Dated: October 16, 2013
The following is SO ORDERED:

Jimmy L. Croom
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE

In re	)	
	)	
CLIFTON BOYD WOODS, SR.,	)	**Case No. 12-12943**
***aka* SHOMARI RAUMKUMBRA**	)	
***aka* SHOMARI RAUMKUMBRA EL BEY**	)	
aka SHOMARI HANIA RAUMKUMBRA	)	
***aka* SHOMARI HANIA RAUMKUMBRA EL BEY**	)	
Debtors.	)	**Chapter 7**
	)	
CLIFTON BOYD WOODS, SR.,	)	
Plaintiff,	)	
v.	)	**Adv. Proc. No. 13-5055**
	)	
CITIMORTGAGE COMPANY, INC., U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE FOR SECURITIZED TRUST CITICORP MORTGAGE SECURITIES, INC., REMIC PASS-THROUGH TRUST SERIES, 2003-3, CITICORP MORTGAGE SECURITIES, INC., MORTGAGE ELECTRONIC REGISTRATION SYSTEM, AKA "MERS" AND DOES 1 THROUGH 100, INCLUSIVE,	)	
Defendants.	)	
	)	

MEMORANDUM OPINION RE: MOTION TO DISMISS SECOND AMENDED COMPLAINT FOR DECLARATORY RELIEF, FEE SIMPLE INTEREST IN PROPERTY AND COMPENSATORY, SPECIAL AND PUNITIVE DAMAGES AND DEBTOR'S OBJECTION THERETO

Before this Court is the defendants' motion to dismiss the debtor's adversary proceeding pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6) and the debtor's objection thereto. The Court conducted a hearing on this matter on September 26, 2013. Fed. R. Bankr. P. 9014. This memorandum opinion shall serve as the Court's findings of facts and conclusions of law. Fed. R. Bankr. P. 7052.

I. FACTS

On January 3, 2003, the debtor in this matter, Clifton Boyd Woods, Sr.,[1] (hereinafter "Debtor"), signed a promissory note (hereinafter "Note") in the amount of $113,400.00 in favor of CitMortgage Company, Inc., (hereinafter "CitiMortgage") successor by merger to CitiFinancial Mortgage Co., Inc.. To secure this loan, the Debtor executed a Deed of Trust (hereinafter "Deed") in favor of CitiMortgage on real property located at 1012 Rossiter Drive, Dayton, Ohio 45402 (hereinafter "Property").

Several years later, CitiMortgage filed a foreclosure complaint against the Debtor in the Court of Common Pleas for Montgomery County, Ohio (hereinafter "State Court"). The Debtor appeared in the foreclosure proceedings via an "Affidavit of Fact Writ of Praecipe," but otherwise did not participate in the foreclosure action or file an answer to the complaint. CitiMortgage subsequently filed a motion for summary judgment. On April 17, 2012, the State Court entered an order granting CitiMortgage's motion for summary judgment. In so doing, the State Court found that all parties were properly served with notice of the proceedings, that CitiMortgage held a valid and first lien upon the Property, and that the Debtor owed CitiMortgage a principal balance of $103,385.01 with interest at a rate of 9.1900% per annum from April 1, 2011, together with advances for taxes, insurance, and costs. The State Court

[1]According to his pleadings, the Debtor is also known as Shomari Raumkumbra, also known as Shomari Raumkumbra El Bey, also known as Shomari Hania Raumkumbra, also known as Shomari Hania Raumkumbra El Bey.

also ordered a judicial foreclosure and issued a decree of sale for the Property.

On October 16, 2012, the Debtor filed a voluntary chapter 7 petition for bankruptcy relief. The Debtor did not list any potential causes of action relating to the Property on any of his bankruptcy schedules nor did he alert the Chapter 7 Trustee to any potential litigation concerning the Property. The Chapter 7 Trustee issued a Report of No Distribution on December 19, 2012, and noted that debts in the amount of $254,755.75 were scheduled to be discharged. On February 2, 2013, the Court issued a chapter 7 discharge to the Debtor. On February 11, 2013, the Court issued a final decree and closed the Debtor's case.

