UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

IN RE: DAVID DEWITT WHITEFOOT and
ELENA (LINDA) R. WHITEFOOT,
DEBTORS CASE NO. 92-40756

OPINION

On consideration before the court is a motion to reopen the above captioned Chapter 13 case, as well as, other requested relief, filed by David Dewitt Whitefoot and Elena (Linda) R. Whitefoot (debtors); response to said motion having been filed by BancorpSouth, formerly known as Bank of Mississippi (bank); and the court, having heard and considered same, hereby finds as follows, to-wit:

I.

JURISDICTION

The court has jurisdiction of the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. §1334 and 28 U.S.C. §157, in addition to the General Order of Reference entered by the United States District Court for the Northern District of Mississippi on July 27, 1984. This is a core proceeding as defined in 28 U.S.C. §157(b)(2)(A).

II.

BANKRUPTCY CASE HISTORY

The debtors filed a voluntary petition under Chapter 13 of the Bankruptcy Code on March 2, 1992. In their bankruptcy schedules, the debtors claimed a homestead exemption in their real property pursuant to §85-3-21, Miss. Code Ann., as follows, to-wit:

A. "House and three (3) acres," having an exemption value of $42,000.00 and a total value of $42,000.00.

B. "32 acres of land," having an exemption value of $9,000.00 and a total value of $9,000.00.

The debtors initially indicated on their Schedule A that the amount of the secured claim encumbering the house and three acres was $43,000.00, and that the secured claim encumbering the thirty-two acres was $14,000.00. By an agreed order entered on July 27, 1992, the debtors consented that the thirty-two acre parcel had a fair market value of $15,163,19, and they agreed to pay this amount to Eastover Bank for Savings, plus interest at 12% per annum, over the life of their sixty month Chapter 13 plan.

An order was entered confirming the debtors' Chapter 13 plan on August 17, 1992. The plan indicated that the Bank of Mississippi would be paid directly or outside the plan at the rate of $418.45 per month beginning May 8, 1992. A separate order was entered on October 19, 1992, sustaining the Chapter 13 trustee's motion to allow claims.

Following the debtor's completion of their plan payments, an order was entered discharging the debtors on August 8, 1997. This was followed by an order closing the bankruptcy case on September 22, 1997.

The debtors filed the subject motion to reopen, etc., on December 24, 2003. The primary purpose of the reopening is to litigate the validity and extent of a deed of trust executed by the debtors in favor of the Bank of Mississippi in 1997. While the legal description set forth in the deed of trust is identical to that utilized in several previous deeds of trust, the debtors now assert that this description, which applies to the three acre parcel of land, does not encompass their residence which is actually located on the adjoining thirty-two acre parcel. The debtors take this

position now notwithstanding the fact that in their bankruptcy schedules they specifically described their properties as “house and three (3) acres” and “32 acres of land.”

The debtors contend that the bank was aware, at the time of the execution of the 1997 deed of trust, that their residence was not located on the three acre parcel because the land had been surveyed prior to execution of the deed of trust. This survey purportedly revealed that the residence was not within legal description of the three acre parcel.

In 1998, the Bank of Mississippi initiated a lawsuit against the debtors in the Chancery Court of Clay County, Mississippi, Cause No. 98-0108, to reform the description of the deed of trust. A discussion of this litigation follows in the paragraphs hereinbelow.

III.

STATE COURT PROCEEDINGS

As noted hereinabove, the bank initiated a lawsuit against the debtors in chancery court. Following a fully litigated trial, the chancery court ordered a survey of the debtors’ property so that the deed of trust executed by the debtors in favor of the bank could be reformed to include the debtors’ residence. The chancery court also directed the bank to negotiate with the debtors for the purpose of re-amortizing the related indebtedness over a sufficient period of time so that the debtors would have a reasonable opportunity to pay it in full. A copy of the Chancellor’s Opinion and Order, dated February 25, 1999, is appended hereto and incorporated herein as Exhibit A.

The debtors appealed the chancery court decision to the Court of Appeals for the State of Mississippi which affirmed the chancery court on June 24, 2003, in Case No. 2001-CP-01753-

COA. A thorough discussion of the factual events pertinent to this proceeding is set forth in the appellate decision, a copy of which is appended hereto and incorporated herein as Exhibit B.

IV.

DISCUSSION

In their motion to reopen, etc., the debtors seek to bring the identical issues before this court that were litigated previously in the Chancery Court of Clay County, as well as, the Court of Appeals of the State of Mississippi. Although the debtors have filed a petition for a Writ of Certiorari with the Mississippi Supreme Court, at the present time, the decision of the Court of Appeals, affirming the chancery court, is binding precedent. As such, it is abundantly clear that the subject motion filed by the debtors is a request for this court to review the substance of the state court decisions.

