No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DOUGLAS BRUCE, an individual,
Petitioner,

v.

CITY AND COUNTY OF DENVER, a municipal government within the State of Colorado, **STERLING CONSULTING CORPORATION**, a Colorado Corporation, **STATE OF COLORADO**, **FAIRFIELD & WOODS, P.C.**, a Colorado Professional Corporation, and **MACHOL & JOHANNES, LLC**, a Colorado Limited Liability Corporation.
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the *Rooker-Feldman* doctrine preclude the District Court from recognizing subject matter jurisdiction over the claims filed by Mr. Bruce in federal court when Mr. Bruce was never made a party to, nor allowed to participate fully in, the state court litigation which formed the basis for the District Court's refusal to exercise subject matter jurisdiction?

LIST OF PARTIES

1. Douglas Bruce, Petitioner.
2. City and County of Denver, Respondent.
3. Sterling Consulting Corporation, Respondent.
4. State of Colorado, Respondent.
5. Fairfield & Woods, P.C., Respondent.
6. Machol & Johannes, LLC, Respondent.

CORPORATE DISCLOSURE

Mr. Bruce is an individual and there is no corporate entity or ownership to disclose per Rule 29.6.

RELATED PROCEEDINGS

1. *Bruce v. City and County of Denver, et al.*, Case No. 1:20-cv-02099-RBJ (D. Colorado) (final judgment entered October 4, 2021).
2. *Bruce v. City and County of Denver, et al.*, Case No. 21-1388 (10th Circuit) (order denying petition for rehearing en banc entered February 7, 2023).

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Opinions Below

The citation to the Tenth Circuit Opinion below is *Bruce v. City and County of Denver, et al.*, 57 F.4th 738 (10th Cir. 2023). The citation to the District Court Order below is *Bruce v. City and County of Denver, et al.*, No. 1:20-cv-02099-RBJ, 2021 U.S. Dist. LEXIS 190618 (D. Colo. Oct. 4, 2021), *aff'd*, 57 F.4th 738 (10th Cir. 2023).

Jurisdiction

This civil rights action was filed by Mr. Bruce pursuant to 42 U.S.C. § 1983 and the Fifth, Eighth, and Fourteenth Amendment of the United States Constitution. Mr. Bruce also alleged a related state law cause of action for Breach of Fiduciary Duties against Defendant Sterling Consulting Corporation. Accordingly, the District Court had subject matter jurisdiction pursuant to 28 U.S.C. § 1331 of the constitutional claims, and supplemental jurisdiction of the state law claims under 28 U.S.C. § 1367, when it entered the final judgment being appealed. The United States Court of Appeals had jurisdiction pursuant to 28 U.S.C. § 1291. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

The United States Court of Appeals for the Tenth Circuit decided Mr. Bruce's appeal on January 10, 2023. Mr. Bruce timely filed a Petition for Rehearing En Banc on January 24, 2023. The Tenth Circuit denied Mr. Bruce's Petition for Rehearing En Banc on February 7, 2023.

This Petition is timely filed as it is filed within 90 days of the denial of Mr. Bruce's Petition for

Rehearing En Banc. *See* US Supreme Ct. R. 13.1, 13.3.

Relevant Constitutional Provisions

United States Constitution, Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment VIII:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

United States Constitution, Amendment XIV, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the

> United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statement of the Case

The question presented for the Court is whether the *Rooker-Feldman* doctrine should be extended to apply to persons who are not parties to a lawsuit, and even refused full party participation in that lawsuit by the state court, acting as bystanders. The Tenth Circuit Court of Appeals extended the *Rooker-Feldman* doctrine erroneously to apply when a person is tangentially involved in a lawsuit as a denied claimant in a receivership action. This Court has been strict in limiting the application of the *Rooker-Feldman* doctrine only to individuals who are named parties in a prior state court lawsuit. Thus, the Court should grant this Petition and the Tenth Circuit Court of Appeals should be reversed.

