

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-11006

In Re: BAMC DEVELOPMENT HOLDING, LLC,

Debtor.

BAMC DEVELOPMENT HOLDING, LLC,
ROBERT PRESCOTT,
1802 W PLATT ST LLC,
TAMPA HYDE PARK CAFE PROPERTIES, LLC,

Plaintiffs-Appellants,

versus

LARRY S. HYMAN,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:23-cv-02939-MSS,
Bkcy No. 8:22-bk-01487

Before NEWSOM, LUCK, and TJOFLAT, Circuit Judges.

PER CURIAM:

This case started as a simple state court foreclosure action. More than a decade later, it's mushroomed into a complicated federal appeal with four appellants raising over a dozen issues related to the sale of a property as part of BAMC Development Holding, LLC's bankruptcy. The appellants—BAMC, Tampa Hyde Park Cafe Properties, LLC, 1802 W Platt St LLC, and Robert Prescott—challenge the bankruptcy court's order approving a settlement of the foreclosure with BAMC's biggest creditor, the order approving the sale of the property and the order denying reconsideration of the sale, and the order modifying the terms of the sale. After careful review, and with the benefit of oral argument, we dismiss BAMC's appeal because it was not a person aggrieved by the bankruptcy court's orders. But we affirm as to everyone else.

I. FACTUAL BACKGROUND

A. *The Property*

Chris Scott owned a property in Tampa, Florida. In 2002, he leased it to Hyde Park. As part of the lease agreement, Hyde Park had an exclusive option to purchase the property.

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Scott mortgaged the property twice: first to First Nationwide Mortgage Corporation in 2002, and a second time to Robert Prescott in 2012. After Scott defaulted on the first mortgage, First Nationwide filed a foreclosure action in Florida state court in 2013.

B. The State Court Foreclosure Action

Years of litigation followed in the state court. During the litigation, First Nationwide transferred its first mortgage to MTGLQ Investors, L.P., while Scott transferred his interest in the property to BAMC.

In 2018, the state court entered a foreclosure judgment of \$206,887.32 in favor of MTGLQ Investors, but reserved ruling on the amount of attorneys' fees. After several years of litigation delays, MTGLQ Investors assigned the first mortgage to Wilmington Savings Fund Society, FSB. Wilmington Savings asked the state court to rule on the motion for prejudgment attorneys' fees. The state court denied the motion because it was filed more than three years after the foreclosure judgment. Wilmington Savings appealed the denial to the state appellate court.

In the meantime, the state court set a foreclosure sale for April 14, 2022. But the sale was not to be. On April 11—three days before the sale—Hyde Park exercised its option to purchase the property. BAMC and Hyde Park entered into an “Option Exercise and [Chapter] 11 Plan Sponsor Agreement,” which required BAMC to file for chapter 11 bankruptcy and obtain an order authorizing

the sale of the property to Hyde Park free and clear of all encumbrances. Under the agreement, closing on the option was contingent on the confirmation of BAMC's chapter 11 plan.

C. The BAMC Bankruptcy

In line with the agreement, BAMC filed for chapter 11 bankruptcy the day before the foreclosure sale, on April 13. Because the bankruptcy triggered an automatic stay of litigation against BAMC, *see* 11 U.S.C. § 362, the state court cancelled the sale.

But the bankruptcy court found that BAMC was “attempt[ing] to game the system,” and that its bankruptcy was “not [] legitimate.” So, the bankruptcy court exercised its discretion to convert the BAMC bankruptcy to a chapter 7 proceeding. *See* 11 U.S.C. § 1112(b).

D. The Hyde Park Bankruptcy

The other party to the option agreement, Hyde Park, also filed for bankruptcy protection under chapter 11. Like it did for the BAMC bankruptcy, the bankruptcy court converted Hyde Park's chapter 11 petition into a chapter 7 proceeding. The BAMC trustee moved for relief from the automatic stay in the Hyde Park bankruptcy to allow the BAMC trustee to dispose of Hyde Park's option to buy the property. The bankruptcy court granted the motion.

As part of its bankruptcy, Hyde Park sold substantially all of its assets—including its option to buy the property—to Hyde Park Cafe, LLC. Hyde Park Cafe, LLC then transferred and assigned its rights and interests in the property to another entity, 1802

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W Platt St LLC. Because of the transfers, we grant Hyde Park's request to substitute 1802 W Platt for the two other entities. *See* Fed. R. App. P. 43; Fed. R. Civ. P. 25. But, for ease of reference, we'll continue to refer to them together as Hyde Park.

II. PROCEDURAL HISTORY

With that setup, we'll focus the rest of our discussion on four orders from the BAMC bankruptcy: the bankruptcy court's order approving the settlement of Wilmington Savings's foreclosure judgment; the bankruptcy court's order approving the sale of the property and the order denying reconsideration of the sale; and the bankruptcy court's order modifying the terms of the sale.

