Jennifer L. Wilson, *Sui Juris*
4365 School House Commons, 500-251
Harrisburg, NC 28075
Ph.: 704-773-1712

RECEIVED
MAR 14 2013
U.S. BANKRUPTCY COURT
SO. DIST. OF NEW YORK

UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Jennifer L. Wilson, Plaintiff, v. Residential Capital, LLC, et al., Defendants.	ADV. CASE: 12-01936-MG ADV. CASE: 12-12020 Chapter 11 Jointly Administered
In re RESIDENTIAL CAPITAL, LLC et al., Debtors.	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEBTORS' MOTION FOR DISMISSAL OF ADVERSARY PROCEEDING PURSUANT TO BANKRUPTCY RULE 7012(B) AND FRCP 12(B)(1) AND 12(B)(6) OR, IN THE ALTERNATIVE, PERMISSIVE ABSTENTION PURSUANT TO 28 U.S.C. §1334(C)(1)

1212020130325000000000003

TABLE OF CONTENTS

TABLE OF CONTENTS 2
AUTHORITIES 2
JURISDICTION VENUE 3
I. Plaintiff, Jennifer L. Wilson, Does NOT Consent to Jurisdiction of Bankruptcy Court. 4
II. Standard For Review. 4
III. Jurisdictional Argument. 5
IV. Jurisdictional Conclusion. 5
FACTUAL BACKGROUND 6
ARGUMENT 8
A. PLAINTIFF'S Adversary proceeding is not duplicative. 8
B. Rooker-Feldman Doctrine is not a bar to plaintiff's claims. 9
a. **Inextricably Intertwined is Non-Threshold** 13
C. The Adversary Proceeding Should Be Sustained. 15
a. Breach of Contract Claim 16
b. Violation of Unfair and Deceptive Trade Practices Act. 16
D. The Court Should Not Abstain. 17
CONCLUSION 17
CERTIFICATE of SERVICE i

AUTHORITIES

Cases

Binford v. First Magnus Fin. Corp. (In re First Magnus Fin. Corp.), 403 B.R. 659 (D. Ariz. 2009) 8
Brumby v. Deutsche Bank Nat. Trust. Co., 2010 WL 617368, 4 (M.D.N.C.2010).. 9
Daviani v. Virginia Dept. of Transportation, 434 F.3d 712, 718-719 (Jan. 17, 2006) 9

District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983).....10

Exxon Mobil Corp. et al. v. Saudi Basic Industries Corp., 544 U.S. 280 (Mar. 30, 2005).....9, 11

Howard K. Stern, Executor of the Estate of Vickie Lynn Marshall v. Elaine T. Marshall, Executrix of the Estate of E. Pierce Marshall, 564 U.S. _____ (2011) 5

In re Adams, ___ N.C. App. ___, 693 S.E.2d 705, 709 (2010)..... 9

In re Foreclosure Brown, 156 N.C. 477, at 489, 577 S.E. 398, 406 (2003)..... 9

M. Witmark & Sons v. Calloway, 22 F. 2d 412, 415 (1927) 16

Moccio v. New York State Office of Court Admin., 95 F.3d 195, 199-200 (2d Cir. 1996).....12

Shapiro, Bernstein and Co. v. H.L. Green Co., 316 F.2d 304 (1963) 16

U.S. District Court Western District of North Carolina (Charlotte) CIVIL DOCKET FOR CASE #: 3:10-cv-00573 7

United States Bankruptcy Court Western District North Carolina case number 10-31255 6

Rules

Fed. R. Bankr P. Rule 7008..... 4

Fed. R. Bankr. P. Rule 7001(7)..... 8

Constitutional Provisions

Constitution for the United States, Amendment 7 16

State Code

N.C.G.S. § 45-21.16(c)(7)(d)..... 9

Unitied States Titles

28 U.S.C. § 157(b)(2) 5

28 U.S.C. § 157(d).....4, 5

28 U.S.C. § 157(e).....4, 5

28 U.S.C. § 1490(e). 4
28 U.S.C. § 157(c)(1)..... 4
28 U.S.C. § 1738.....11
28 U.S.C. §§ 157(b)(1) 5
28 U.S.C. §§ 157(c) 4, 5

JURISDICTION VENUE

I. Plaintiff, Jennifer L. Wilson, Does NOT Consent to Jurisdiction of Bankruptcy Court.

01. The Bankruptcy Court for the Southern District of New York does not have jurisdiction to enter a final order and judgment in a "non-core" proceeding without the express consent of the parties to the action. Wilson does not consent to the Bankruptcy Court entering a final order and/or ruling on dispositive issue(s) relevant to this "non-core" action.

