

**FILED**

**SEP 28 2007**

**United States Bankruptcy Court  
Eastern District Of Washington**

**T.S. MCGREGOR, CLERK  
U.S. BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON**

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In Re:

DAVID WALLACE BAYS,  
  
Debtor(s).

LINDA BAYS, OVERSEER OF  
THE LINJERICKS SOCIETY,

Plaintiff(s),

vs.  
DAVID BAYS, ET AL

Defendant(s).

Main Case Number: 01-05127-JAR7

Adversary Number: A03-00237

**MEMORANDUM DECISION**

The genesis of this adversary proceeding is a domestic dispute between David Bays and his former wife Linda Bays. The litigation between these parties has been conducted over many years in the Superior Court of Pend Oreille County, the Washington State Court of Appeals, the Washington State Supreme Court, and the United States Bankruptcy Court for the Eastern District of Washington. Although a number of the plaintiff's causes of action filed in this adversary proceeding have been either dismissed or remanded to state court, four causes of action remain before this court. They are allegations of substantial abuse of the bankruptcy law, offset, slander of title and intentional infliction of emotional distress. The matter currently before the court is Linda Bays' "MOTION FOR SUMMARY JUDGMENT ON VALIDITY OF JUDGMENT WHEN GIVEN BY VISITING JUDGE WHO WAS NOT ASSIGNED PURSUANT TO THE LAWS AND WHO IGNORED THE LAWS OF DUE PROCESS."

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I. The Parties.

The parties remaining in this adversary proceeding are:

Linda Bays: The plaintiff and former wife of David Bays. She is also the Overseer of the Linjerick Society, a corporation sole, a plaintiff that the court has dismissed from this case.

David Bays: The defendant and former husband of Linda Bays. The marriage was dissolved by the Superior Court of Pend Oreille County. David Bays is also the debtor in this bankruptcy case.

Douglas Lambarth: The attorney who represented David Bays in the dissolution proceedings, the appeals to the Court of Appeals and to the Washington Supreme Court. He also represented David Bays when he filed this bankruptcy case.

Joseph Esposito: The bankruptcy trustee appointed in David Bays' Chapter 7 case.

Gary Stenzel: The lawyer who represented Linda Bays in the dissolution proceeding prior to trial.

Paul Bastine, Joe Wittstock, David Hardy and Spokane County Superior Court: The Judge who heard the Bays' dissolution matter and his court staff including the court reporter and administrator. For convenience these parties will hereafter be referred to collectively as the court defendants.

II. Facts and Procedural History.

Linda and David Bays were married in 1998. David Bays filed a dissolution action in Pend Oreille Superior Court against Linda Bays on April 4, 2001. Thereafter on June 20, 2001 he filed this bankruptcy case. Joe Esposito was appointed the Chapter 7 trustee. Stay Relief was granted in David Bays' bankruptcy case on August 2, 2002 to allow the dissolution proceeding to go to trial. A month later, Linda Bays filed her own Chapter 7 bankruptcy case in this court under cause # 02-07687. In response, David Bays, acting through his attorney

1 Douglas Lambarth, successfully sought emergency relief from the automatic stay in Linda  
2 Bays' case so that the dissolution trial scheduled for October 7, 2002 could proceed. Linda  
3 Bays wanted the trial continued but Judge Bastine denied her request.

4 The trial in the dissolution case proceeded in the absence of Linda Bays. It resulted  
5 in a dissolution decree that she regarded as unfavorable to her. She sought to obtain relief  
6 from that judgment in the superior court seeking both a new trial under C.R. 59 and relief from  
7 judgment under C.R. 60. The relief sought from the Superior Court was denied. Linda Bays  
8 appealed to the Washington State Court of Appeals challenging the trial court's denial of her  
9 motions and the propriety of Judge Bastine, a Spokane County Superior Court Judge, sitting  
10 as a judge in her Pend Oreille County dissolution matter. On February 7, 2006, Division 3 of  
11 the State Court of Appeals delivered its opinion affirming the state court judgment. Linda  
12 Bays then filed a Petition for Review with the Washington State Supreme Court, which was  
13 denied on January 31, 2007.

14 This adversary proceeding was filed on October 17, 2003. It sought relief on eight  
15 different causes of actions against multiple defendants. Because the causes of action alleged  
16 were intimately related to the dissolution proceeding, this court held the matter in abeyance  
17 pending resolution of the state court appeals. After the Washington State Supreme Court had  
18 rendered its decision denying review, this court heard motions in this case. As a result a  
19 number of the causes of action plead by Linda Bays were dismissed or remanded to state  
20 court. The causes of action remaining before this court are allegations of abuse of the  
21 bankruptcy laws, offset, slander of title and intentional infliction of emotional distress.