A. The Settlement Order

The BAMC trustee entered into a settlement agreement with Wilmington Savings and moved the bankruptcy court to approve the settlement. In the motion, the BAMC trustee explained that Wilmington Savings's judgment in the foreclosure action had accrued significant interest and attorneys' fees since the BAMC bankruptcy began. The judgment ballooned to \$391,454.14 and would continue to grow if the BAMC bankruptcy and foreclosure action dragged on. If that happened, Wilmington Savings's claim would eclipse the value of the property (which the BAMC trustee estimated at \$400,000.00) and destroy any chance of recovery for BAMC's other creditors.

Under the settlement, the BAMC trustee would auction off the property free and clear of all liens, claims, and encumbrances—

including any interest held by BAMC, Hyde Park, or Prescott—under 11 U.S.C. section 363(f). Wilmington Savings would receive \$327,267.37 in full satisfaction of the foreclosure judgment while the rest of the money from the sale, up to a maximum of \$64,187.00, would be carved out to distribute to BAMC’s unsecured creditors. In exchange, Wilmington Savings would voluntarily dismiss the foreclosure action upon approval of the settlement.

Prescott objected to the settlement (joined by BAMC and Hyde Park). First, he argued that the *Rooker–Feldman* doctrine barred the bankruptcy court from considering prejudgment attorneys’ fees in assessing the fairness of the settlement because the state court had already denied the fee request and any decision to the contrary would effectively be an appeal of the state court’s ruling. Second, Prescott asserted that the settlement was not fair because he was owed \$276,343.86 (plus interest) as the second mortgagee, and the settlement would likely leave him with no distribution from the sale because the carve-out was capped at \$64,187.00 and the unsecured creditors would receive a “guaranteed distribution,” “all of which rightfully belong[ed] to Prescott under his [s]econd [m]ortgage.”

The bankruptcy court overruled the objections and approved the settlement. Concluding that the *Rooker–Feldman* doctrine did not apply, the bankruptcy court found that the settlement was fair, reasonable, and adequate because: (1) Wilmington Sav-

ings was likely to succeed in getting its attorneys' fees in the foreclosure action; (2) collection by other creditors would be impossible if Wilmington Savings's claim exceeded the value of the bankruptcy estate; (3) continued litigation would add expense and delay; and (4) the settlement benefitted the creditors because it ensured a distribution for the unsecured creditors (who would otherwise get nothing) while Prescott was "going to be a loser anyway or st[ood] very little to gain" in asserting a claim based on his second mortgage given that Wilmington Savings's claim had priority.

B. The Sale Order and the Order Denying Reconsideration

As part of the settlement, the BAMC trustee moved to sell the property at auction under section 363(f) free and clear of all liens, claims, and encumbrances. Hyde Park, BAMC, and Prescott objected to the sale.

First, Hyde Park argued that the property was not "property of the estate" under 11 U.S.C. section 541 because Hyde Park became the equitable owner of the property when it exercised the option before the BAMC bankruptcy. Second, BAMC objected that the proposed sale would result in a windfall for Wilmington Savings because the proceeds of the sale would be used to satisfy Wilmington Savings's \$327,267.37 claim, which was greater than the \$206,887.32 Wilmington Savings was entitled to under the foreclosure judgment. Wilmington Savings's claim, BAMC argued, included attorneys' fees and interest in the foreclosure action, but the state court had denied the request for prejudgment attorneys' fees. Although Wilmington Savings was appealing that ruling, BAMC

maintained that the state court would likely dismiss the appeal because MTGLQ Investors was the nominal plaintiff in the case, which meant that Wilmington Savings was not the proper party. And third, Prescott—who submitted an unsigned objection pro se—also objected that the sale would give Wilmington Savings more than it was entitled to, leaving Prescott with potentially no distribution from the sale.

After a hearing, the bankruptcy court overruled the objections and approved the sale of the property. Hyde Park, the bankruptcy court explained, did not have standing to object because its option was controlled by the trustee in the Hyde Park bankruptcy. Because the Hyde Park trustee did not join the objection, and Hyde Park didn't get relief from the automatic stay to object, it had no basis to object to the sale.

BAMC also didn't have standing to object to the sale, the bankruptcy court concluded, because only the BAMC trustee could object on behalf of the company. And the bankruptcy court did not consider Prescott's objection because it was not signed, as required by Federal Rule of Bankruptcy Procedure 9011.

Hyde Park, BAMC, and Prescott moved to reconsider, but the bankruptcy court denied the reconsideration motions because they either rehashed the parties' previous objections to the sale or brought new issues not raised in their original motions.