02. When "non-core" issues are raised in an Adversary Complaint, such as here, the Bankruptcy Court is absent jurisdiction to enter a final order and judgment. The Complaint made clear the proceeding is "NON-CORE" pursuant to 28 U.S.C. §§ 157(c), 157(d), and 157(e).

03. Further, Wilson made demand for "Trial by Jury" and such trial is inviolable pursuant to Article VII of the Constitution for the United States of America.

II. Standard For Review.

04. Non-core proceedings, otherwise related to title 11, may be heard by the bankruptcy court and the bankruptcy judge shall submit findings of fact and conclusions of law to the district judge who after reviewing de novo shall enter a final order and judgment.[1] A claim arising from the business operations of a

[1] 28 U.S.C. § 157(c)(1).

debtor after commencement of a Bankruptcy proceeding may bring such claim in the district court in which such case is pending.[2]

05. Complaint in an adversary proceeding must state whether it be a core or non-core proceeding and shall state if the pleader does or does not consent to entry of final order or judgment by the bankruptcy judge.[3]

III. Jurisdictional Argument.

06. The bankruptcy court is without jurisdiction to make a final determination in a non-core proceeding.4 Defendants, Residential Capital, LLC ("ResCap") and Residential Funding Company, LLC ("RFC" and collectively "Debtor Defendants") admit "This is a non-core proceeding pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2)." (See Debtor Defendant's "JURISDICTION AND VENUE"). However, Debtor Defendants reference to 28 U.S.C. §§ 157(b)(1) and (b)(2) is in error as the Complaint is "non-core" pursuant to 28 U.S.C. §§ 157(c), 157(d), and 157(e). (See Complaint, "JURISDICTION AND VENUE"). A statutory cause of action to recover a fraudulent conveyance that is not a "public right" for Article III purposes, may not be assigned to a specialized non-Article III court lacking "the essential attributes of the judicial power." (See Granfinanciera, S. A. v. Nordberg, 492 U.S. 33, 53 (Jun. 21, 1989).

IV. Jurisdictional Conclusion.

07. For the foregoing reasons the Bankruptcy Court is absent jurisdiction to issue a final order and judgment on Debtor Defendants "MOTION FOR

---

[2] 28 U.S.C. § 1490(e).

[3] Fed. R. Bankr P. Rule 7008 (2012)..

[4] *Howard K. Stern, Executor of the Estate of Vickie Lynn Marshall v. Elaine T. Marshall, Executrix of the Estate of E. Pierce Marshall*, 564 U.S. _____ (2011) (slip op., at 7 and 8) ("Bankruptcy judges may hear and enter final judgments in "all core proceedings arising under title 11, or arising in a case under title 11." §157(b)(1). "Core proceedings include, but are not limited to 16 different types of matters, including counterclaims by [a debtor's] estate against persons filing claims against the estate. §157(b)(2)(C). ... When a bankruptcy judge determines that a referred proceeding . . . is not a core proceeding but . . . is otherwise related to a case under title 11, the judge may only submit proposed findings of fact and conclusions of law to the district court. §157(c)(1).") (Internal quotation marks omitted).

DISMISSAL OF ADVERSARY PROCEEDING PURSUANT TO BANKRUPTCY RULE 7012(b) AND FRCP 12(b)(1) AND 12 (b)(6) OR, IN THE ALTERNATIVE, PREMISSIVE ABSTENTION PURSUANT TO 28, U.S.C. § 1334(c)(1)" (hereinafter "Memo to Dismiss")

FACTUAL BACKGROUND

08. Defendants "**Factual Background**" in their *Memo to Dismiss* redacts the following facts:

09. Prior to Wilson taking any legal action Wilson sought validation (verification) of the alleged debt by written communication on December 8, 2009, July 8, 2010, and October 27, 2010 to the Defendants, The Law Firm of Hutchen, Senter, and Britton, P.A. n/k/a Hutchens, Senter, Kellam, & Pettit, P.A., and Roy Cooper, State of Carolina Attorney General.