1. Procedural History.

This case was filed on July 17, 2020. The Defendants filed a Joint Motion to Dismiss on November 18, 2020. Sterling Consulting Corporation (the "Receiver") filed its own motion to dismiss on February 10, 2021. Mr. Bruce responded to the Motions to Dismiss, and the Court entered an order granting the Motions on subject matter jurisdiction

grounds on October 4, 2021. Mr. Bruce timely filed his Notice of Appeal on November 1, 2021. The parties briefed the issues before the Tenth Circuit, and the Tenth Circuit held oral argument on November 17, 2022. The Tenth Circuit issued its decision on January 10, 2023, and Mr. Bruce filed his Petition for Rehearing En Banc on January 24, 2023. The Tenth Circuit entered its order denying the Petition for Rehearing En Banc on February 7, 2023.

2. Brief Facts.

A. Background Facts.

Mr. Bruce is the holder of two notes (the "Notes") which are secured by recorded trust deeds (the "Trust Deeds") on two different parcels of real estate. The first parcel is located 601-609 Lipan St., Denver, Colorado 80204 (the "Lipan Property"), and the second parcel is located at the northwest corner of 37th and York, also in Denver, Colorado (the "York Property," and collectively with the Lipan Property, the "Properties"). In 1997, Plaintiff transferred the Lipan Property to Tele Comm Resource LP ("Tele Comm") in exchange for a note in the amount of $230,000 (the "Lipan Property Note"). The present value of the Lipan Property Note is over $600,000, plus interest. Plaintiff's trust deed on the Lipan Property was recorded in 1998, securing a face value of $230,000 in indebtedness plus interest (the "Lipan Property Deed"). In 2003, Plaintiff transferred the York Property to Tele Comm in exchange for a note in the amount of $2.4 million (the "York Property Note"). The present value of the York Property Note is at least $6 million, plus interest. Plaintiff's trust deed on the York Property was recorded in 2004, securing a face

value of $2.4 million plus interest (the "York Property Deed").

In 2013, Tele Comm deeded ownership of the Properties to Roger McCarville ("Mr. McCarville"), who accepted the Properties subject to Plaintiff's encumbrances. At some later date, Mr. McCarville attempted to deed the Properties back to Tele Comm, but these deeds were ineffective because Tele Comm did not know of or accept the attempted reconveyance. Thus, Mr. McCarville was and remained the rightful owner of the Properties in law and in fact.

In 2015, Appellee City and County of Denver ("Denver") filed several lawsuits against Tele Comm in an effort to collect on certain fines and assessments (mainly yard mowing maintenance and paper trash charges) it had issued against the Properties based on alleged violations of city ordinances, which were ultimately consolidated into one Colorado state district court action given Case Number 2015CV30918, proceeding in the Denver County District Court, State of Colorado (the "State Court Litigation"). Appellee Sterling Consulting Corporation (the "Receiver") was appointed as a receiver to oversee the management, evaluation of claims concerning, and ultimately the sale of the Properties in the State Court Litigation.

The State Court Litigation proceeded against Tele Comm, even though Tele Comm and Mr. Bruce presented clear evidence to the state court that Mr. McCarville was the owner of the Properties. Appellees opted to ignore this evidence and press ahead against the Properties essentially in absentia so that they could liquidate the Properties and keep the proceeds for themselves with as little resistance as possible. A significant portion of the fines accrued while Mr. McCarville was the owner of the Properties.

Nonetheless, the State Court Litigation moved forward with Tele Comm as the defendant, and these "fines" were paid out of equity owed to Mr. Bruce.

Plaintiff was the real party in interest in the State Court Litigation by way of the Trust Deeds. However, Plaintiff was not made a party to the case even though he repeatedly asked to be made a party to the State Court Litigation so that he could defend his interests.