### 22 23 III. Jurisdiction

24 Jurisdiction to hear bankruptcy cases and proceedings is vested in federal district courts  
25 under 28 U.S.C. § 1334(b) and can be heard by the bankruptcy courts under 28 U.S.C. §  
26 157(a). Under 28 U.S.C. § 157(b)(1), bankruptcy courts may hear and determine core

1 proceedings. This is a core matter pursuant to 28 U.S.C. § 157(b)(2) as it is an action  
2 concerning the administration of the estate. The four remaining causes of action in Linda  
3 Bays complaint all relate to property of David Bays bankruptcy estate or actions taken in or  
4 related to administration of the bankruptcy estate. As such they are within the jurisdiction of  
5 this court.

6 There is however a jurisdictional problem in this case. Linda Bays' Motion for  
7 Summary Judgment asks this court to declare the judgment of the Pend Oreille Superior  
8 Court, as affirmed by the Court of Appeals, with review denied by the State Supreme Court,  
9 void and to no effect because of errors made by those courts. This request is in essence a  
10 request that this court exercise appellate authority over the state courts final judgments. This  
11 Court has no subject matter jurisdiction over this request.

12 The bankruptcy courts are units of the district courts. 28 U.S.C. §151. Their  
13 jurisdiction derives and is limited by the jurisdiction of the district courts. The district courts  
14 have "original" jurisdiction in bankruptcy matters and in cases involving federal questions. 28  
15 U.S.C. §157; 28 U.S.C. §1331. They do not have "appellate" jurisdiction to hear appeals  
16 from decisions of the state courts. "Appellate" jurisdiction over decisions of state courts is  
17 limited to the United States Supreme Court and obtained by Writ of Certiorari. 28 U.S.C. §  
18 1257. Therefore this court has no jurisdiction to review the propriety of a state court final  
19 judgment.

20 In Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S. Ct. 149, 68 L.Ed. 362 (1923), the  
21 court faced a situation strikingly similar to the case currently before this court. In Rooker the  
22 plaintiff in the United States District Court in Indiana sought to have an Indiana state court  
23 judgment, which had been affirmed by the state Supreme Court declared null and void on a  
24 number of grounds including want of due process. The district court ruled that it did not have  
25 jurisdiction to hear the case. The United States Supreme Court affirmed the district court  
26 ruling that the case called upon the district court to exercise appellate jurisdiction to review the

1 state court decision and that the district court 's jurisdiction was "strictly original". (263 U.S.  
2 at 416.) The district court therefore had no subject matter jurisdiction over the matter.  
3 Although the United States Supreme Court has limited the broad application of what became  
4 known as the Rooker-Feldman doctrine in many respects, it still applies to cases brought by  
5 state court losers complaining of injuries caused by state court judgments and seeking review  
6 and rejection of these judgments. Exxon Mobil Corporation v. Saudi Basic Industries Corp.,  
7 544 U.S. 280 at 284 (2005). Exactly the case before this court.

8 This court has no subject matter jurisdiction over Linda Bays request that this court  
9 invalidate the state court judgment.

#### 10 11 IV. Preclusion Issues.

12 There are four remaining causes of action in this adversary proceeding: allegations of  
13 substantial abuse of the bankruptcy law, offset, slander of title, and intentional infliction of  
14 emotional distress. The state court judgment in the dissolution action may have some  
15 common factual or legal nexus with these remaining causes of action and may arguably be  
16 entitled to some preclusive effect on those causes of action. Federal statutes require that  
17 federal courts give state court judgments the same full faith and credit that such judgments  
18 are accorded by law of the judgment issuing state. 28 U.S.C. §1738. This appears to require  
19 reference to the claim preclusion/issue preclusion law of the forum state in which the judgment  
20 was issued. In re Lopez, 367 B.R. 99 (9<sup>th</sup> Cir. BAP 2007). See also "Principles of Preclusion  
21 and Estoppel in Bankruptcy Cases", Christopher Klein, Lawrence Ponoroff and Sarah Borrey.  
22 79 The American Bankruptcy Law Journal, pp. 839 - 892 (2005).


23 This court is not at this time able to make any determination as to what preclusive  
24 effect, if any, the dissolution judgment has on the specific causes of action remaining in this  
25 case. Any such determination must be made in reference to the specific cause of action.

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V. Conclusion

Linda Bays' "MOTION FOR SUMMARY JUDGMENT ON VALIDITY OF JUDGMENT WHEN GIVEN BY VISITING JUDGE WHO WAS NOT ASSIGNED PURSUANT TO THE LAWS AND WHO IGNORED THE LAWS OF DUE PROCESS" should be denied.

Done this 28<sup>th</sup> day of September, 2007.



BANKRUPTCY JUDGE