10. In advance of filing this action on May 4, 2010 Wilson sought bankruptcy protection.[5] During and post the bankruptcy proceeding(s) Defendants caused the filing of multiple mendacious documents, "PROOF OF CLAIM[S]", Affidavits, and Declarations. Wilson, erroneously relying upon these mendacious documents voluntarily dismissed the Petition for Bankruptcy protection and failed to take any other actions until post the foreclosure hearing.

11. On October 12, 2010 Wilson called SunTrust Mortgage ("STM") engaging in telephonic communication with customer service employee Ameerah, employee number UVAM96. Ameerah informed Wilson STM is not the "Note Holder and that RFC is the owner of the loan. Armed with this information Wilson began to research RFC historical background leading Wilson to searching the Securities and Exchange Commission ("SEC") website for evidence of the

[5] United States Bankruptcy Court Western District North Carolina case number 10-31255, and by reference herein is incorporated in its entirety.

loan. After an exhaustive search of SEC's website Wilson found evidence the loan was sold into a Trust identified as "RALI Series 2007- QS5 Trust".

12. Defendants, by redaction of the facts in this case are attempting to paint an unfavorable picture of Wilson by falsely declaring Wilson "did not … file a separate action to enjoin the Foreclosure" (see Scolaird Declaration ¶ 8.) an allegation although labeled "Factual" is without question inaccurate.

13. Having determined the truth about the location and ownership of the loan Wilson filed an action to enjoin the sale in United States Federal District Court for the Western District of North Carolina (hereinafter "USDCWD") on November 12, 2010, case number 3:10-cv-00573 (hereinafter "Complaint 2010"). Wilson's Emergency Motion for a Temporary Restraining Order ("TRO") to enjoin that foreclosure sale scheduled for November 15, 2010, was filed contemporaneously with the Complaint 2010.[6] The USDCWD Court chose not to grant Wilson her request for a TRO allowing the sale to proceed.

14. The USDCWD directed Wilson to submit a MEMORANDUM IN SUPPORT OF SUBJECT MATTER JURISDICTION (USDCWD case 3:10-cv-00573 (see Dkt. #'s 11 & 12). Subsequently, at the direction of the USDCWD, Wilson filed an Amended Complaint 2010 (*Id.* Dkt # 15). In support of the Amend Complaint 2010 Wilson filed a "Request for Judicial Notice of U.S. Securities & Exchange Commissions Attestations" (see *Id.* Dkt. # 20, Attachments: #1, SEC Attestation1 – Part 1; #2 SEC Attestation1 – Part 2; #3 SEC Attestation1 – Part 3; #4 Attestation2; #5 SEC Attestation 3).

[6] "U.S. District Court Western District of North Carolina (Charlotte) CIVIL DOCKET FOR CASE #: 3:10-cv-00573-FDW-DCK" evidence the Complaint 2010 and the contemporaneously filed "EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER" (Dkt. #s 1 and 2 respectively.).

15. Defendants, SunTrust Bank and SunTrust Mortgage, answered the Amended Complaint 2010 (see *Id.* Dkt. #s 21[7] & 43[8] respectively).

16. Following a flurry of motions the USDCWD directed Wilson to Show Cause how venue is proper in the USDCWD. Wilson, in response to the USDCWD Show Cause Order, voluntarily dismissed the action in USDCWD and re-filed a the Complaint on April 5, 2011in the United States District Court Middle District North Carolina (Case #: 1:11-cv-00390) serving same pursuant to the rules of the Court, see *Id.* docket numbers 1, 12, 13, 14, 15, 16 and 17 respectively.

17. RFC answered the Complaint admitting STB was not the Note Holder.[9] The admission by RFC that "the promissory note executed by Plaintiff in favor of SunTrust Mortgage, Inc. d/b/a Sun America Mortgage on March 1, 2007 and the deed of trust executed by Plaintiff securing such promissory note were transferred to RFC after the closing of Plaintiff's loan." (see *Fn* 9, Dkt. 25, p. 10, para. 57). This admission by RFC is prima facie evidence of the mendacious documents, "PROOF OF CLAIM", affidavits, declarations, and assignments, were all executed with the purpose and intent to deceive and are in fact fraudulent on their face.