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C. The Modification Order

After the property was sold at auction, the BAMC trustee moved to modify the terms of the sale. He requested a modification to provide the successful bidder with relief as a good faith purchaser under section 363(m), to add the legal description of the property, to provide that the sale was free and clear of potential defects in prior deeds, and to authorize the BAMC trustee to execute any deed from the sale. Without objection or a hearing, the bankruptcy court granted the motion, and modified the terms of the sale.

D. The District Court Appeal

BAMC, Prescott, and Hyde Park appealed the bankruptcy court's settlement order, the sale order, the order denying reconsideration, and the modification order. With full briefing, the district court affirmed.

III. STANDARD OF REVIEW

In a bankruptcy appeal, “we independently examine the bankruptcy court’s factual and legal determinations, applying the same standards of review as the district court.” *In re Coady*, 588 F.3d 1312, 1315 (11th Cir. 2009) (citing *In re Sublett*, 895 F.2d 1381, 1384 (11th Cir. 1990)). That means we review de novo jurisdictional issues and legal conclusions, and we review factual findings for clear error. See *In re Stanford*, 17 F.4th 116, 121 (11th Cir. 2021); *Cavalieri v. Avior Airlines C.A.*, 25 F.4th 843, 848 (11th Cir. 2022). We

review for abuse of discretion an order denying a motion for reconsideration, *see Equity Inv. Partners, LP v. Lenz*, 594 F.3d 1338, 1342 (11th Cir. 2010), and the bankruptcy court’s approval of a compromise or settlement, *see In re Daughtrey*, 896 F.3d 1255, 1273 (11th Cir. 2018) (citing *Christo v. Padgett*, 223 F.3d 1324, 1335 (11th Cir. 2000)). Of course, we “may affirm on any ground supported by the record, regardless of whether that ground was relied upon or even considered below.” *Waldman v. Conway*, 871 F.3d 1283, 1289 (11th Cir. 2017).

IV. DISCUSSION

We divide our discussion into four parts. First, we consider whether BAMC was allowed to appeal under the person aggrieved doctrine. Second, we review the bankruptcy court’s order approving the settlement of Wilmington Savings’s foreclosure judgment. Third, we examine the bankruptcy court’s sale order and its order denying reconsideration. And fourth, we discuss the bankruptcy court’s modification of the terms of the sale.

A. BAMC and the Person Aggrieved Doctrine

BAMC, as a chapter 7 debtor, cannot appeal the bankruptcy court’s orders under the person aggrieved doctrine. “The person aggrieved doctrine limits the right to appeal a bankruptcy court order to those parties having a direct and substantial interest in the question being appealed,” in other words, parties who are “‘directly, adversely, and pecuniarily affect[ed]’ by a bankruptcy court’s order.” *See In re Ernie Haire Ford, Inc.*, 764 F.3d 1321, 1325 (11th Cir.

2014) (citation modified).¹ “An order will directly, adversely, and pecuniarily affect a person if that order diminishes their property, increases their burdens, or impairs their rights.” *Id.* (quoting *In re Westwood Cmty. Two Ass’n*, 293 F.3d 1332, 1338 (11th Cir. 2002)).

“The advent of the chapter 7 estate . . . divest[s] the chapter 7 debtor of all right, title[,] and interest in nonexempt property of the estate at the commencement of the case,” and “the debtor typically lacks any pecuniary interest in the chapter 7 trustee’s disposition of that property.” *Spenlinhauer v. O’Donnell*, 261 F.3d 113, 118 (1st Cir. 2001). “Thus, normally it is the trustee alone, as distinguished from the chapter 7 debtor,” who can “appeal from bankruptcy court orders which confirm or reject sales of property of the estate.” *Id.*; see also *In re Richman*, 104 F.3d 654, 657 (4th Cir. 1997) (noting that “in a Chapter 7 proceeding, the trustee alone” can “raise issues before the bankruptcy court” and “prosecute appeals” of bankruptcy court orders); *In re Peoples*, 764 F.3d 817, 820 (8th Cir. 2014) (“[D]ebtors, particularly chapter 7 debtors, rarely have a pecuniary interest because how the estate’s assets are disbursed by the trustee has no pecuniary effect on the debtor.” (quoting *In re Nangle*, 288 B.R. 213, 216 (B.A.P. 8th Cir. 2003))).