On March 12, 2013, the Debtor filed a motion to reopen his case for purposes of addressing the debt on his Property. The Court granted the Debtor's motion on March 17, 2013.

One month after the case was reopened, the Debtor filed an adversary proceeding (hereinafter "Complaint"), listing CitiMortgage; U.S. Bank, N.A. as Trustee for Securitized Trust; REMIC Pass-Through Trust Series 2003-3; Citicorp Mortgage Securities, Inc.; and Mortgage Electronic Registration System ("MERS") (hereinafter collectively the "Defendants"). The Debtor listed several causes of action against the Defendants including lack of standing to foreclose, fraud in the concealment, fraud in the inducement, intentional infliction of emotional distress, slander of title, and accounting and control fraud. The Debtor requested compensatory, special, and punitive damages for alleged injuries resulting from the pre-petition foreclosure sale. The Debtor asked the Court to enter a declaratory judgment stating that the Debtor was entitled to a fee simple interest in the Property, that the Defendants had no security interest in the Property, and that the Defendants had no right to foreclose upon the Property. The Debtor filed an amended complaint on May 2, 2013, which cured a technical defect noted by the bankruptcy court. The debtor filed a second amended complaint on July 22, 2013. The second amended complaint added Sanjiv Das, Chief Executive Officer of CitiMortgage Company, Inc., as a defendant and removed MERS as a defendant but was otherwise identical to the May 2, 2013 Complaint.

On June 5, 2013, the Defendants filed a motion to extend the time to file a response to the Debtor's Complaint. The Debtor filed an objection to this motion on June 17, 2013. The

Court granted the Defendants' motion on June 27, 2013. On July 29, 2013, the Defendants filed a motion to dismiss the adversary proceeding pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6). As grounds for their motion, the Defendants asserted that (1) the Court lacked subject matter jurisdiction because the Debtor did not have standing to pursue his adversary claims, (2) the Court lacked subject matter jurisdiction because the claims were barred by the *Rooker-Feldman* doctrine, and (3) the Debtor's Complaint was allegedly barred by the doctrine of judicial estoppel. The Debtor filed an objection to the Defendants' motion on September 6, 2013.

At the hearing on the Defendants' motion to dismiss, the Debtor argued that the Court had subject matter jurisdiction over all claims listed in his Complaint. Although the Debtor admitted at the hearing that he did not include his cause of action in his bankruptcy petition or schedules, he suggested that the cause of action was abandoned when the bankruptcy case was closed. The Debtor also stated that he moved to re-open his bankruptcy case in order to disclose and pursue his cause of action against the Defendants.

II. ANALYSIS

The Debtor's Complaint includes several claims which generally concern the mortgage origination, securitization, and foreclosure on the Debtor's Property. The Defendants in this case assert that the Debtor's Complaint should be dismissed because (1) the Debtor lacks standing to pursue his cause of action pursuant to Federal Rule of Civil Procedure 12(b)(1) because all pre-petition claims belong to the Chapter 7 Trustee, (2) the Court lacks subject matter jurisdiction over the action pursuant to Federal Rule of Civil Procedure 12(b)(1) because the *Rooker-Feldman* doctrine precludes federal court review of the action, and (3) the Debtors' claims are barred under the doctrine of judicial estoppel. Before considering the issue of judicial estoppel under Rule 12(b)(6), this Court must first determine whether it has subject matter jurisdiction to hear this action at all. If this Court lacks subject matter jurisdiction over this action, then all other pending issues before this Court are moot. *See Bell v. Hood*, 327 U.S. 678, 682, 66 S. Ct. 773 (1946) (stating that a motion to dismiss for failure to state a cause of action may be decided only after establishing subject matter jurisdiction, since determination of the validity of the claim is, in itself, an exercise of jurisdiction).