ARGUMENT

A. PLAINTIFF'S ADVERSARY PROCEEDING IS NOT DUPLICATIVE.

18. Defendants cite *Binford v. First Magnus Fin. Corp.* (In re First Magnus Fin. Corp.), 403 B.R. 659 (D. Ariz. 2009) in support of the "Duplicative"

[7] Dkt. # 21 of U.S. District Court Western District of North Carolina (Charlotte) CIVIL DOCKET FOR CASE #: 3:10-cv-00573-FDW-DCK by reference is incorporated herein in its entirety.

[8] Dkt. # 43 of U.S. District Court Western District of North Carolina (Charlotte) CIVIL DOCKET FOR CASE #: 3:10-cv-00573-FDW-DCK by reference is incorporated herein in its entirety.

[9] See "ANSWER OF RESIDENTIAL FUNDING COMPANY, LLC TO COMPLAINT, U.S. District Court Middle District of North Carolina (Greenboro) CIVIL DOCKET FOR CASE #: 3:10-cv-00390 Dkt. 25, p. 9, para. 50; and p. 10, para. 57 and 58.

claim. The background in *Binford v. First Magnus Fin. Corp.* clearly identifies the court's reasoning for its decision unveiling all eight plaintiffs to the adversary complaint under the WARN Act also filed "PROOFS OF CLAIM". It is on this basis the court stated, "it seems to be a waste of judicial resources to move forward on [the] adversary complaint when the claims process is moving in the same issues down a parallel track."

19. A properly brought adversary proceeding pursuant to Fed. R. Bankr. P. Rule 7001(7) of the Federal Rules of Bankruptcy Procedure is an action for equitable relief. Plaintiff has properly brought an action for equitable relief. Further, plaintiff's claims should not be dismissed for failure to file a PROOF OF CLAIM with limiting requirements that would preclude Plaintiff of presenting all the facts in this case.

B. ROOKER-FELDMAN DOCTRINE IS NOT A BAR TO PLAINTIFF'S CLAIMS.

20. "In a foreclosure proceeding under a power of sale, the lender bears the burden of proving four elements that must be established in order for the clerk of court to authorize the mortgagee or trustee to proceed with the foreclosure: (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to foreclose under the instrument, (iv) notice to those entitled to such ...." (*In re Adams*, ___ N.C. App. ___, 693 S.E.2d 705, 709 (2010); citing *In re Foreclosure Brown*, 156 N.C. 477, at 489, 577 S.E. 398, 406 (2003)). None of Plaintiff's claims in the Complaint are based on the four issues determined in a foreclosure hearing pursuant to N.C.G.S. § 45-21.16(c)(7)(d).

21. Defendants rely upon the *Exxon Mobil Corp. et al. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (Mar. 30, 2005) to support a Rule 12(b)(6) motion to dismiss. Additionally, Defendants cite numerous decisions within the 4th

circuit.[10] With exception of *Brumby v. Deutsche Bank Nat'l Trust Co.,* No. 1:09CV144, *6-20 (Feb. 17, 2010 M.D.N.C.), a case Wilson will address separately, all 4th Circuit opinions DEFENDANTS reference are post the 4th Circuit Appellate opinion in *Daviani v. Virginia Dept. of Transportation,* 434 F.3d 712, 718-719 (Jan. 17, 2006).[11]

22. The *Brumby v. Deutsche Bank Nat. Trust. Co.,* 2010 WL 617368, 4 (M.D.N.C.2010) is inapplicable; 1) because Brumby, unlike Wilson, filed two separate state actions for wrongful foreclosure before filing in Federal District Court; 2) Wilson does not seek a review of the foreclosure hearing in state court by this Court; and 3) none of Wilson's claims seek review of the order of the clerk, rather the focus of each claim in the complaint is for redress of the Defendants acts evidenced by the filing of mendacious documents, affidavits, declarations, "PROOF OF CLAIM[S]", and breaches of contract Wilson relied upon and in so doing suffered damages.

23. Defendants allege "Wilson is complaining of the state court Foreclosure, which was completed prior to Wilson initiating this action."[12] This is unsupported by the causes of action in the Complaint and the facts in this case.

24. The United States Supreme Court, post a 22 year sabbatical since the opinion in *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462 (1983) leading to the advent of the *Rooker-Feldman* doctrine, granted certioriari to Exxon Mobile corporation.