¹ Although the person aggrieved doctrine is often described as a standing requirement, this is something of a misnomer because, unlike constitutional standing, the doctrine “does not speak to a court’s subject-matter jurisdiction.” *In re Ernie Haire Ford, Inc.*, 764 F.3d at 1325 n.3. Rather, the person aggrieved doctrine “tells us which parties may appeal from a bankruptcy court order.” *Id.*

But there are two exceptions to the normal rule. A chapter 7 debtor may be able to appeal a bankruptcy court's order if: (1) the appeal might result in a surplus distribution back to the debtor; or (2) the appeal implicates the debtor's discharge at the end of the case. See *In re Neira*, 14 F.4th 60, 66 (1st Cir. 2021); *In re Peoples*, 764 F.3d at 820; see also 1 *Collier on Bankruptcy* ¶ 5.07 (16th ed. 2026) (“[D]ebtors in chapter 7 cases only infrequently have standing to appeal an order of the bankruptcy court. The exceptions are in cases in which an appeal might result in a distribution to the debtor or if the debtor's discharge would be affected.”). Neither exception applies here.

BAMC did not demonstrate that there was a chance of a surplus distribution. In fact, the reason the parties were fighting over the settlement was because there wasn't enough money to go around for all of the creditors. Although there was a carve-out, that money was put aside for the unsecured creditors. So, there was no possibility of a surplus distribution to BAMC, and no indication that any of the bankruptcy court's orders implicated the discharge.

At oral argument, BAMC conceded that, as a chapter 7 debtor, it was not a person aggrieved and could not appeal from the bankruptcy court's orders. We accept its concession and dismiss BAMC's appeal. See *In re Bay Circle Props., LLC*, 955 F.3d 874, 879–80 (11th Cir. 2020) (dismissing bankruptcy appeal where appellant was not a person aggrieved).

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B. The Settlement Order

The remaining appellants, Prescott and Hyde Park, challenge the bankruptcy court's order approving the settlement of Wilmington Savings's foreclosure judgment. They raise two issues: first, the settlement violated the *Rooker–Feldman* doctrine; and second, the settlement was not fair, reasonable, and adequate.

1. The Rooker–Feldman Doctrine

Prescott and Hyde Park argue that the *Rooker–Feldman* doctrine barred the bankruptcy court from considering prejudgment attorneys' fees in assessing the fairness of the settlement. The state court, they contend, had already entered final judgment and denied the fee request, so any review would be a challenge to the state court's ruling.

The *Rooker–Feldman* doctrine is a “narrow jurisdictional doctrine” that prohibits a party who loses in state court from “appeal[ing] that loss in a federal district court.” *Behr v. Campbell*, 8 F.4th 1206, 1208 (11th Cir. 2021). Importantly, though, “district courts do not lose subject matter jurisdiction over a claim ‘simply because a party attempts to litigate in federal court a matter previously litigated in state court.’” *Id.* at 1210 (quoting *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 292–93 (2005)). Instead, the doctrine is “confined to cases of the kind from which [it] acquired its name: 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.” *T. M. v. Univ. of Md. Med.*

Sys. Corp., 146 S. Ct. 1739, 1748 (2026) (quoting *Exxon Mobil Corp.*, 544 U.S. at 284).

The *Rooker–Feldman* doctrine does not apply here because Wilmington Savings did not seek to review and reject a state court judgment. Wilmington Savings sought to settle its foreclosure judgment against BAMC. In approving the settlement, the bankruptcy court had to determine the likelihood that Wilmington Savings would be successful on its claim of attorneys’ fees in the state court. See *In re Justice Oaks II, Ltd.*, 898 F.2d 1544, 1549 (11th Cir. 1990). In doing so, the bankruptcy court “never had to *decide* the merits of those claims—only the *probability* of succeeding on those claims.” *Id.* The bankruptcy court’s approval of the settlement was not a “review and rejection of” the state court’s ruling—only a prediction of how it would come out. See *T. M.*, 146 S. Ct. at 1748 (quoting *Exxon Mobil Corp.*, 544 U.S. at 284). So, the *Rooker–Feldman* doctrine did not block the bankruptcy court from reviewing the settlement.

2. The Settlement’s Fairness, Reasonableness, and Adequacy

Prescott and Hyde Park also assert that the settlement was not fair, reasonable, and adequate. We apply four factors to determine “the fairness, reasonableness[,] and adequacy of a proposed settlement agreement” in a bankruptcy case. *In re Chira*, 567 F.3d 1307, 1312–13 (11th Cir. 2009) (quoting *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986)). They are: (1) “[t]he probability of success in the litigation”; (2) “the difficulties, if any, to be encountered

in the matter of collection”; (3) “the complexity of the litigation involved, and the expense, inconvenience[,] and delay necessarily attending it”; and (4) “the paramount interest of the creditors and a proper deference to their reasonable views in the premises.” *In re Justice Oaks II, Ltd.*, 898 F.2d at 1549 (citation modified).