The Rooker-Feldman doctrine, which provides that lower federal courts lack jurisdictional authority to sit in appellate review of state court decisions, precludes any further consideration of this matter. The Rooker-Feldman doctrine derives its name from two United States Supreme Court cases, Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923), holding that the jurisdiction of the federal district courts is strictly original, and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983), holding that federal district courts do not have the authority to review final state court judgments. See, United States v. Shepherd, 23 F.2d 923 (5th Cir. 1994) and 28 U.S.C. §1257, which provide that federal appellate jurisdiction over state court decisions is vested almost exclusively in the United States Supreme Court. See also, In the Matter of Erlewine (Ingalls v. Erlewine), 349 F.3d 205 (5th Cir. 2003), and In the Matter of Reitnauer (Reitnauer v.

Texas Exotic Feline Foundation, Inc.), 152 F.3d 341 (5th Cir. 1998). Consequently, for the above reasons, the debtors' motion to reopen, etc., is not well taken and must be overruled.

Although it is not necessary to decide the debtors' motion to reopen, etc., the court is compelled to mention the doctrine of judicial estoppel which was discussed in Oneida Motor Freight, Inc. v. United Jersey Bank, 848 F.2d 414 (3rd Cir. 1988), cert. denied, 488 U.S. 967, 109 S.Ct. 495, 102 L.Ed.2d 532 (1988), as follows:

> We are also mindful of the equitable concept of judicial estoppel. This doctrine, distinct from that of equitable estoppel, applies to preclude a party from assuming a position in a legal proceeding inconsistent with one previously asserted. Judicial estoppel looks to the connection between the litigant and the judicial system while equitable estoppel focuses on the relationship between the parties to the prior litigation. Scarano v. Central Railroad Co., 203 F.2d 510 (3rd Cir. 1953); USLIFE Corp. v. U.S. Life Insurance Co., 560 F.Supp. 1302 (N.D. Tex. 1983).
>
> We conclude that Oneida's failure to list its claim against the bank worked in opposition to preservation of the integrity of the system which the doctrine of judicial estoppel seeks to protect. Although we stop short of finding that, as the bank urges, Oneida's prior silence is equivalent to an acknowledgement that it did not have a claim against the bank, we agree that its current suit speaks to a position clearly contrary to its Chapter 11 treatment of the bank's claim as undisputed.

Id. at 419.

The Fifth Circuit expressly recognized the doctrine of judicial estoppel in Ergo Science, Inc. v. Martin, et al, 73 F.3d 595 (5th Cir. 1996), where the court commented as follows:

> Viewed in this light, the issue is more akin to judicial estoppel. The doctrine of judicial estoppel prevents a party from asserting a position in a legal proceeding that is contrary to a position previously taken in the same or some earlier proceeding. United States v. McCaskey, 9 F.3d 368, 378 (5th Cir. 1993), cert. denied, 511 U.S. 1042, 114 S.Ct. 1565, 128 L.Ed.2d 211 (1994). We recognize the applicability of this doctrine in this circuit because of its laudable policy goals. The doctrine prevents internal inconsistency,

> precludes litigants from "playing fast and loose" with the courts, and prohibits parties from deliberately changing positions based upon the exigencies of the moment.

73 F.3d 595 at 598.

See also, In the Matter of Coastal Plains, Inc., 179 F.3d 197 (5th Cir. 1999), and Hall v. GE Plastic Pacific PTE Ltd., et al, 327 F.3d 391 (5th Cir. 2003).

Judicial estoppel was recently applied by the Eleventh Circuit in DeLeon v. Comcar Industries, Inc., 321 F.3d 1289 (11th Cir. 2003), to preclude a Chapter 13 debtor's post-bankruptcy cause of action against a former employer for discrimination and retaliation. The court determined that the debtor knew about the claim before filing bankruptcy and possessed a motive to conceal the claim from the court in order to reduce the payments to the estate's creditors.

Throughout the course of the administration of their Chapter 13 bankruptcy case, the debtors asserted without reservation or qualification that the claim of the Bank of Mississippi was secured by their "house and three (3) acres." The debtors acknowledged on several occasions in their most recent pleadings that they were fully aware that their house was not actually situated on the three acre parcel prior to the filing of their bankruptcy petition. Yet, they advocated a contrary position from the time that they filed their bankruptcy schedules, through confirmation, until they received a discharge and their case was closed. It was not until after the bank initiated the deed of trust reformation cause of action in chancery court that the debtors officially asserted in a legal proceeding that the deed of trust did not encumber their residence because of the description defect. Clearly, this position is judicially inconsistent with what the debtors asserted throughout the pendency of their bankruptcy case. Without question, the

validity and extent of the legal description should have and could have been addressed "head-on" when the debtors initially filed their bankruptcy case in 1992. It was not, and, therefore the doctrine of judicial estoppel has preclusive effect on the debtors' present motion.

As such, the court is of the opinion that the debtors' motion to reopen, etc., including the relief requested therein, must be overruled. Likewise, the debtors' motion to strike the affirmative defense raised by the bank is also overruled.

An order will be issued consistent with this opinion.

This the 2 day of February, 2004.

___/s/_____
DAVID W. HOUSTON, III
UNITED STATES BANKRUPTCY JUDGE