A motion brought pursuant to Federal Rule of Civil Procedure 12(b)(1) asserts that the court lacks subject matter jurisdiction over the plaintiff's claims. Fed. R. Civ. P. 12(b)(1). Federal Rule of Civil Procedure 12(h)(3) provides that "[i]f the court determines at any time that it lacks subject matter jurisdiction, the court **must** dismiss the action." Fed. R. Civ. P. 12(h)(3) (emphasis added). "When a defendant moves to dismiss on grounds of lack of subject matter jurisdiction, 'the plaintiff has the burden of proving jurisdiction in order to survive the motion' " to dismiss. *Nichols v. Muskingum College*, 318 F.3d 674, 677 (6th Cir. 2003) (quoting *Moir v. Greater Cleveland Reg'l Transit Auth.*, 895 F.2d 266, 269 (6th Cir. 1990)).

Courts have adopted two standards for evaluating Rule 12(b)(1) motions depending upon whether the movant makes a facial or factual attack upon the court's subject matter jurisdiction. *Ohio Nat'l Life Ins. Co. v. United States*, 922 F.2d 320, 325 (6th Cir. 1990). "In a 'facial attack,' the basis of the challenge is not that the Court does not actually have jurisdiction over the case, but rather, that a plaintiff has failed to faithfully recite all the jurisdictional predicates necessary for the Court to exercise subject matter jurisdiction over the matter." *Dalton v. Jefferson Smurfit Corp.*, 979 F. Supp. 1187, 1193 (S.D. Ohio 1997) (citing *RMI Titanium Co. v. Westinghouse Elec. Corp.*, 78 F.3d 1125, 1134-35 (6th Cir. 1997)). In other words, a facial attack challenges the court's subject matter jurisdiction based upon "the sufficiency of the pleading[s]." *Leffew v. Kugler*, 220 B.R. 598, 600 (Bankr. E.D. Tenn. 1998). "In deciding whether there is subject matter jurisdiction [in a facial attack], 'the allegations stated in the complaint are taken as true and jurisdiction is decided on the face of the pleadings.' " *Folden v. United States*, 379 F.3d 1344, 1354 (Fed. Cir. 2004) (quoting *Shearin v. United States*, 992 F.2d 1195, 1195-96 (Fed. Cir. 1993)).

On the other hand, if a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) "challeng[es] the actual existence of the Court's jurisdiction over the matter," the movant is making a factual attack upon the court's subject matter jurisdiction. *Dalton*, 979 F. Supp. at 1193. In a factual attack, "a defect . . . may exist even though the complaint contains the formal allegations necessary to invoke jurisdiction." *Brandon v. Fin'l Accounts Servs. Team, Inc.*, 701 F.Supp.2d 990, 993 (E.D. Tenn. 2010) (citing *RMI Titanium Co.*, 78 F.3d at 1134)). When considering a factual attack, a

"court is free to weigh the evidence and satisfy itself as to the existence of its

> power to hear the case. In short, no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims."

RMI Titanium, 78 F.3d at 1134 (quoting *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 890 (3d Cir. 1977)). Finally, "a trial court has wide discretion to allow affidavits, documents, and even a limited evidentiary hearing to resolve disputed jurisdictional facts." *Ohio Nat'l Life Ins. Co.*, 922 F.2d at 325 (citations omitted).

In the matter before the Court, the Defendants are bringing a factual attack on the Debtor's Complaint. The Defendants based that portion of their motion which seeks dismissal of the Debtor's complaint under Federal Rule of Civil Procedure 12(b)(1) on two separate grounds. First, the Defendants argue that the Debtor lacks standing to bring these claims. Second, the Defendants argue that the *Rooker-Feldman* doctrine bars the Debtor's claims. The Court will discuss each argument separately.