Applying the factors, the bankruptcy court did not abuse its discretion in finding that the settlement was fair, reasonable, and adequate. As to the first factor, Wilmington Savings was likely to prevail in the state court foreclosure action on the fee issue. Hyde Park and Prescott argued that the state appeal would likely be dismissed because MTGLQ Investors—the named plaintiff—was the proper party. But, as the bankruptcy court explained, this was a correctable procedural issue, not a bar to recovery. Florida Rule of Civil Procedure 1.260 provides that, “[i]n case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.” Fla. R. Civ. P. 1.260(c). So, there was no impediment to substituting Wilmington Savings for MTGLQ Investors as the proper party.

As to the second factor, the difficulty of collection weighed in favor of the settlement because, absent the settlement, the unsecured creditors “would not get a dime” and “there would be nothing to collect.” Third, the complexity, expense, inconvenience, and delay of the litigation weighed in favor of approving the settlement. While, as the bankruptcy court acknowledged, the issues involved

were not “unduly complex,” there would inevitably be delay while waiting for the state appeal and this delay would necessarily impose additional expense, both in the continued accrual of post-judgment interest, and in attorneys’ fees in the foreclosure action and the bankruptcy case.

Finally, settlement was in the best interest of BAMC’s creditors because Wilmington Savings’s unsettled claim would likely exceed the value of the estate, leaving other creditors with no recovery. The settlement preserved a carve-out, which would then be paid out to unsecured creditors whose claims would otherwise be extinguished. Although it was possible that Prescott would not receive any distribution, the bankruptcy court noted that Prescott was “going to be a loser anyway or st[ood] very little to gain” because he was either going to hold a junior lien or be an unsecured creditor, and his interest would likely be swallowed by Wilmington Savings’s senior lien. The bankruptcy court reasonably determined that the settlement satisfied Wilmington Savings’s interest stemming from its first mortgage and provided the unsecured creditors with a distribution that would not have been possible absent the compromise. We see no abuse of discretion in blessing this arrangement.

C. The Sale Order

Prescott and Hyde Park next argue that the bankruptcy court erred in overruling their objections to the sale of the property at auction and in denying their motions for reconsideration. But there was no error.

First, the bankruptcy court properly rejected Prescott's pro se objection. Rule 9011 requires that "[a] party not represented by an attorney must sign all documents" submitted to the bankruptcy court. Fed. R. Bankr. P. 9011(a). A bankruptcy court "must strike an unsigned document unless the omission is promptly corrected after being called to the attorney's or party's attention." *Id.* That's exactly what the bankruptcy court did here. It struck Prescott's objection because it was unsigned. Prescott does not contest this ruling on appeal.

Second, the bankruptcy court also properly rejected Hyde Park's objection. Hyde Park was in the midst of its own bankruptcy proceeding when it filed the objection. As the bankruptcy court explained, that meant only the trustee in the Hyde Park bankruptcy could represent the interests of the company.

Hyde Park then shifted gears and argued that it represented the company's equity holders. But Hyde Park's equity holders also had no right to object. Under the automatic stay provision, the Hyde Park bankruptcy "operate[d] as a stay, applicable to all entities, of . . . any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. § 362(a)(3). Because Hyde Park's equity holders did not seek or obtain relief from the automatic stay, they could not object to a sale that would have disposed of the option. *Cf. id.* § 362(d) (providing that, "[o]n request of a party in interest and after notice and a hearing," a bankruptcy court "shall grant relief from the stay" in specified circumstances).

Third, the bankruptcy court did not err in denying Prescott's and Hyde Park's motions for reconsideration. Prescott and Hyde Park moved for reconsideration under Rule 9023, which incorporates the standard for a motion for a new trial or to alter or amend a judgment under Federal Rule of Civil Procedure 59. *See* Fed. R. Bankr. P. 9023; Fed. R. Civ. P. 59.

"The only grounds for granting a Rule 59 motion are newly-discovered evidence or manifest errors of law or fact." *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007) (citation modified). "A motion for reconsideration" under Rule 59 "cannot be used to 're-litigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment. This prohibition includes new arguments that were previously available, but not pressed.'" *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 957 (11th Cir. 2009) (quoting *Michael Linet, Inc. v. Village of Wellington*, 408 F.3d 757, 763 (11th Cir. 2005)).

As the bankruptcy court explained, Prescott's and Hyde Park's motions for reconsideration did not point to any newly discovered evidence and did not identify any errors of law or fact in the bankruptcy court's reasoning. The motions either rehashed issues brought in their objections or raised new issues that should have been brought the first time. So, the bankruptcy court did not abuse its discretion in denying them.

D. The Modification Order

Finally, Hyde Park argues that the bankruptcy court erred in modifying the terms of the sale without holding a hearing. Section

363(b), it contends, required the bankruptcy court to hold a hearing before approving a sale outside the ordinary course of business.