By the time the State Court Litigation reached its conclusion, the outrageous fines and penalties that Denver ordinances permitted Denver to levy against the Properties, which included unconstitutionally excessive fines of $999 per day simply for having unoccupied buildings, had reached millions of dollars. Denver levied additional fines as well, including for not maintaining the buildings, paper trash accumulation, and not mowing the yard. Denver assessed these fines even though Appellees would not let Mr. Bruce maintain the yards and refused his agents access. Additionally, Denver removed the trash dumpsters that had been placed at the York Property and paid for by Plaintiff through property taxes. Denver also removed a heavy duty chain at the York Property that Plaintiff installed to prevent illegal dumping in the privately-owned alley.

B. Mr. Bruce's Participation, or Lack Thereof, in the State Court Litigation.

In March 2015, Denver, represented by Appellee Machol & Johannes, LLC ("M&J"), initiated litigation in Colorado State Court against Tele Comm as owner of the Properties, ostensibly to collect on alleged civil penalties unilaterally assessed by Denver without a court filing against the Properties (the

"State Court Litigation"). In that action, before a state court, the Receiver was appointed as a receiver over the Properties, and the Receiver was represented by Appellees Fairfield & Woods, P.C. ("F&W").

It is not in dispute that Mr. Bruce was never made a party to the State Court Litigation, despite his repeated requests to be made a party so that he could defend his interests in the Trust Deeds securing the Notes, and the many millions of dollars that were owing thereunder. For example, Mr. Bruce was brought before the Colorado State Court on September 18, 2017, not for a substantive matter on the case, but so that he could be advised of his rights due to a pending Motion for Order to Show Cause for civil contempt that had been filed against him. While Mr. Bruce was waiting to be originally served with a copy of the subpoena, the judge indicated: "Every person, every party and you, Mr. Bruce, are ordered to remain in the courtroom." In response, Mr. Bruce stated: "I'm glad you recognize that I'm not a party." The judge then stated, "Right. Is that clear to you as well? [directed to counsel for Denver]," to which counsel for Denver responded, "Yes." After Mr. Bruce received a copy of the Motion for Order to Show Cause, the hearing concluded.

Thereafter, Mr. Bruce returned to court on October 6, 2017. Nothing of substance transpired at that hearing because Mr. Bruce had filed a motion to disqualify the judge for bias.

The next hearing transpired on November 9, 2017. Mr. Bruce appeared for this hearing, at which he was advised of his rights regarding the pending Motion for Order to Show Cause. The judge asked Mr. Bruce if he had any questions, and Mr. Bruce said, "Yes, Am I a party? Yes or no?" The Court turned to counsel for Denver to respond, and counsel stated:

> Your Honor, I guess, I guess in this context the term party is somewhat ambiguous. I would say capital P, Party, Plaintiff or Defendant he is not, lowercase P, party in the sense that no party should interfere with the receivership, that applies to the whole world and in that context, lowercase P, he is a party, but he's not a capital P, Party, Plaintiff, or Defendant.

The judge followed up by asking counsel for Denver, "Do you believe that he was properly added to this case, Sir?" to which counsel for Denver responded, "I believe I properly filed a motion to hold him in contempt. I, I don't know if that makes him a party to the case." The judge then turned to Mr. Bruce and asked if he "wish[ed] to add anything to that record?" to which Mr. Bruce stated, "So in other words, the seven billion people in the whole world," and counsel for Denver agreed, stating: "We would concur with that point."

The following hearing, which transpired on January 24, 2018, was a trial on the Motion for Order to Show Cause filed by Denver.[1] None of the substantive matters in the case were addressed. Indeed, at the conclusion of the hearing, Mr. Bruce requested that the court address the motions he had filed to be made a party to the case and his objections to the proceedings, which at that point had been pending for many months. (Mr. Bruce: "I have filed several motions."; "I'm asking you – these motions are six or eight months old."; "So I'd like you to issue a ruling, please."). The trial court did not address those

[1] Although it is not directly relevant to this petition, Mr. Bruce was not held in contempt.

motions at this time. (Judge: "So that's not part of the contempt. And you can bring that up, separately, sir.").