25. Exxon Mobile corporation posed one of several questions concerning the scope of *Rooker-Feldman*—whether a state-court judgment rendered while a

---

[10] See Memo to Dismiss, ¶ 29.

[11] "*Exxon* requires us to examine whether the state-court loser who files suit in federal district court seeks redress for an injury caused by the state-court decision itself. If he is not challenging the state-court decision, the *Rooker-Feldman* doctrine does not apply. *See, e.g., Washington v. Wilmore,*407 F.3d 274, 280 (4th Cir.2005) (holding, post-*Exxon,* that the *Rooker*-Feldman doctrine did not apply because "[the plaintiff's] claim of injury rests not on the state court judgment itself, but rather on the alleged violation of his constitutional rights [by the defendant]")."

[12] See *Memo to Dismiss,* p. 17, ¶ 31.

parallel federal action was pending could deprive a lower federal court of original jurisdiction that had been properly invoked. Saudi Basic Industries Corp., a majority government-owned Saudi Arabian corporation, sued two Exxon Mobil corporation subsidiaries in Delaware state court for a declaratory judgment that certain disputed royalty charges were proper. Around two weeks later, Exxon Mobil corporation and subsidiaries sued Saudi Basic as a foreign government entity in the New Jersey federal district court to recover the alleged overcharges. The subsidiaries also counterclaimed , with allegations that mirrored the federal complaint, in state court for the overcharges and eventually won a large judgment, which was on appeal to the Delaware Supreme Court at the time of the relevant proceedings in the Third Circuit.

26. The Third Circuit panel *sua sponte* raised the question whether the state trial court's judgment triggered *Rooker-Feldman*'s jurisdictional bar even though, as in this case, federal subject-matter jurisdiction initially had properly attached. Reading the doctrine broadly, the panel reasoned that if Saudi Basic won its pending state-court appeal, then Exxon-Mobil's federal suit would be seeking to undo a state-court judgment—"the very situation contemplated by *Rooker-Feldman*'s 'inextricably intertwined' bar."[13] Hence, the Third Circuit concluded, the lower federal courts had lost jurisdiction.

27. The United States Supreme Court reversed, in a unanimous opinion by Associate Justice Ruth Bader Ginsburg. The opinion proceeds in four parts: an unnumbered introduction, including a distillation of how the Court now views *Rooker-Feldman*; a descriptive part I summarizing *Rooker*, *Feldman*, and the few other Supreme Court cases dealing with the doctrine; an account in part II of the

[13] *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 364 F.3d 102, 106 (3d Cir. 2004), *rev'd*, 544 U.S. 280 2005).

proceedings; and a part III restating how the Court views the doctrine and applying its distillation to decide the case.

28. The first sentence in the introductory part of *Exxon Mobile supra* emphasizes the confinement and narrow application of *Rooker-Feldman* noting only two cases in which the Court has "applied" the doctrine.[14] Then two themes are introduced, the existence of concurrent state – and federal-court jurisdiction and the significance of preclusion: "[T]he doctrine has sometimes been construed to extend far beyond the contours of the *Rooker* and *Feldman* cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts, and superseding the ordinary application of preclusion law pursuant to 28 U.S.C. § 1738."[15]

29. As a negative example the Court cites a Second Circuit decision[16] that construed "inextricably intertwined" as largely conflating preclusion and *Rooker-Feldman.* That court had said:

30. *"[The phrase] means, at a minimum, that where a federal plaintiff had an opportunity to litigate a claim in a state proceeding (as either the plaintiff or defendant in that proceeding), subsequent litigation of the claim will be barred under the Rooker-Feldman doctrine if it would be barred under the principles of preclusion."* (Emphasis added).

31. The Court then states the circumstances in which *Rooker-Feldman* applies:

32. *"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*

[14] *Exxon Mobil Corp. et al. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 283 (Mar. 30, 2005)
[15] *Id.*
[16] *Moccio v. New York State Office of Court Admin.*, 95 F.3d 195, 199-200 (2d Cir. 1996) (emphasis added) (cited with "See, *e.g.*," signal immediately following quotation in text accompanying note 20 *supra*, 544 U.S. at 283).

the district court proceedings commenced and inviting district court review and rejection of those judgments. Rooker-Feldman does not otherwise override or supplant preclusion doctrine or augment the circumscribed doctrines that allow federal courts to stay or dismiss proceedings in deference to state-court actions."