A bankruptcy trustee may sell estate property outside the ordinary course of business “after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances.” 11 U.S.C. §§ 102(1)(A), 363(b). But section 363(b) “authorizes an act without an actual hearing if such notice is given properly and if—(i) such a hearing is not requested timely by a party in interest; or (ii) there is insufficient time for a hearing to be commenced before such act must be done, and the court authorizes such act.” *Id.* §§ 102(1)(B), 363(b). Here, Hyde Park does not dispute that it received proper notice of the motion, and it did not request a hearing. So, the bankruptcy court did not violate section 363(b) by failing to hold one.

Even if section 363(b) didn’t require a hearing, Hyde Park asserts that Rules 6004(c) and 9014 required the bankruptcy court to hold a hearing before entering the modification order. Rule 6004(c) provides that “[a] motion for authority to sell property free and clear of liens or other interests must be made in accordance with Rule 9014,” which in turn requires that “[r]easonable notice and an opportunity to be heard must be given to the party against whom relief is sought.” Fed. R. Bankr. P. 6004(c), 9014. But the BAMC trustee’s modification motion did not seek authority to sell the property. The bankruptcy court already granted the authority to sell the property in the sale order and the BAMC trustee had

already sold the property (after a hearing) before the modification request. All the modification motion sought was to:

modify the terms of the Sale Order to provide that (i) the successful bidder shall be provided with relief pursuant to 11 U.S.C. [section] 363(m); (ii) add the legal description of the Property to paragraph 6 of the Sale Order; (iii) amend paragraph 6 of the Sale Order to provide that the sale is free and clear of potential defects in prior deeds; and (iv) provide that the Trustee is authorized to execute any deed relative to the sale.

None of this was a new request to sell the property. So, the modification motion did not trigger the right to a hearing under Bankruptcy Rules 6004(c) or 9014.

V. CONCLUSION

For these reasons, we dismiss BAMC's appeal. And we affirm the bankruptcy court's orders in all other respects.

DISMISSED IN PART and AFFIRMED IN PART.

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TJOFLAT, J., Concurring

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TJOFLAT, Circuit Judge, Concurring:

I write separately to underscore that BAMC initiated this Chapter 11 case to collaterally attack the judgment the Hillsborough County Circuit Court entered against it in the state court foreclosure action, which the Second District Court of Appeals (DCA) affirmed. *Scott v. MTGLQ Invs., L. P.*, 263 So. 3d 10 (Fla. Dist. Ct. App. 2019). While Hyde Park and Prescott filed claims in BAMC’s bankruptcy estate, they failed to intervene in the foreclosure action and submit their claims to the Circuit Court. They therefore abandoned their claims.¹

Bankruptcy Judge Catherine Peek McEwen recognized what BAMC, Hyde Park, and Prescott were doing and deemed their efforts an “abuse of [the bankruptcy] process,” and “one of the worst cases of abuse [she had] ever encountered.” Judge McEwen rejected Hyde Park’s and Prescott’s claims and BAMC’s collateral attack. In this appeal, we affirm Judge McEwen’s decision.

¹ The State Court docket in the foreclosure action reflects that Robert Prescott received in-hand service of the “Summons and Complaint and Notice of Lis Pendens” at his home in Arlington, MA on July 22, 2013. Summons Returned Served, *Fed. Nat’l Mortg. Ass’n v. Scott*, Case No. 13-CA-9150 (Fla. 13th Cir. Ct. August 29, 2013). The docket also reflects individual service of “unknown tenant #1” at the property’s physical address on August 5, 2013. *Id.* The clerk’s docket for No. 13-CA-9150 is online at <https://hover.hillsclerk.com/>. I take judicial notice of the docket entries in the mortgage foreclosure case and of the documents the entries identify.

I. BAMC'S REPEATED ATTACKS ON STATE COURT JUDGMENTS

At bottom, Judge McEwen, a highly respected bankruptcy judge of 21 years' experience, correctly identified BAMC's filing as "an abuse of the bankruptcy process for pure speculation and investment value upside to equity." This is not the first time Judge McEwen has dismissed a Chapter 11 case BAMC initiated for the purpose of mounting a collateral attack on a state court foreclosure judgment.

Consider Judge McEwen's statements in dismissing BAMC's 2016 bankruptcy case, which also involved a last-second Chapter 11 filing after the entry of a state court foreclosure judgment:

THE COURT: You're basically saying there's inadequate justice in the State Court and, for that reason, I should keep this case here. . . . You are asking me to make a ruling based on the quality of judicial labor in the State Court, and I refuse to do that. . . . [The argument is] one that I reject, it's offensive to me, it's forum shopping—it's blatant forum shopping—and it's an end run on the regular procedures and processes that they have in the State Court system to accord due process when people . . . perceive that a wrong has been done.²

² Transcript, *In re BAMC Development Holding LLC*, Case No. 8:16-bk-05643-CPM (Bankr. M.D. Fla. Dec. 7, 2016). I take judicial notice of the docket entries in this previous bankruptcy case and of the documents the entries identify in this footnote and in succeeding footnotes.

