the Fees Judgment by this Court.

Accordingly, the State argued that this Court lacks subject matter jurisdiction over the Court of Appeal's determination of non-dischargeability of the Fees Judgment, such that this proceeding must be dismissed.

The Debtor contended that a dischargeability determination under 11 U.S.C. § 523 is an "independent claim" for relief that arises exclusively under the Bankruptcy Code. As a result, the Debtor argued that his request for this Court to determine the dischargeability of the Fees Judgment does not amount to asking the Court to review or reject the merits of the District Court ruling. Rather, the Debtor argued that his request is an attempt to avail himself of the protections of the bankruptcy court via his independent claim, rendering the *Rooker-Feldman* Doctrine inapplicable to this proceeding.

At the conclusion of oral argument, the Court ordered the parties to file post-hearing briefs and all relevant state court pleadings, orders, and judgments on or before January 4, 2019. The parties timely filed their post-hearing briefs (Doc. 12 and Doc. 14, respectively) and the requested state court documents (Doc. 13).

During oral argument, the Debtor indicated that he intended to file a petition for writ of certiorari with the Colorado Supreme Court in the Merits Judgment Appeal. The parties agreed that if the Merits Judgment were reversed, either in whole or in part, the issue of dischargeability of the Fees Judgment would not be ripe for this Court to decide.

On December 28, 2018, the Debtor filed a petition for writ of certiorari with the Colorado Supreme Court in the Merits Judgment Appeal. Upon learning of the petition for writ of certiorari on February 20, 2019, this Court entered an Order Holding Adversary Proceeding in Abeyance Pending Resolution of Appeal, requiring the Debtor to file periodic reports "advising the Court as to the status of the appeal or any ruling which has been issued by the Colorado Supreme Court" (Doc. 15).

On June 3, 2019, the Debtor filed a status report advising that, on the date thereof, the Colorado Supreme Court had issued an order denying the petition for writ of certiorari (Doc. 21). As a result, on June 3, 2019, the Court took this matter under advisement.

ANALYSIS

With certain exceptions, 28 U.S.C. § 1334(b) provides that "district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." One such exception is found in 11 U.S.C. § 523(c), which designates the bankruptcy court as the exclusive forum to determine the discharge exceptions in 11 U.S.C. §§ 523(a)(2), (4), and (6). *See also Resolution Trust Corp. v. McKendry (In re McKendry)*, 40 F.3d 331, 335 (10th Cir. 1994) (citing Fed. R. Bankr. P. 4007 Advisory Committee Notes) ("Among the dischargeability determinations delegated exclusively to the bankruptcy courts are those arising under § 523(a)(2), ... as well as those arising under §§ 523(a)(4) and (6).").

Thus, state courts have concurrent jurisdiction over most claims to determine the dischargeability of particular debts. *See* Fed. R. Bankr. P. 4007 Advisory Committee Notes; *see also Grynberg v. Danzig Claimants (In re Grynberg)*, 966 F.2d 570, 576 n. 6 (10th Cir. 1992) (citing 9 *Collier on Bankruptcy* ¶ 7001.09) ("with certain exceptions not

applicable here, state courts have concurrent jurisdiction with the bankruptcy court over question of whether debts are dischargeable under 11 U.S.C. § 523(a)"). Indeed, the state court's concurrent jurisdiction to determine dischargeability exceptions extends to claims under 11 U.S.C. § 523(a)(7), which states as follows in pertinent part:

(a) A discharge under section 727 ... of this title does not discharge an individual debtor from any debt-- (7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty....

The *Rooker-Feldman* Doctrine, derived from two Supreme Court Cases, *Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923), and *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983), "forbids lower federal courts from reviewing state-court civil judgments." *Mayotte v. U.S. Bank Nat'l Ass'n for Structured Asset Inv. Loan Tr. Mortg. Pass-Through Certificates, Series 2006-4*, 880 F.3d 1169, 1170 (10th Cir. 2018). Observing that some lower courts had applied the *Rooker-Feldman* Doctrine too broadly, the Supreme Court explained its proper application in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005):

Federal district courts, we noted, are empowered to exercise original, not appellate, jurisdiction. Plaintiffs in *Rooker* and *Feldman* had litigated and lost in state court. Their federal complaints, we observed, essentially invited federal courts of first instance to review and reverse unfavorable state-court judgments. We declared such suits out of bounds, *i.e.*, properly dismissed for want of subject-matter jurisdiction.

The *Rooker–Feldman* doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.

Id. at 283–84.