33. Strict application of the *Rooker-Feldman* doctrine, as enumerated in *Exxon Mobile supra*, to Wilson's Complaint fails to reveal any element that would give rise to its application. All causes of action in the Complaint fall outside the narrow corridors of the *Rooker-Feldman* doctrine.

a. **Inextricably Intertwined is Non-Threshold.**

34. Two points are of major significance in *Exxon Mobil*'s discussion of *Feldman*: First, the Court reads *Feldman* in a way that puts "inextricably intertwined" in a non-threshold part of that case's analysis. Second, the opinion mentions the "inextricably intertwined" test only in this descriptive part I and in so much of part II as recounts the decision under review, without saying anything positive or negative about what it thinks of the phrase—but using it not at all in the introduction and part III, where the Court states its view of *Rooker-Feldman* and decides the case.

35. To expand somewhat on these points: The *Exxon Mobil* Court reads part III-A of *Feldman* as having "held," as to the judicial aspects of the D.C. court's challenged action, that "the District Court lacked subject-matter jurisdiction over their complaints"[17]—a "determination" that "did not dispose of the entire case"[18] but that apparently, in the Court's view, did dispose of some of it.[19] The *Exxon Mobil* opinion mentions the *Feldman* Court's use of the

[17] *Exxon Mobil*, 544 U.S. at 285.
[18] *Id.* at 285.
[19] This reading of *Feldman* is questionable, because the *Feldman* Court went on to start part III-B by saying that it was "[a]pplying" the "standard" from part III-A to the plaintiffs' complaints, and proceeded to deal with all aspects of their claims. *See Feldman*, 460 U.S. at 486-87; *compare id.* (dealing with five claims), *with id.* at 469 n.3 (summarizing complaint as making same five claims). However questionable it may thus be to read part III-A

"inextricably intertwined" test in part III-B of that opinion as the basis for its having found no jurisdiction over the allegation that the D.C. court had acted arbitrarily in denying the petitions for waiver—in contrast to the facial challenges to the admission rule, which "do not require review of a judicial decision in a particular case."[20] *Exxon Mobil* thus parks *Feldman*'s use of "inextricably intertwined" in a non-threshold part of the disposition, a siting fully consistent with *Exxon Mobil*'s own disposition of the case before it without using "inextricably intertwined" as part of its analysis (as opposed to its description of other cases).

36. "*Rooker-Feldman* did not prevent the District Court from exercising jurisdiction when *Exxon Mobil* filed the federal action, and it did not emerge to vanquish jurisdiction after *Exxon Mobil* prevailed in the Delaware courts."[21] Nowhere in the operative part of the opinion in *Exxon Mobile* does the Court invoke the "inextricably intertwined" test; instead, it directly applies its less formulaic distillation of circumstances in which *Rooker-Feldman* bars lower federal courts from exercising jurisdiction.

37. The 4th Circuit addressed the Courts application of the term "inextricably intertwined" stating, "Our cases have given the *Rooker-Feldman*

---

of *Feldman* as disposing of part of the case, the *Exxon Mobil* Court's reading is plenty authoritative. What is significant for lower courts now is not the strength of our argument that the Court may have misread *Feldman* but that a unanimous Court has read it the way it has.

[20] *Exxon Mobil*, 544 U.S. at 286-87 (quoting *Feldman*, 460 U.S. at 487). The Court drops a footnote to mention a second appearance of the "inextricably intertwined" phrase in the *Feldman* opinion, where *Feldman* "explained that a district court could not entertain constitutional claims attacking a state-court judgment, even if the state court had not passed directly on those claims, when the constitutional attack was 'inextricably intertwined' with the state court's judgment." *Exxon Mobil*, 544 U.S. at 286 n.1 (quoting *Feldman*, 460 U.S. at 482 n.16). Again, the *Exxon Mobil* Court's use of the phrase comes in a purely descriptive mode. The third and last mention of "inextricably intertwined" in *Exxon Mobil* comes near the end of part II, where the Court quotes the Third Circuit's decision it is reviewing and reversing—once more in a wholly descriptive manner. *See Exxon Mobil*, 544 U.S. at 291.