1. Standing

Under 11 U.S.C. § 541(a)(1), a bankruptcy estate is comprised of "all legal or equitable interests of the debtor as of the commencement of the case." 11 U.S.C. § 541(a)(1). "[I]t is well established that the 'interests of the debtor in property' include 'causes of action.' " *Bauer v. Commerce Union Bank*, 859 F.2d 438, 441 (6th Cir. 1988). Additionally, "when [the Debtor] filed his Chapter 7 bankruptcy petition, all causes of action belonging to him became vested in the bankruptcy trustee for the benefit of the bankruptcy estate." *Leffew*, 220 B.R. at 602 (citations omitted). This is so regardless of the fact that the Debtor failed to list this cause of action in his bankruptcy schedules. *In re O'Brian*, 443 B.R. 117, 131 (Bankr. W.D. Mich. 2011) (noting that "[e]ven when a debtor neglects to list property, the unscheduled property is 'property of the estate' "). "The bankruptcy trustee acts as the representative of the bankruptcy estate," and, as such, "[i]t is the trustee who has the capacity to sue and be sued pursuant to 11 U.S.C. § 323(b)." *Leffew*, 220 B.R. at 602. Thus, in chapter 7 cases, the debtor rarely has standing to pursue pre-petition causes of action.

When property of the estate, such as causes of action, are abandoned, the debtor is free to claim ownership of the property or cause of action. *Mgmt. Investors v. United Mine*

Workers of America, 610 F.2d 384, 392 (6th Cir. 1979) (stating that only if the bankruptcy trustee formally abandons a claim pursuant to § 554 does that claim revest in the debtor thereby enabling the debtor to bring suit in this own name). Property of the estate may be abandoned in one of two ways. First, 11 U.S.C. § 554(a) and (b)

> provide for what is commonly referred to as specific or intentional abandonment. Pursuant to § 554(a), the trustee or debtor in possession may provide notice of an intent to abandon property if that property "is burdensome to the estate" or "of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a). Section 554(b) allows for a "party in interest" to move for an order directing the trustee to abandon property for the same reason as stated in § 554(a).

In re DeGroot, 484 B.R. 311, 318-19 (B.A.P. 6th Cir. 2012) (citations omitted).

The second way in which property may be abandoned in bankruptcy is set forth in 11 U.S.C. § 554(c). This method of abandonment is often referred to as abandonment by "operation of law." Pursuant to § 554(c),

> property which the debtor schedules and which the trustee has not administered is abandoned to the debtor at the closing of the case . . . Unlike abandonments under § 544(a) and (b) which require some "initiative" by the trustee or a party in interest, abandonment under § 554(c) occurs automatically upon the closing of the bankruptcy case.

Id. (internal quotation marks and citations omitted).

The Debtor in this case suggests that this cause of action was abandoned at the close of his chapter 7 case pursuant to 11 U.S.C. § 554(c). However, the language of §554(c) makes clear that debtors must formally schedule property in order to claim the property at the close of a bankruptcy case. *See DeGroot*, 484 B.R. at 320 (noting that "technical abandonment of an asset pursuant to §554(c) ordinarily cannot occur if the Debtor failed to list the asset on his schedules"). Unscheduled property cannot be abandoned in a bankruptcy case because "[a]bandonment presupposes knowledge, thus abandonment cannot occur by mere operation of law for property that was not listed on the debtor's schedules or otherwise disclosed to creditors." *Darrah v. Franklin Credit* (*In re Darrah*), 337 B.R. 313, 316 (Bankr. N.D. Ohio 2005) (citing *5 Collier on Bankruptcy P*. ¶ 554.03 (Lawrence P. King, ed., 15th ed. rev. 2005)). Rather, 11 U.S.C. §554(d) dictates the fate of unscheduled and unadministered property with its mandate that "property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate." 11 U.S.C. § 554(d).

Courts have noted that "§554(d) is essentially a 'fail-safe' provision that ensures property which the debtor fails to schedule and which the trustee does not administer remains within the estate." *DeGroot*, 484 B.R. at 319 (citing *Mele v. First Colony Life Ins. Co.*, 127 B.R. 82, 86 (D.D.C. 1991)).