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TJOFLAT, J., Concurring

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Judge McEwen reiterated her collateral attack concerns in a later hearing in the 2016 case:

THE COURT: [W]hat you're doing is, your frustration at losing some issues before the State Court really came out here but it's not really things that relate to here. Because you can't forum shop. What really came out was: The tenor of your arguments were that you were forum shopping; that you had to file bankruptcy in order to correct a State Court issue.³

So too here. After the state court entered a foreclosure judgment, BAMC attempted to relitigate the issues decided by the state court by filing a Chapter 11 case in attempting to direct the foreclosed property to an affiliated entity through the exercise of an option.

BAMC's 2018 bankruptcy filing was also dismissed for abuse of process. In that case, which involved a different creditor, Judge McEwen reprimanded BAMC for purchasing the property at interest in the instant case without first seeking approval from BAMC's trustee: "It is an abuse of process [for BAMC] to buy a stay."⁴

In 2022, the hearings in BAMC's latest filing, now before us on appeal, sound like a broken record:

THE COURT: This is a strategic filing. It's improper. You don't have a carve-out. Your original game plan

³ Transcript, *In re BAMC Development Holding LLC*, Case No. 8:16-bk-05643-CPM (Bankr. M.D. Fla. Jan. 4, 2017).

⁴ Transcript, *In re BAMC Development Holding LLC*, Case No. 8:18-bk-06643-CPM (Bankr. M.D. Fla. Aug. 9, 2016)

was to string the creditor out for 24 months to let Mr. Ortiz⁵ do an assemblage that would benefit himself.

I lay out the history of BAMC's repeated collateral attacks to underscore that BAMC's behavior undermines the integrity of the bankruptcy system. As the Trustee stated in the instant case: "This is just kind of an egregious setup. And it appears to be a textbook example of abuse of the bankruptcy process for the benefit of a principal and to the detriment of a creditor." Judge McEwen later echoed the Trustee's statement:

THE COURT: This is one of the worst cases I've ever seen when I juxtapose it by the number of times we've had hearings where I've clearly telegraphed what was necessary. You're not going to ride a speculative investment opportunity for equity on the back of an involuntary lender, involuntary in the sense that they never agreed to do business with BAMC. They didn't agree to be strung out over time by BAMC.

That said, a quick discussion of claim preclusion will elucidate my concerns with BAMC's repeated attempts to attack state court foreclosure judgments through strategically initiated Chapter 11 cases.

⁵ Thomas Ortiz is the Managing Member of BAMC. He is also the Managing Member of THPC. Voluntary Petition, *In re Tampa Hyde Park Cafe LLC*, 8:16-bk-04868-CPM (Bankr. M.D. Fla. June 6, 2016).

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II. ISSUE PRECLUSION

Federal courts, pursuant to the Full Faith and Credit Act, 28 U.S.C. § 1738, must apply state court judgments so long as the state court afforded due process to the parties.

The preclusive effect of a judgment is defined by claim preclusion and issue preclusion, which are collectively referred to as “res judicata.” *Taylor v. Sturgell*, 553 U.S. 880, 892, 128 S. Ct. 2161, 2171 (2008). Issue preclusion forecloses litigation of matters that have been litigated and decided. *Res judicata*, *Black’s Law Dictionary* 1425 (9th ed. 2009). Claim preclusion forecloses litigation of matters that have never been litigated because they should have been advanced in an earlier suit. *Id.*

Both issue preclusion and claim preclusion operate across a two-lawsuit continuum. *Fla. Dep’t of Transp. v. Juliano*, 801 So. 2d 101, 105 (Fla. 2001). First, parties litigate a dispute to a final judgment on the merits. Second, in a later, separate suit between the parties, one party brings evidence of an earlier judgment and contends that issue or claim preclusion should apply to prevent her opponent from litigating a previously decided issue or cause of action. In this two-lawsuit scheme, the first court is the “rendering” court and the second is the “recognizing” court. As I have previously explained:

When a rendering court decides an issue and a recognizing court later accords that issue preclusive effect, two consequences result: First, the precluded party is gagged from litigating that issue. Second, the parties

are bound to the rendering court's decision with respect to that issue. A litigant is therefore susceptible to being denied her due process right of having an opportunity to be heard on each issue of her case, unless the recognizing court, before giving preclusive effect to an issue determination, first identifies with specificity what the rendering court allegedly decided and determines it was, indeed, actually decided.