Citing *Rooker* and *Feldman*, the Tenth Circuit Court of Appeals has continued to emphasize post-*Exxon Mobil* that the "*Rooker-Feldman* [Doctrine] precludes federal district courts from effectively exercising appellate jurisdiction over claims 'actually decided by a state court' and claims 'inextricably intertwined' with a prior state-court judgment." *Silva v. US Bank, Nat'l Assoc.*, 294 F. Supp. 3d 1117, 1128 (D. Colo. 2018) (citation omitted). If, however, a federal plaintiff "present[s] some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party ..., then there is jurisdiction...." *Exxon Mobil*, 544 U.S. at 293 (citations omitted).

In the context of dischargeability proceedings, the *Rooker-Feldman* Doctrine prohibits bankruptcy courts from exerting appellate jurisdiction over dischargeability

determinations made by state courts in an exercise of their concurrent jurisdiction. See *In re Candidus*, 327 B.R. 112 (Bankr. E.D.N.Y. 2005). The debtors in *Candidus* were sued in state court several years after they received their Chapter 7 discharge by a creditor that they had failed to schedule in their bankruptcy case. The debtors asserted their discharge as an affirmative defense in the state court suit to recover on the unscheduled debt, but the state court rejected the defense and determined that the unscheduled debt was excepted from discharge under 11 U.S.C. § 523(a)(3).

Thereafter, the debtors moved to reopen their bankruptcy case to obtain clarification regarding the discharge order or, in the alternative, authorization to commence an adversary proceeding to determine the dischargeability of the unscheduled debt. Noting that bankruptcy courts and state courts have concurrent jurisdiction to determine the dischargeability of unscheduled debts, the *Candidus* court applied the *Rooker-Feldman* Doctrine to deny the debtors' motion:

The state court acquired jurisdiction over whether the ... [unscheduled] Debt was discharged when the Debtors raised the Discharge Order as an affirmative defense in the State Court Action. The Debtors' remedy from the adverse State Court Adjudication was to seek reconsideration or appellate review in the state court. This Court cannot be substituted as an appellate forum. Where, as here, a state court assumes and exercises jurisdiction to determine that an unscheduled debt is nondischargeable, the *Rooker-Feldman* doctrine is applicable and a bankruptcy court is devoid of jurisdiction to correct a possible erroneous determination.

Id. at 119.

Even where a state court exercises its concurrent jurisdiction and makes a dischargeability determination that is clearly erroneous, the *Rooker-Feldman* Doctrine precludes the bankruptcy court from reviewing and rejecting such determination. See *In re Toussaint*, 259 B.R. 96 (Bankr. E.D.N.C. 2000). As in *Candidus*, the debtors in *Toussaint* were sued in state court by an unscheduled creditor post-discharge. The debtors asserted their discharge as an affirmative defense in the state court suit, but, without knowledge that the debtors' bankruptcy case was a no-asset Chapter 7 case, the state court found that the unscheduled debt was non-dischargeable under 11 U.S.C. § 523(a)(3).¹

¹ As set forth in *Toussaint*.

Application of § 523(a)(3) is contingent upon the presence of assets in a chapter 7 case, "because in no-asset [c]hapter 7 cases no bar date is set, with the result that § 523(a)(3)(A) is never triggered in such cases." For a debt to be nondischargeable under this section, "the omitted creditor must have been deprived of the opportunity to timely file a proof of claim." In sum, "unless an unlisted creditor was precluded from filing a timely proof of claim, it is irrelevant whether the creditor had notice or knowledge of the bankruptcy proceeding.

Id. at 104 (citations omitted).

The debtors subsequently sought a stay of the state court proceedings and moved to reopen their bankruptcy case to seek sanctions and attorney's fees, alleging that the unscheduled creditor violated 11 U.S.C. § 727 by commencing suit and obtaining a judgment in state court. The *Toussaint* court concluded that no violation of the discharge injunction had occurred and found that, although federal law suggested that the unscheduled debt should have been discharged in the debtors' no-asset Chapter 7 case, the *Rooker-Feldman* Doctrine deprived it of subject matter jurisdiction to collaterally attack the state court's determination of non-dischargeability:

Once the state court has subject matter jurisdiction to adjudicate dischargeability under § 523, it cannot retroactively be stripped of that jurisdiction based on an incorrect application of federal law. If that were so, state courts would have a mythical type of "conditional" rather than concurrent jurisdiction to decide matters under § 523. As the Bankruptcy Appellate Panel for the Ninth Circuit acknowledged, "the power to decide an issue ordinarily connotes the power to decide it incorrectly, with any erroneous result being enforceable unless corrected on appeal" ... This is the appropriate analysis. Once the debtors choose a forum and that court renders judgment, the debtors cannot then run to the other forum if the result is incorrect. They must pursue reconsideration or appellate review for that forum.