[21] *Exxon Mobil*, 544 U.S. at 293-94.

doctrine an expansive reading."[22] The *Divani v. Virginia Dept. of Transportation* Court relying on the Exxon Mobile opinion stated,

38. "[T]his language undercuts the broad interpretation of the Rooker-Feldman doctrine we applied in cases like Barefoot. Whereas in Barefoot we examined whether the state-court loser who files suit in federal court is attempting to litigate claims he either litigated or could have litigated before the state court, Exxon requires us to examine whether the state-court loser who files suit in federal district court seeks redress for an injury caused by the state-court decision itself. If he is not challenging the state-court decision, the Rooker-Feldman doctrine does not apply. If he is not challenging the state-court decision, the Rooker-Feldman doctrine does not apply."[23] (Emphasis added).

39. In applying the Exxon opinion the Court concluded,

> *"we reject Appellees' argument that Davani's federal suit is "inextricably intertwined" with the state proceedings. Davani lost before the Virginia circuit court and then filed a suit in the federal district court raising similar claims to those he presented in the state proceedings. In his federal complaint, Davani did not allege that the state decision caused him injury; rather, he alleged that Appellees discriminated against him in violation of federal and state law. Davani's federal claims do not challenge the state decision and are therefore "independent" from that decision. Exxon, 125 S.Ct. at 1527."* (Emphasis added).

C. THE ADVERSARY PROCEEDING SHOULD BE SUSTAINED.

40. Defendants', either severally or collectively, engaged in gross and/or intentional misrepresentations by and through their agent(s), creating, executing,

[22] *Daviani v. Virginia Dept. of Transportation*, 434 F.3d 712, 717 (Jan. 17, 2006); "Barefoot" is in reference to *Barefoot v. City of Wilmington*, 306 F.3d 113 (4th Cir.2002).
[23] *Id.* at 719.

and/or recording in the Offices of the Register of Deeds and the General Court of Justice North Carolina Cabarrus County numerous documents in breach of the inviolable covenants set forth in the mortgage instruments, and in violation of both state and federal law.

41. Defendants either knew or should have known, their agents either severally or collectively sought to deprive Plaintiff of their real property and the equity therein through calculated and deliberate acts perpetrated under color of title and color of law.

a. **Breach of Contract Claim**

42. Plaintiff set forth sixty-four paragraphs detailing the acts and then identified the contractual breaches resulting from the deliberate acts of Defendants.

43. Plaintiff relying upon the veracity of the sworn affidavits, "PROOFS OF CLAIM" and other mendacious documents took no action until post discovery of Defendants egregious acts.

44. Defendants allege "Plaintiff fails to show how her alleged reliance on the foregoing documents resulted in the loss of her home". This statement completely ignores paragraphs 73, 84, 91, 99 of the Complaint.

b. **Violation of Unfair and Deceptive Trade Practices Act.**

45. Plaintiff was unaware the "PROOF OF CLAIM" was fraudulent until post the foreclosure hearing.

46. The false filing of a "PROOF OF CLAIM" that ultimately results in the sale of property is a deceptive act *in or affecting commerce*. Bankruptcy courts are courts dealing almost exclusively with commerce (see Title 28 U.S.C. 157(2) et seq.).

47. Here an egregious act took place and with discovery shall be proved. The court, in *Allied Distribs., Inv. v. Latrobe Brewing Co.*, 847 F.Supp. 376, 379

(E.D.N.C. 1993), did not state the allegation must be proved upon filing of the Complaint.

48. Defendants carry vicarious[24] liability for their agents. Defendants' are responsible for the act of any third party whom they possess a "right, ability or duty to control" the activities of the violator.

D. THE COURT SHOULD NOT ABSTAIN.

Plaintiff is not Forum shopping. The United States District Court has jurisdiction. Plaintiff has the right to choose what forum to bring the claims.[25]

CONCLUSION

For the foregoing reasons the case should not be dismissed, or in the alternative Plaintiff should be afforded the opportunity to amend the complaint.

Date: March 13, 2013

Respectfully,

Jennifer L. Wilson

Jennifer L. Wilson, *Sui Juris*
4365 School House Commons, 500-251
Harrisburg, NC 28075
Ph.: 704-773-1712

[24] *M. Witmark & Sons v. Calloway*, 22 F. 2d 412, 415 (1927); *Shapiro, Bernstein and Co. v. H.L. Green Co.*, 316 F.2d 304 (1963).
[25] Constitution for the United States, Amendment 7.