C. Federal Lawsuit and Basis for Jurisdiction.

Mr. Bruce's federal lawsuit, this case, followed after the State Court Litigation concluded with the sale of the Properties to a third party buyer along with substantial payments to Denver, its counsel, the Receiver, and its counsel. Mr. Bruce receiving nothing in return for his recorded and secured Trust Deeds and Notes with a face value in the millions of dollars. The case was filed pursuant to 42 U.S.C. § 1983 and asserted claims under the Fifth, Eighth, and Fourteenth Amendments of the United States Constitution. Mr. Bruce also alleged a related state law cause of action for Breach of Fiduciary Duties against Defendant Sterling Consulting Corporation. Accordingly, the District Court had subject matter jurisdiction pursuant to 28 U.S.C. § 1331 of the constitutional claims, and supplemental jurisdiction of the state law claims under 28 U.S.C. § 1367, when it entered the final judgment being appealed.[2]

[2] Mr. Bruce has requested that the Court be provided with some additional information regarding the history of this claim. Those facts are contained in Addendum 5.

Reasons for Granting the Writ

1. The Tenth Circuit Court of Appeals Has Impermissibly Expanded the *Rooker-Feldman* Doctrine Contrary to the Decisions of this Court.

Under Rule 10, a Writ of Certiorari may be granted if "a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court." US Supreme Ct. R. 10(c).

Under governing Supreme Court case law, "[t]he *Rooker-Feldman* doctrine . . . is confined to cases of the kind from which the doctrine 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." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). This Court has been equally clear that the "invocation of *Rooker/Feldman* is . . . inapt" in cases such as this, where the plaintiff "was not a party in the state court." *Johnson v. De Grandy*, 512 U.S. 997, 1006 (1994).

In its decision in this case, the Tenth Circuit expanded the application of the *Rooker-Feldman* Doctrine beyond its narrow scope to include anyone who might conceivably raise or have a right to appeal a decision of a state court. *See Bruce*, 57 F.4th at 747-48 ("But under the *Rooker-Feldman* doctrine, the question is whether a federal claimant seeks to appeal a state court judgment that the claimant could have appealed in state court, not whether the federal

claimant was listed as a party on a state court docket."). However, there is a significant difference between being a party to a lawsuit and simply being an ancillary participant in litigation that may result in the participant being subject to an appealable judgment. A party to a lawsuit can file pleadings such as a Complaint, Answer, Counterclaim, or Crossclaim. A party to a lawsuit can request discovery, issue subpoenas to obtain evidence from third parties, and take depositions. A party to a lawsuit can file motions and has the right to have those motions decided by the court, as well as the right to notice of motions filed with the court and the opportunity to respond. Depending on the type of case in which an ancillary participant may be involved, and there are many, the ancillary participant may or may not have some or all of these due process rights.

In this case, Mr. Bruce requested to be made a party in interest to the underlying State Court Litigation. The state court denied that request and relegated him to the status of a claimant upon the receivership estate that was the subject of the State Court Litigation. The City and County of Denver ("Denver"), which was the party that filed the State Court Litigation, also filed a motion to declare Mr. Bruce a party, and the state court denied that motion. *See Bruce*, 57 F.4th at 744 ("In 2018, Denver moved unsuccessfully to add Mr. Bruce as a party defendant."). Instead, Mr. Bruce was eventually listed on the docket (by an unknown clerk, based on no legal authority) as "Other Interested Party." *Id.* Notwithstanding this technicality, as detailed above, Mr. Bruce was still not treated as a party nor afforded due process of law.

While the Tenth Circuit noted that Mr. Bruce filed "over a dozen" filings with the state court, *id.* at

742, it also goes on to acknowledge that many of those filings were never ruled upon by the state court. *See, e.g.*, *id.* at 743 ("The state court docket does not indicate whether the state court ruled on Mr. Bruce's motion . . . ."); *id.* (noting that "Mr. Bruce renewed several motions he claimed the court had ignored, including motions to dismiss the receivership and to dismiss the case with prejudice"). The Tenth Circuit also noted that Mr. Bruce was the subject of four court hearings, while acknowledging that none was related to the substance of the case but rather a failed attempt by Denver to hold Mr. Bruce in contempt. *See id.* at 742.

