New York Law Journal
SERVING THE BENCH AND BAR SINCE 1888
Web address: http://www.nylj.com
VOLUME 235—NO. 105 THURSDAY, JUNE 1, 2006 ALM

BY EDWARD M. SPIRO

What's Become of 'Rooker-Feldman'?

In recent months, Supreme Court Justice John Paul Stevens has twice referred to the interment and burial of the *Rooker-Feldman* doctrine.[1] That doctrine stands for the proposition that federal district courts lack subject matter jurisdiction over cases which seek review and reversal of unfavorable state-court judgments, because jurisdiction over such appeals is vested exclusively in the Supreme Court under 28 USC §1257.

Reports of the demise of the *Rooker-Feldman* doctrine may, however, be somewhat exaggerated. To be sure, two recent Supreme Court decisions have significantly curtailed the doctrine,[2] but it continues to enjoy some utility in the lower courts which are on the front lines of federal battles instituted by frustrated state-court litigants.

'Rooker-Feldman'

The *Rooker-Feldman* doctrine gets its name from the only two Supreme Court cases that have actually applied the doctrine. In *Rooker v. Fidelity Trust Co.*[3] the Court rejected a federal suit challenging the constitutionality of a state-court judgment and seeking to have that judgment declared "null and void." The Court explained that the only federal court empowered to review a final state-court judgment is the Supreme Court, and that the "aggrieved litigant" could not "be permitted to do indirectly what he no longer [could] do directly" by challenging the state-court proceedings in a subsequent federal lawsuit. The Court next invoked the doctrine in *U.S. Court of Appeals for the District of Columbia v. Feldman*,[4] where it rebuffed a federal challenge to decisions by the District of Columbia Court of Appeals denying the plaintiffs admission to the District of Columbia Bar. The Court held that the allegations that the D.C. Court of Appeals had acted arbitrarily and discriminatorily in rejecting the admission petitions would have required the district court to review a final judicial decision of the highest court of the jurisdiction—an inquiry it had no jurisdiction to undertake.

Inextricably Intertwined Claims

In reaching its decision in *Feldman*, the Court twice stressed that the ban on subject matter jurisdiction extended not only to claims actually decided by the state court, but also to those that were "inextricably intertwined" with the state-court decision. Seizing on this language, some lower courts, including the U.S. Court of Appeals for the Second Circuit, gave a fairly expansive reach to the *Rooker-Feldman* doctrine, finding that it was at least coextensive with preclusion under either res judicata or collateral estoppel. Thus, in *Moccio v. New York State Office of Court Administration*,[5] the Second Circuit applied *Rooker-Feldman* to bar the plaintiff's federal-court claims that the state had violated his due process and equal protection rights in terminating his employment, after he had unsuccessfully challenged that termination in an Article 78 proceeding in state court. The *Moccio* court found that although he did not raise his constitutional claims in the Article 78 proceeding, he could have done so. In holding that the prior Article 78 proceeding deprived the district court of jurisdiction over plaintiff's federal suit, the Second Circuit observed that "the Supreme Court's use of 'inextricably intertwined' [in *Feldman*] means, at a minimum, that where a federal plaintiff had an opportunity to litigate a claim in a state proceeding…, subsequent litigation of the claim will be barred under the *Rooker-Feldman* doctrine if it would be barred under the principles of preclusion."

'Exxon Mobil'

Finding that lower courts had given *Rooker-Feldman* too broad an interpretation, the Supreme Court sought in *Exxon Mobil Corp. v. Saudi Basic Industries Corp. (SABIC)*,[6] to circumscribe that doctrine. Justice Ruth Bader Ginsburg, writing for a unanimous Court, specifically singled out the Second Circuit's opinion in *Moccio* as an example of how the doctrine had been used improperly to override congressionally conferred concurrent federal/state jurisdiction and

Edward M. Spiro *is a principal of Morvillo, Abramowitz, Grand, Iason & Silberberg and the co-author of "Civil Practice in the Southern District of New York, 2d Ed." (Thomson West 2005).* **Judith L. Mogul** *assisted in the preparation of this article.*

to supersede the ordinary application of preclusion law. In *Exxon Mobil*, the U.S. Court of Appeals for the Third Circuit had sua sponte invoked *Rooker-Feldman* to dismiss a federal suit that Exxon Mobil had commenced against a partner in a joint venture (SABIC), just two weeks after SABIC had brought a declaratory judgment action against Exxon Mobil in Delaware Superior Court. Exxon Mobil asserted as counterclaims in the state-court action the same claims it had asserted in the federal case. The two cases proceeded on parallel tracks, with the state-court action proceeding to trial and resulting in a significant jury verdict for Exxon Mobil, and SABIC making an unsuccessful motion to dismiss the federal suit. SABIC appealed the result in both cases. On appeal from the denial of its motion to dismiss the federal case, the Third Circuit held that although the district court had subject matter jurisdiction over the federal action at the time it was filed, federal jurisdiction had terminated when the Delaware Superior Court entered judgment in Exxon Mobil's favor on the jury verdict. It reasoned that if SABIC won its appeal of the state-court action, Exxon Mobil's federal action would become an effort to "invalidate" the state-court decision, a situation that called for the application of *Rooker-Feldman's* "inextricably intertwined" bar.