Because the Debtor in the case at bar did not schedule his causes of action against the Defendants in his bankruptcy petition, the trustee did not administer the asset. Consequently, the causes of action were never abandoned to the Debtor. Pursuant to § 544, they remain property of the estate and standing to pursue them remains vested solely in the Chapter 7 Trustee in this case.

2. *Rooker-Feldman* Doctrine

The *Rooker-Feldman* doctrine received its name from two Supreme Court cases decided sixty years apart: *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S. Ct. 149 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303 (1983). Both cases were brought before federal district courts "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.*, 544 U.S. 280, 284, 125 S. Ct. 1517 (2005). In both *Rooker* and *Feldman*, the Supreme Court concluded that the district court could not review the state court judgment because district courts "do not have jurisdiction . . . over challenges to state court decisions . . . even if those challenges allege that the state court's action was unconstitutional." *Feldman*, 460 U.S. at 486. Thus, the *Rooker-Feldman* doctrine stands for the proposition that parties who lose in state court may not seek federal court review of state court proceedings. *Exxon Mobil Corp.*, 544 U.S. 280 at 284. Federal courts may not review state court judgments because "pursuant to 28 U.S.C. § 1257, only the Supreme Court, and not the lower federal courts, enjoys appellate jurisdiction over state court decisions." *Coles v. Granville*, 448 F.3d 853, 857 (6th Cir. 2006).

While on its face, the *Rooker-Feldman* doctrine appears to preclude an individual from bringing all matters previously considered in state court into a federal court for review, courts have limited the application of the *Rooker-Feldman* doctrine by "differentiat[ing] between a claim that [impermissibly] attacks a state court judgment, which is within the scope of the

Rooker-Feldman doctrine, and an independent claim, over which a district court may assert jurisdiction." *McCormick v. Braverman*, 451 F.3d 382, 393 (6th Cir. 2006). Specifically, federal jurisdiction is proper if "a federal plaintiff present[s] some independent claim, albeit one that denies a legal conclusion that a state court has reached." *Exxon Mobil Corp.*, 544 U.S. at 293 (quoting *GASH Assocs. v. Rosement*, 995 F.2d 726, 728 (7th Cir. 1993)). One type of independent claim the Sixth Circuit recognizes is "when the state court judgment 'was procured through fraud, deception, accident or mistake . . . .' " *Singleton v. Fifth Third Bank* (*In re Singleton*), 230 B.R. 533, 538 (B.A.P. 6th Cir. 1999) (quoting *Sun Valley Foods Co. v. Detroit Marine Terminals*, Inc. (*In re Sun Valley Foods Co.*), 801 F.2d 186, 189 (6th Cir. 1986)). In other words, claims brought in district court by state court losers alleging that the prior state court decision was procured by the wrong-doing of the opposing party are independent claims, and an exception to the *Rooker-Feldman* doctrine.

The Sixth Circuit noted the difference between claims attacking state court judgments and independent claims in *Todd v. Weltman, Weinberg, & Reis Co., L.P.A.*, 434 F.3d 432 (6th Cir. 2006). In that case, the defendant, a creditor, initiated state court proceedings to garnish the plaintiff's bank account when the plaintiff defaulted on a loan. In order to commence the garnishment proceedings, state law required the defendant to file an affidavit stating that the defendant had a reasonable belief that the plaintiff's bank account funds were not exempt from garnishment. The state court found the affidavit to be valid and froze the plaintiff's bank account funds. At a subsequent hearing on the matter, the plaintiff successfully disputed the defendant's claim that the funds were not exempt, and the state court released the plaintiff's funds. The plaintiff then filed a complaint in district court alleging that the defendant violated the Fair Debt Collection Practices Act by lying in the affidavit submitted to the state court. The defendant argued that the district court lacked jurisdiction over the claim pursuant to the *Rooker-Feldman* doctrine. The district court determined that the *Rooker-Feldman* doctrine did not bar the plaintiff's claim and dismissed the defendant's motion for judgment on the pleadings. *Id.* at 434.