Id. at 102 (citations omitted).

The Debtor correctly notes that *Candidus* and *Toussaint* were decided prior to the Supreme Court's narrowing of the *Rooker-Feldman* Doctrine in *Exxon Mobil*. However, even if *Candidus* and *Toussaint* had been decided with the benefit of the *Exxon Mobil* Court's clarification regarding the proper application of the *Rooker-Feldman* Doctrine, their outcomes would have been the same. The non-dischargeability of the debts at issue in *Candidus* and *Toussaint* was "actually decided" by the state courts. As such, the only way that the bankruptcy courts could have reached contrary conclusions regarding the dischargeability of the debts would have been to, in effect, sit as appellate courts over the state courts. This is precisely what the *Rooker-Feldman* Doctrine forbids. Notably, post-*Exxon Mobil* courts that have examined *Candidus* and *Toussaint* continue to agree with their reasoning. See e.g., *In re Flanders*, 517 B.R. 245, 257–58 (Bankr. D. Colo. 2014), *aff'd*, No. AP 13-01456, 2015 WL 4641697 (10th Cir. BAP (Colo.) Aug. 5, 2015), *aff'd in part, remanded in part*, 657 F. App'x 808 (10th Cir. 2016) (distinguishing the interplay between the *Rooker-Feldman* Doctrine and 11 U.S.C. § 524(a)(1) from a situation "where a debtor raises and litigates the effect of his discharge in a state court proceeding and loses," and agreeing with the courts in *Candidus* and *Toussaint* "so long as the state court has concurrent subject matter jurisdiction to determine dischargeability").

Nonetheless, the Debtor argues in the instant proceeding that his request for a determination of dischargeability of the Fees Judgment constitutes an "independent claim" for relief. The Court disagrees. As in *Candidus* and *Toussaint*, the Colorado Court of Appeals exercised its concurrent jurisdiction and "actually decided" that the Fees Judgment is non-dischargeable under 11 U.S.C. § 523(a)(7). To conclude that the Fees

Judgment is dischargeable would require this Court to review and reject the Court of Appeals' decision. Therefore, the Debtor has not presented an independent claim, and the Court is not persuaded by the Debtor's argument that the *Rooker-Feldman* Doctrine does not apply. In fact, none of the cases that the Debtor cites in support of his position are on point with the procedural posture of this proceeding.

The Debtor cites two Sixth Circuit cases, *Hamilton v. Herr (In re Hamilton)*, 540 F.3d 367 (6th Cir. 2008), and *Isaacs v. DBI-ASG Coinvestor Fund, III, LLC (In re Isaacs)*, 895 F.3d 904 (6th Cir. 2018), which examined the interplay between the *Rooker-Feldman* Doctrine and 11 U.S.C. § 524(a)(1). However, neither case involved a determination of dischargeability under any paragraph of 11 U.S.C. § 523(a), by a state court or otherwise.

To the extent that the Debtor attempts to rely on *Isaacs* to disguise his request for this Court to reject the Court of Appeals' decision as a request for "interpretation of the discharge order issued in his bankruptcy," the Court is not convinced. *Isaacs* involved a pre-petition mortgage that was belatedly recorded post-petition, after the automatic stay had gone into effect. The mortgage debt was scheduled as secured in the Chapter 7 case. Post-discharge, the successor mortgagee instituted foreclosure proceedings against the debtor with respect to the subject property, wherein the state court found that the debtor owed on the note secured by the mortgage, entered an *in rem* foreclosure judgment, and ordered a foreclosure sale. One day before the sale, the debtor filed a Chapter 13 case and an adversary proceeding, seeking to avoid the mortgage either under 11 U.S.C. § 544(a) or, in the alternative, because the mortgage never attached. The *Isaacs* court found that the *Rooker-Feldman* Doctrine did not preclude the debtor's first claim for relief, but it did preclude the alternative claim:

[F]or *Isaacs* to prevail on this claim, the bankruptcy court would need to reach a conclusion precisely opposite from the state court on the issue of whether the mortgage lien attached, and then declare the state court's foreclosure judgment invalid. This closely resembles federal appellate review of the state court's judgment. The claim "invit[es] district court review and rejection" of a state-court judgment, see *Exxon Mobil*, 544 U.S. at 284, 125 S.Ct. 1517, and for this reason falls within *Rooker-Feldman's* bar. *Isaacs's* recourse on this claim was to the Kentucky state appellate courts, not the federal bankruptcy court.

Id. at 913.

As in *Isaacs*, this Court would have to reach a conclusion precisely opposite from the Court of Appeals to afford the Debtor the relief he seeks. Therefore, *Isaacs* undercuts—rather than supports—the Debtor's argument.