In reversing that decision, the Supreme Court stressed that *Rooker-Feldman* is strictly a limitation on federal subject matter jurisdiction and is not triggered by parallel state and federal litigation. It observed that principles of comity or abstention may require a federal court to stay or dismiss a federal action in favor of a parallel state-court proceeding, and that preclusion principles may govern disposition of the federal action once the state action is completed, but that properly invoked concurrent jurisdiction does not vanish simply because there is a judgment in the state-court action. The Court held that where a party attempts to litigate in federal court a matter that it has previously pursued in state court, if it "present[s] some independent claim, albeit one that denies a legal conclusion" reached by the state court, jurisdiction exists and state law preclusion principles will determine if the party prevails.[7] The Court concluded that *Rooker-Feldman* should be narrowly confined to those 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."

'Rooker-Feldman' 'Lite'

• ***'Hoblock v. Albany County Bd. of Elections.'*** Chastened by the Court's decision in *Exxon Mobil*, the Second Circuit announced a new approach and a new test for applying *Rooker-Feldman* in its decision last September in *Hoblock v. Albany County Board of Elections*.[8] That case involved a dispute over whether certain absentee ballots in a court-ordered special election should be counted because of the way the ballots were issued. In previous state-court litigation between candidates in that election and the County Board of Elections, those ballots were declared invalid and the Board of Elections was directed not to count them. Two of the candidates, along with seven voters whose ballots were involved, then sued in federal court alleging that the board's refusal to count the challenged ballots violated their due process and equal protection rights under the Fourteenth Amendment. The district court dismissed the candidates' claims, but granted a preliminary injunction preventing the board from certifying the election results without counting the challenged ballots.

'Rooker-Feldman' is not completely eviscerated. Federal actions challenging domestic relations, eviction or foreclosure orders will still be barred under the doctrine,…

On appeal from the order granting the preliminary injunction, the board argued that the district court should have dismissed the voters' claims under the *Rooker-Feldman* doctrine.[9] In analyzing that argument under the doctrine "pared back…to its core" by *Exxon Mobil*, the Second Circuit articulated a four-part test for application of *Rooker-Feldman*:

(1) the federal plaintiff must have lost in state court;

(2) the plaintiff must complain of injuries caused by a state-court judgment;

(3) the plaintiff must invite district court review and rejection of that judgment; and

(4) the state-court judgment must have been rendered before the district court proceedings were commenced.

The Second Circuit observed that determining whether the federal plaintiffs in this case were seeking review and reversal of the state-court judgment was complicated because their claims, which were not raised before the state court, did not require review of the state-court decision. The relief sought, however, was inconsistent with the relief ordered by the state court, and in that sense would require reversal of that judgment. It noted that the language in *Exxon Mobil* that a federal plaintiff may "present some independent claim, albeit one that denies a legal conclusion" of a state court, suggests that a plaintiff seeking a result opposed to the one achieved in state court does not necessarily run afoul of *Rooker-Feldman*. The *Hoblock* court concluded that the "key to resolving this uncertainty" lies in the inquiry into whether the plaintiff is complaining of an injury caused by the state-court judgment itself, as distinct from an independent act which may have been challenged in the state-court proceeding, such as some form of employment discrimination actionable under both state and federal law. In the latter circumstance, the court reasoned that "[t]he fact that the state court chose not to remedy the injury does not transform the subsequent federal suit on the same matter into an appeal, forbidden by *Rooker-Feldman*, of the state-court judgment."[10] Thus, if a third party's actions "are produced by a state-court judgment and not simply ratified, acquiesced in, or left unpunished by it," the complained of injury is caused by the state-court decision, and the *Rooker-*

Feldman doctrine may be implicated. Under that analysis, the *Hoblock* court concluded that it was the state-court order that had produced the voters' complained of injury in that case.

Party Identity

• ***Is the Federal Plaintiff a State-Court Loser?*** The court went on to hold, however, that on the record before it, it could not determine whether the voter plaintiffs in the federal action were losers in the state-court proceeding such that their claims should be barred under *Rooker-Feldman*. It determined that federal preclusion law should guide that inquiry, asking whether the candidates who were parties in the state lawsuit had represented the interests of the voters to such an extent that they could be deemed to have virtually represented the voters in the first litigation. It observed that ordinarily the interests of candidates (who seek to be elected) and voters (who seek to have their votes counted) are not closely enough aligned for the virtual representation doctrine to apply. However, in this case, the federal voter plaintiffs represented only a subset of the voters whose ballots had been invalidated, consisting of those whose ballots had been challenged by the opponents of the original candidate plaintiffs. The court concluded that those voters might simply be the puppets or pawns of the candidates, and as such would be in sufficient privity with the candidates to be considered losers in the state case. It remanded for further proceedings on this question.

