

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

COMPLETE BUSINESS SOLUTIONS GROUP, INC., d/b/a PAR Funding	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	
SUNROOMS AMERICA, INC., d/b/a Sunrooms America, d/b/a SRA Home Products, d/b/a SPA Home Products, d/b/a Sun Room America and MICHAEL FOTI, Guarantor	:	NO. 20-847

MEMORANDUM OPINION

Savage, J.

July 22, 2020

In this case removed from the state court, the issue is whether a confessed judgment that is not subject to a pending petition to strike or open at the time of removal is a final judgment for purposes of applying the *Rooker-Feldman* doctrine. We hold that a state court confessed judgment is a final judgment covered by the *Rooker-Feldman* doctrine whether or not a petition to strike or open has been filed in either state or federal court. Stated differently, unless the state court confessed judgment has been stricken or opened, it is a final judgment.

Facts

On January 16, 2020, Complete Business Solutions Group, Inc. (CBSG) obtained a confessed judgment against the defendants Sunrooms America, Inc. and Michael Foti in the Philadelphia Court of Common Pleas.¹ Instead of filing a petition to strike or open the confessed judgment, the defendants timely removed the action on the basis of

¹ Defs.' Notice of Removal at Ex. B (ECF No. 1). The underlying matter stems from the alleged breach of five factoring agreements. Under the agreements, Sunrooms sold CBSG future receivables, and Foti was Sunrooms' guarantor. *Id.* at Ex. A.

diversity jurisdiction.² Eleven days later, CBSG filed a motion to remand.³ The defendants then filed a petition to strike or open the confessed judgment.⁴

Invoking the *Rooker-Feldman* doctrine, CBSG moves to remand. It contends that a confessed judgment unchallenged in state court prior to removal is a final adjudication over which the federal court has no jurisdiction.⁵ It argues that the subsequent filing of a petition to strike or open cannot retroactively confer jurisdiction, which is evaluated at the time of removal.⁶ The defendants respond that the *Rooker-Feldman* doctrine does not apply “because the entry of a confession of judgment is a mere ministerial task and not an adjudication on the merits.”⁷ They contend that a confessed judgment is not a final adjudication until the time to challenge it has passed, and that “the clock has not even started ticking” in this case due to alleged service defects with the underlying confessed judgment.⁸

Analysis

Rooker-Feldman Doctrine

The *Rooker-Feldman* doctrine bars a federal court from entertaining “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.” *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*,

² *Id.* at 4-6.

³ Pl.’s Mot. to Remand (ECF No. 4).

⁴ Defs.’ Pet. to Strike or Open Confessed Judgment (ECF No. 12).

⁵ Pl.’s Memo. in Supp. of Mot. to Remand at 5-6 (ECF No. 4-1).

⁶ Pl.’s Reply to Defs.’ Opp. to Pl.’s Mot. to Remand at 6-7 (ECF No. 13).

⁷ Defs.’ Memo. in Opp. to Pl.’s Mot. to Remand at 2 (ECF No. 10).

⁸ *Id.* at 4, 6.

544 U.S. 280, 284 (2005). A federal district court lacks subject matter jurisdiction over an action in the nature of an appeal seeking to reverse a state court decision.

The *Rooker–Feldman* doctrine applies where: (1) the party invoking federal jurisdiction lost in state court; (2) the party complains of injuries caused by the state court judgment; (3) the judgment was entered before the federal action was filed; and (4) the party seeks federal review and rejection of the state court judgment. *Great W. Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 166 (3d Cir. 2010) (citing *Exxon Mobil*, 544 U.S. at 284). The defendants complain of the entry of the confessed judgment before they removed the case, satisfying the second and third requirements. By filing a petition to strike or open the judgment, they are seeking federal review and rejection of the state court judgment, thus satisfying the fourth element. The only requirement at issue is the first – whether there was a judgment rendering the defendants losers in state court.

Both sides appear to agree that a state court confessed judgment is not a final judgment for purposes of the *Rooker-Feldman* bar if a petition to strike or open is pending in the state court at the time of removal. They differ on whether *Rooker-Feldman* applies where a petition is filed after removal. CBSG argues that as long as the judgment remains unchallenged in state court, the case is not removable because federal review is precluded by the *Rooker-Feldman* doctrine. The defendants contend that a petition need not be filed in state court, but may be filed in federal court after removal “because a confession of judgment is a mere ministerial task and not an adjudication on the merits.”⁹

Courts that have addressed the issue have drawn a distinction between removal prior to the filing of a petition to strike or open and removal after. One court has held that

⁹ *Id.* at 2.

the state court action cannot be removed unless there is a pending petition. See *S & T Bank v. Zokaïtes*, No. 10-1748, 2011 WL 1298171, at *1 (W.D. Pa. Mar. 31, 2011). Another court has decided that the action can be removed even if there is no petition pending in the state court as long as it was removed within 30 days of service of the complaint and the judgment upon the defendant. *Rait P'ship, L.P. v. Nathan*, No. 10-cv-7146, 2012 WL 488253 (E.D. Pa. Feb. 14, 2012).¹⁰

There is no basis for this distinction. Although we agree with the result in *S & T Bank*, we reach our decision for different reasons.