Graham v. R.J. Reynolds Tobacco Co., 857 F.3d 1169, 1216 (11th Cir. 2017) (Tjoflat, J., dissenting) (internal citations omitted). In deciding whether claim preclusion or issue preclusion is applicable, the first question is whether the rendering court's judgment is entitled to full faith and credit. If it is, the question becomes whether the issues or claims presented to the recognizing court—the Bankruptcy Court here—was decided by the rendering court. Thus, in order to protect the parties' due process rights, the Bankruptcy Court properly held adversarial hearings to determine what the State Court foreclosure judgment actually decided before giving preclusive effect to the State Court's judgment.

The Hillsborough County Circuit Court, as a court of general jurisdiction, had the power to entertain and decide an in rem foreclosure action. The State Court obtained jurisdiction to decide claims to the property held by Hyde Park and Prescott because those parties were “properly served in the foreclosure lawsuit,” and its final judgment precluded Hyde Park and Prescott from thereafter “seek[ing] to set aside, invalidate or challenge the validity of a final judgment of foreclosure . . . or to establish or reestablish a lien

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or encumbrance on the property in abrogation of the final judgment of foreclosure.” Fla. Stat. § 702.036.

Here, Wilmington held a foreclosure judgment in its favor. Wilmington’s judgment against the BAMC estate’s property made Wilmington a “party in interest” to BAMC’s bankruptcy. 11 U.S.C. §§ 362(a), 362(d). Wilmington filed a motion to dismiss BAMC’s Chapter 11 case as a bad faith filing, or, alternatively, to lift the automatic stay. *Id.* § 362(d). Opposing Wilmington’s motion, BAMC argued its Chapter 11 petition “was not filed in bad faith” and stated it would “propose to pay the Bank in full on the Bank’s judgment” and would “propose to pay a significant dividend to unsecured creditors and some junior secured creditors (in order of priority).” That was not so. As detailed above, the Court would later find BAMC’s Chapter 11 petition was “a strategic filing” and “one of the worst cases [it had] ever seen.”

In essence, the bankruptcy court properly concluded that BAMC’s filing was nothing more than an attempt to avoid a final state court judgment. Thus, BAMC’s attack on the state court’s judgment through adversarial hearings is precluded.

Under both Florida and Federal law, claim preclusion carries four elements: (1) “a final judgment on the merits”; (2) a “decision . . . rendered by a court of competent jurisdiction”; (3) “the same cause of action . . . involved in both cases”; and (4) “the parties, or those in privity with them, are identical in both suits.” *Baloco v. Drummond Co., Inc.*, 767 F.3d 1229, 1246 (11th Cir. 2014).

Claim preclusion bars litigation both as to issues that were and were not litigated in a prior case. *Juliano*, 801 So. 2d at 105.

In the context of claim preclusion, Judge McEwen's decision to convert BAMC's case to a Chapter 7 liquidation follows as a matter of course. The state court foreclosure judgment was valid, final, and reached the merits. Because Wilmington could litigate the foreclosure in state court without substituting MTGLQ as the plaintiff, those parties are in privity. Fla. Stat. § 1.210(a). Similarly, because Wilmington could litigate the foreclosure action without substituting BAMC for Scott, those parties are in privity. *Id.* Prescott, while not technically a party to the state foreclosure suit, had a full and fair opportunity to be heard in the state court action based on his status as a junior lienholder. The Bankruptcy Court properly noted the Hyde Park entities, before us on appeal, represented nothing more than an attempt to "string this creditor out for 24 months to let Mr. Ortiz do an assemblage that would benefit himself." Thus, properly squeezed down, the claims of the Appellants here are nothing but a rehashing of the claims available to BAMC in the original state court action.⁶

⁶ The Bankruptcy Court properly identified this concern at the May 10, 2022, hearing following BAMC's third Chapter 11 filing:

[This case] is being run for Mr. Ortiz's benefit to salvage the property he took an option on. . . . [W]hat's the point of the bankruptcy, Mr. Williamson? [Mr. Ortiz] can exercise the price and buy it and pay it off at his own leisure, if he can beat foreclosure. I don't understand the bankruptcy utility of this case.

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Bound by the state court judgment, the Appellants were precluded from attempting to secure a different outcome in bankruptcy. Thus, the Bankruptcy Court did not err in effectuating the sale of the property pursuant to the settlement reached by Wilmington and the Trustee. In doing so, the Court properly observed the principles of full faith and credit, which, as codified at 28 U.S.C. §1738, require federal courts to “give the same preclusive effect to a state-court judgment as another court of that state would give.” *See* U.S. Const. art. IV, § 1.

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Finally, I commend Judge McEwen for her diligence in handling this case and in sanctioning attorney William Barton Meachem for his inappropriate conduct.