On appeal, the Sixth Circuit determined that the *Rooker-Feldman* doctrine was not applicable. The court noted that the doctrine was not applicable because "the Plaintiff [did] not complain of injuries caused by this state court judgment, as the plaintiffs did in *Rooker* and *Feldman*. Instead . . . [the] Plaintiff filed an independent federal claim that Plaintiff was injured by Defendant when he filed a false affidavit." Id. at 437. The court noted that the plaintiff's

complaint before the district court did not seek to set aside the state court's decision to garnish the bank account funds, a result prohibited by the *Rooker-Feldman* doctrine. Rather, the plaintiff's claim was permissible because the plaintiff alleged injuries independent of the state court's garnishment. *Id.*

Thus, in order to distinguish between an independent claim and an attack upon a state court judgment:

> [t]he inquiry . . . is on the source of the injury the plaintiff alleges in the federal complaint. If the source of the injury is the state court decision, then the *Rooker-Feldman* doctrine would prevent the district court from asserting jurisdiction. If there is some other source of injury, such as a third party's actions, then the plaintiff asserts an independent claim.

McCormick, 451 F.3d at 393 (citing *Hoblock v. Albany Cnty. Bd. Of Elections*, 422 F.3d 77, 87-88 (2d Cir. 2005)).

The Debtor's Complaint in this case includes several claims which generally result from the State Court Foreclosure Order and the subsequent foreclosure sale. In addition to monetary damages, the Debtor requests that this Court enter a judgment reversing the Foreclosure Order and granting the Debtor a fee simple interest in the Property. In their motion to dismiss, the Defendants assert a factual attack upon this Court's subject matter jurisdiction to hear the Debtor's claims. The Defendants' factual attack specifically challenges the Debtor's assertion that the Foreclosure Order may be set aside and that the rights and security interests in the Property may be redetermined. Pursuant to Sixth Circuit case law concerning factual attacks upon subject matter jurisdiction, this Court need not accept the Debtor's factual allegations as true and may weigh the evidence to determine whether this Court has the authority to hear this case.

A review of the record in this case reveals that prior to filing this Complaint, the Debtor was involved with foreclosure proceedings in Ohio. The State Court determined that the Debtor was properly served with notice of the foreclosure proceeding. The Debtor, therefore, had notice that foreclosure proceedings were pending and he had ample opportunity to present his defenses to the foreclosure action in state court, but chose not to do so. The foreclosure proceedings would have been the proper setting for the Debtor to object to the Defendants' security interest in the Property and to dispute CitiMortgage's right to foreclose

upon the Property. The Debtor also could have raised his other claims relating to the origination and securitization of the Debtor's mortgage including fraud in the concealment, fraud in the inducement, and accounting and control fraud. The Debtor, however, chose not to raise his claims at that time and in that forum. Consequently, the State Court determined that CitiMortgage held a valid and first lien upon the Property as well as the right to foreclose upon the Property.

To the extent that the Debtor's Complaint requires this Court to nullify the Foreclosure Order, enter an order declaring that the Debtor holds fee simple ownership in the property, or grant compensatory, special, and punitive damages for injuries related to the Foreclosure Order, the *Rooker-Feldman* doctrine precludes such actions. The Debtor's Complaint does not raise an independent claim, but rather, requests that this Court review and reverse a judgment previously entered by a state court.

III. Conclusion

The chapter 7 Debtor lacks standing to pursue his pre-petition claims against the Defendants because the cause of action remains property of the estate and only the Chapter 7 Trustee has standing to pursue such action. Additionally, the *Rooker-Feldman* doctrine precludes Debtor's claims against the Defendants. Accordingly, the Defendants' motion to dismiss for lack of subject matter jurisdiction should be granted.

Because the Court has determined that the Debtor lacks standing to bring his claims and that the *Rooker-Feldman* doctrine precludes the Debtor's claims, it is unnecessary to address the Defendants' other arguments for dismissal including their motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).

The Court will enter an order in accordance herewith.

Mailing list

Clifton Boyd Woods, Sr., Debtor
Deaver Collins, attorney for Defendants
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Unites States Trustee