We conclude that a confessed judgment that has not been stricken or opened remains a final state court judgment whether or not there is a pending motion to strike or open it. No Pennsylvania court has held otherwise. Indeed, the Pennsylvania Rules of Civil Procedure provide that a confessed judgment is enforceable at the time it is entered.

Rule 2959 sets forth the procedure for obtaining relief from a judgment by confession. Relief may be sought by petition filed within 30 days of service on the defendant of the praecipe for writ of execution and the confessed judgment. PA. R. CIV. P. 2959(a)(1), (3), 2956.1(c)(2)(1), 2958.1. Although not required to do so, a court may stay the proceedings while a petition is pending. PA. R. CIV. P. 2959(b).

Rule 2959 makes clear that the judgment remains in full force and effect even while a petition to strike or open is pending. The Rule provides that “the lien of judgment or of

¹⁰ In *First Commonwealth Bank v. Fresh Harvest River, LLC*, the court cited *Rait* for the proposition that “a confessed judgment, on its own, is not a final judgment until the time to challenge it has passed.” No. 3:10-231, 2012 WL 1982537, at *1 (W.D. Pa. June 1, 2012). It attempted to distinguish *S&T Bank* on the grounds that the defendant “never filed any responsive pleading to the confessed judgment in state court prior to removal.” *Id.* at *2. However, *First Commonwealth Bank* is consistent with *S & T Bank*'s holding because the defendant filed a petition to strike or open the confessed judgment in state court prior to removal. *Id.* at *1. We could not find, and the parties did not cite, any other cases addressing whether the filing of a petition to strike or open a confessed judgment renders it not final under the *Rooker-Feldman* doctrine.

any levy or attachment shall be preserved while the proceedings to strike or open the judgment are pending.” PA. R. CIV. P. 2959(f). Lest there be any doubt, the explanatory notes make it explicit. Advising that a pending petition does not impair the lien of judgment even though a court may stay the proceedings, the notes state, “the mere filing of a petition to open or strike a judgment does not affect the lien of judgment or of any execution, subject, of course, to the power of the court to stay execution pending decision on the petition.” PA. R. CIV. P. 2959(f) explanatory comment to 1979 amendment. See *also Macioce v. Glinatis*, 522 A.2d 94, 96 (Pa. Super. Ct. 1987) (“While the trial court may stay execution pending the decision on the petition to open, the filing of the petition to open judgment does not impair the lien of the judgment.”). Thus, considering the Pennsylvania procedural framework and precedent, we hold that unless the confessed judgment has been stricken or opened in state court, it is a final judgment for purposes of the *Rooker-Feldman* doctrine.

The parties cite three cases where district courts have held that where a petition to strike or open has been filed, a confessed judgment is not a final adjudication for purposes of the *Rooker-Feldman* doctrine. See *First Commw. Bank*, 2012 WL 1982537, at *1 (quoting *Riverside Mem’l Mausoleum, Inc. v. UMET Tr.*, 581 F.2d 62, 67 (3d Cir. 1978)) (additional citations omitted) (after filing of state court petition to strike and/or open, “the litigation bec[ame] an adjudication upon the merits of the defenses raised”—and therefore not a final judgment”); *Rait Partnership, L.P.*, 2012 WL 488253, at *1 (a confessed judgment “is not final until the time to challenge it has passed,” and the petition may be filed in federal court); *S & T Bank*, 2011 WL 1298171, at *1 (a confessed judgment

is no longer final if a petition to strike or open it is timely filed in state court) (citing *Riverside Mem'l Mausoleum, Inc.*, 581 F.2d at 67).

Both *First Commonwealth Bank* and *S & T Bank* cite *Riverside* in support of their conclusion that a petition to strike or open filed in federal court renders a confessed judgment “not final” for *Rooker-Feldman* purposes. *Riverside* does not support that conclusion. Quoting Rule 2959(e), the court observed that “[t]estimony, depositions, admissions or other evidence may be produced and ‘if evidence is produced which in a jury trial would require the issues to be submitted to the jury, the court shall open the judgment.’” *Riverside Mem'l Mausoleum, Inc.*, 581 F.2d at 67. The *Riverside* court explained that this proceeding is “an adversary proceeding in which there is an adjudication upon the merits of the defenses raised” – the language quoted by *First Commonwealth Bank* and apparently relied upon by *S & T Bank*. *Id.* See also *First Commw. Bank*, 2012 WL 1982537, at *1; *S & T Bank*, 2011 WL 1298171, at *1. However, the court was clearly referring to the nature of the proceeding to open the judgment itself. *Riverside Mem'l Mausoleum, Inc.*, 581 F.2d at 67. It did not address the effect of a petition to strike or open on the enforceability or finality of the confessed judgment for purposes of application of the *Rooker-Feldman* doctrine.