The Debtor cites *Sasson v. Sokoloff (In re Sasson)*, 424 F.3d 864, 867 (9th Cir. 2005), for the proposition that "[a]ctions seeking a determination of nondischargeability are core bankruptcy proceedings, see 28 U.S.C. § 157(b)(2)(I), and are not subject to the *Rooker-Feldman* Doctrine." *Sasson* involved a state court judgment for breach of promissory note which served as the basis of a complaint filed by the appellee in

bankruptcy court, seeking a determination of non-dischargeability under 11 U.S.C. § 523(a)(6). Importantly, the state court had not made a finding of non-dischargeability in the underlying judgment. Nor could it have, as 11 U.S.C. § 523(c) provides that the bankruptcy court is the exclusive forum for adjudicating exceptions to discharge under 11 U.S.C. § 523(a)(6). This stands in stark contrast to 11 U.S.C. § 523(a)(7) claims, over which the state court has concurrent jurisdiction.

For the same reason, the Debtor's reliance on *In re Glaser*, No. 09-12600 MER, 2012 WL 1535822 (Bankr. D. Colo. Apr. 30, 2012), is improper. *Glaser* involved claims under 11 U.S.C. §§ 523(a)(2), (4), and (6), all of which must be determined by the bankruptcy court pursuant to 11 U.S.C. § 523(c).

The Debtor's reliance on *Colorado ex rel. v. Jensen (In re Jensen)*, 395 B.R. 472 (Bankr. D. Colo. 2008), is also misplaced. The Debtor cites *Jensen* for the proposition that a federal court may try a matter anew and reach a judgment contrary to that rendered by a state court without conducting the sort of appellate review prohibited by the *Rooker-Feldman* Doctrine. *Jensen* involved a state court default judgment in a case where the issue of dischargeability had not been fully and fairly litigated before or determined by the state court. The distinction that the Debtor ignores in the present case is that, unlike in *Jensen*, the Court of Appeals explicitly found, after vigorous participation by both the Debtor and the State in the State Court Case and the Fees Judgment Appeal, that the Fees Judgment is non-dischargeable under 11 U.S.C. § 523(a)(7).

Interestingly, the Debtor attempts to "have it both ways" in his application of *Jensen*. The Debtor praises the *Jensen* court for declining to apply the *Rooker-Feldman* Doctrine to bar a debtor from raising a defense, but simultaneously suggests that the *Jensen* court wrongly decided that the attorney's fees and costs at issue were non-dischargeable under 11 U.S.C. § 523(a)(7). Instead, the Debtor argues that this Court should follow *In re Parsons*, 505 B.R. 540 (Bankr. D. Haw. 2014), wherein a Hawaii bankruptcy court concluded that attorney's fees issued pursuant to a Hawaii state statute were dischargeable because they did not satisfy the requirements of 11 U.S.C. § 523(a)(7).

Whether the *Jensen* court correctly decided that an award of attorney fees made under the CCPA's mandatory provision is sufficiently penal to constitute a fine, penalty or forfeiture under 11 U.S.C. § 523(a)(7), is not relevant to this proceeding. Equally irrelevant to this proceeding is whether the Court of Appeals correctly relied on *Jensen* in determining the non-dischargeability of the Fees Judgment. What is relevant, however, is that during the Fees Judgment Appeal, the Court of Appeals considered the Debtor's arguments, reached the merits, and concluded in an exercise of its concurrent jurisdiction that the Fees Judgment was non-dischargeable under 11 U.S.C. § 523(a)(7). If the Debtor disagreed with the Court of Appeal's determination of non-dischargeability of the Fees Judgment, his proper avenue for appeal was to seek rehearing and/or file a petition for writ of certiorari with the Colorado Supreme Court. The Debtor, as a state court loser, cannot come before this Court now and ask it to sit in an appellate capacity over the Court of Appeals.

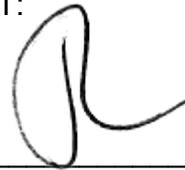
CONCLUSION

Because the Colorado Court of Appeals concluded in an exercise of its concurrent jurisdiction that the Fees Judgment is non-dischargeable under 11 U.S.C. § 523(a)(7), the *Rooker-Feldman* Doctrine deprives this Court of subject matter jurisdiction to review the Court of Appeals' non-dischargeability determination. Accordingly, it is

ORDERED that the Motion (Doc. 5) is granted, and the within adversary proceeding is dismissed with prejudice.

Dated this 27th day of September, 2019.

BY THE COURT:



Joseph G. Rosania, Jr.
United States Bankruptcy Judge