'Lance v. Dennis'

Although the Second Circuit took pains to limit its privity analysis to circumstances where there was not simply an identity of interests but virtual control of the federal plaintiffs by the state-court losers, it may be that even this approach exceeds the bounds of *Rooker-Feldman*.

In its most recent pronouncement on the doctrine, the Supreme Court in *Lance v. Dennis*[11] held that "*Rooker-Feldman*…does not bar actions by nonparties to the earlier state-court judgment simply because, for purposes of preclusion law, they could be considered in privity with a party to the judgment."[12] That case involved a federal challenge by Colorado voters to a decision by the Colorado Supreme Court invalidating the state Legislature's redistricting plan. A three-judge panel of the district court dismissed the federal suit under *Rooker-Feldman*, holding that "when a state government litigates a matter of public concern, that state's citizens will be deemed to be in privity with the government for preclusion purposes," and that this principle applies with equal force in the context of *Rooker-Feldman*.

In reversing that decision, the Supreme Court held that the district court had "erroneously conflated preclusion law with *Rooker-Feldman*." The Court held that incorporating preclusion principles into the *Rooker-Feldman* doctrine would improperly turn it into a uniform federal rule governing the preclusive effect of state-court judgments, which would run counter to the Full Faith and Credit Act's mandate that federal courts be guided by state law in determining the preclusive effect of a state-court judgment. In a footnote, the Court suggested that there might be limited circumstances where *Rooker-Feldman* might apply absent strict identity of parties, such as when an estate takes a de facto appeal in district court of an earlier state-court judgment against the decedent.[13] However, it appears doubtful that the Supreme Court is prepared to embrace the privity analysis outlined in *Hoblock*.

What Remains?

Clearly, *Rooker-Feldman* is a shadow of its former self. Yet it has not been completely eviscerated. Federal actions challenging domestic relations,[14] eviction or foreclosure orders will still be barred under the doctrine,[15] as will federal suits attempting to set aside other state-court judgments as unconstitutional.[16] In those in-stances where the injury challenged in the federal action is not caused by the state-court judgment, *Rooker-Feldman* no longer stands as a bar.[17] Dissatisfied state-court litigants will continue, however, to face an uphill battle in seeking redress through the federal courts. They must still thread their way through comity or abstention doctrines when pursuing concurrent parallel litigation, and through state law preclusion doctrines when pursuing federal claims following the conclusion of state-court litigation.

The recent constriction of the *Rooker-Feldman* doctrine does mean that these litigants will no longer face the threshold bar of subject-matter jurisdiction at the federal courthouse door unless their claims are brought after the close of state-court litigation in which the plaintiff was itself a party, and unless the federal litigation specifically seeks redress of an injury caused by the state-court judgment.

•••••••••••••••••••••

1. Concurring in the majority opinion in *Marshall v. Marshall*, 126 SCt 1735 (2006) (better known as the Anna Nicole Smith case), Justice Stevens called for the burial of the probate exception to federal jurisdiction "in a grave adjacent to the resting place of the *Rooker-Feldman* doctrine," 126 SCt at 1752, a doctrine he declared the Court had interred in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005), and had refused to resuscitate in its recent decision in *Lance v. Dennis*, 126 S. Ct. 1198, 1203 (2006) (Stevens, J., dissenting).

2. *Lance v. Dennis*, 126 S. Ct. 1198 (2006); *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005).

3. 263 US 413 (1923).

4. 460 US 462 (1983).

5. 95 F3d 195 (2d Cir. 1996).

6. 544 US 280.

7. Id. at 293 (quoting *GASH Assocs. v. Village of Rosemont*, 995 F2d 726, 728 (7th Cir. 1993)).

8. 422 F3d 77 (2d Cir. 2005).

9. The two candidates, whose claims were dismissed under *Rooker-Feldman*, did not appeal.

10. Id. at 87-88.

11. 126 S. Ct. 1198.

12. Id. at 1202.

13. Id. at n.2.

14. See *Hoblock*, 422 F.3d at 87.

15. See, e.g., *Bueno v. Hurd*, 2006 WL 959853 (2d Cir. Apr. 11, 2006); *Swiatkowski v. New York*, 160 FApp'x 30 (2d Cir. 2005); *Mareno v. Dime Savings Bank of New York*, 421 FSupp2d 722 (S.D.N.Y. 2006) (McMahon, J.).

16. *Montesano v. New York*, 2006 WL 944285 (SDNY April 12, 2006) (Daniels, J.).

17. See *Dolan v. Roth*, 2006 WL 558578 (2d Cir. March 8, 2006) (where plaintiff sued to remedy injury produced by defendants' decision to terminate him rather than by the state-court judgments in question, his claim is "independent" within the meaning of *Hoblock*). See also *Burkybile v. Board of Educ.*, 411 F.3d 306, 313 n.3 (2d Cir. 2005); *Shekhem' El-Bey v. City of New York*, 419 FSupp2d 546, 550 n.1 (SDNY 2006) (Sprizzo, J.).