The defendants’ reliance on *Rait* is misplaced. In that case, after the defendant removed the confessed judgment action to federal court, it filed a petition to strike or open, which the court denied. 2012 WL 488253, at *1. The defendant then filed a motion to remand, inconsistently claiming that the court lacked jurisdiction under the *Rooker-Feldman* doctrine because the state court confessed judgment was a final judgment. *Id.* The court found the doctrine did not apply “because there is no state court adjudication

when a confessed judgment is entered based solely on the filing of the complaint. The entry of judgment by confession is a ministerial act—not an adjudication.” *Id.*

Aside from a single citation to a case setting forth the elements of the *Rooker-Feldman* doctrine, the *Rait* court’s analysis of the applicability of that doctrine cited no legal authority. See generally 2012 WL 488253. On the contrary, its conclusion that a confessed judgment may not serve as the basis for application of the *Rooker-Feldman* doctrine conflicts with prior holdings of this court and others. See *Harley v. AMC Patriot LN IV B LLC*, 2018 WL 558462, at *3 (E.D. Pa. Jan. 25, 2018); see also *Schraven v. Phelan Hallinan Diamond & Jones, LLP*, No. 15-3397, 2016 WL 374729, at *2 (E.D. Pa. Feb. 1, 2016) (“As a starting point, the *Rooker–Feldman* doctrine applies to all judgments by a state court, including . . . judgments by confession. . . . [C]onfessed judgments are treated by federal courts as judgments on the merits.”) (citations omitted); *Stoss v. Singer Fin. Corp.*, 2010 WL 678115, at *4 (E.D. Pa. Feb. 24, 2010); *Flannery v. Mid–Penn Bank*, No. 08–0685, 2008 WL 5113437, at *5 (M.D. Pa. Dec. 3, 2008).

The defendants also contend the confessed judgment is not final because “the time limit to file a petition has not passed” due to defects with service of the judgment.¹¹ They contend that if we remand this matter, they could simply refile their petition to strike or open in state court and again remove the matter to this court.¹² They are wrong. Filing a petition before removal will not affect the lien of the confessed judgment, which will remain a final judgment unless and until it is stricken or opened. In that case, it will still be a judgment for purposes of the *Rooker-Feldman* doctrine.

¹¹ Defs.’ Memo. in Opp. to Pl.’s Mot. to Remand at 5-7 (ECF No. 10).

¹² *Id.* at 5.

Attorney's Fees

In its motion, CBSG, pursuant to 28 U.S.C. § 1447(c), requests attorney's fees incurred in opposing removal.¹³ The defendants respond that an award of attorney's fees would be improper because they had an objectively reasonable basis for seeking removal.¹⁴

"[C]ourts may award attorney's fees under § 1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal." *Martin v. Franklin Cap. Corp.*, 546 U.S. 132, 141 (2005). District courts exercise discretion in light of the objectives of § 1447(c)—to discourage the use of removals as a means of prolonging litigation and imposing costs on the plaintiff while generally allowing litigants the right of removal. *Id.* at 140-41.

The defendants relied upon *Rait*. See 2012 WL 488253, at *1 ("the *Rooker-Feldman* doctrine is not applicable in this case because there is no state court adjudication when a confessed judgment is entered solely on the filing of the complaint"). Although we do not agree with *Rait*, it was not unreasonable for the defendants to rely on it to support removal. Therefore, we shall deny the request for fees.

Conclusion

Because the *Rooker-Feldman* doctrine precludes our exercising jurisdiction, we shall grant CBSG's motion to remand this action to the Court of Common Pleas of Philadelphia County. We decline to award CBSG attorney's fees incurred in litigating this motion.

¹³ Pl.'s Mot. to Remand at 6-7 (ECF No. 4).

¹⁴ Defs.' Memo. in Opp. to Pl.'s Mot. to Remand at 7 (ECF No. 10).

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ORDER

NOW, this 22nd day of July, 2020, upon consideration of Plaintiff Complete Business Solutions Group, Inc.'s Motion to Remand (Document No. 4) and the defendants' response, and the reply, it is **ORDERED** that the motion is **GRANTED**.

IT IS FURTHER ORDERED that this action is **REMANDED** to the state court from which it was removed.

/s/ TIMOTHY J. SAVAGE J.