In *Exxon Mobil Corp.*, the United States Supreme Court was careful to note in reversing an attempted extension of the doctrine by another court that "the lower federal courts have variously interpreted the *Rooker-Feldman* doctrine to extend far beyond the contours of the *Rooker* and *Feldman* cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts . . . ." *Exxon Mobil Corp.*, 544 U.S. at 283. Indeed, the Tenth Circuit itself has repeatedly acknowledged that the doctrine is "narrow" in scope. *See, e.g.*, *Chapman v. Oklahoma*, 472 F.3d 747, 749 (10th Cir. 2006) (noting that "[i]n *Exxon Mobil*, the Supreme Court made clear that the *Rooker-Feldman* doctrine has a narrow scope"). There is no legal basis in this case to extend the *Rooker-Feldman* doctrine beyond its limited confines already clearly established by this Court. *See Lance v. Dennis*, 546 U.S. 459, 464 (2006) (per curiam) (refusing to extend the *Rooker-Feldman* doctrine to cases where a party may have been in privity with a litigant, and noting that "we have held *Rooker-Feldman* inapplicable where the party against whom the doctrine is invoked was not a

party to the underlying state-court proceeding").

The Tenth Circuit's decision represents a dangerous expansion of the *Rooker-Feldman* doctrine to any ancillary administrative claimant or bystander who may be affected or impacted by an appealable court order, but is unable to participate in a lawsuit to the extent of an actual party. The purpose of the *Rooker-Feldman* doctrine was to prevent litigants from having "two bites of the apple." It is not due process to deny them even one bite. As such, the Tenth Circuit's decision is contrary to the clear guidance given by the United States Supreme Court. For this reason, the Court should grant this petition.

CONCLUSION

For the foregoing reasons, Mr. Bruce respectfully requests that this Court issue a writ of certiorari to review the judgment of the Tenth Circuit Court of Appeals.

DATED this 5th day of May, 2023.

Respectfully submitted,

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APPENDIX 1

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

DOUGLAS BRUCE, an individual,

Plaintiff – Appellant,

v.

CITY AND COUNTY OF DENVER, a municipal government within the State of Colorado; **STERLING CONSULTING CORPORATION**, a Colorado corporation; **STATE OF COLORADO**; **FAIRFILED & WOODS, P.C.**, a Colorado professional corporation; **MACHOL & JOHANNES LLC**, a Colorado limited liability corporation,

Defendants – Appellees.

Appeal from the United States District Court
For the District of Colorado
No. 21-1388
(D.C. No. 1:20-CV-02099-RBJ) (D. Colo.)

Before **McHUGH**, **BALDOCK**, and **BRISCOE**, Circuit Judges.

McHUGH, Circuit Judge.

Douglas Bruce sued the City and County of Denver ("Denver") and others (collectively, "Appellees") in federal district court for alleged constitutional violations arising from a Colorado state court's determination that Mr. Bruce's liens on several properties were inferior to Denver's liens. The district court dismissed for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine.[1] Mr. Bruce

[1] *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) (holding lower federal courts lack jurisdiction to reverse or modify state court judgments); *District of Columbia Court of Appeals v. Feldman*,

contends that the *Rooker-Feldman* doctrine does not apply because he was not a party to the state court litigation. We disagree and affirm the dismissal.

I. BACKGROUND

Mr. Bruce formerly owned several multi-family residential properties in Denver, Colorado, known here as the "Lipan Property" and the "York Property" (collectively, the "Properties").[2] In 1997 and 2003, respectively, Mr. Bruce transferred the parcels to Tele Comm Resources LP ("Tele Comm") in exchange for promissory notes secured by trust deeds. Mr. Bruce alleges Tele Comm later deeded the Properties, subject to his encumbrances, to an individual who then transferred them back to Tele Comm. Mr. Bruce claims the final transfer was invalid because Tele Comm lacked notice that the deeds had been re-recorded in its name, so the other individual remained the Properties' owner despite Tele Comm being the owner of record.

We first examine the administrative proceedings against Tele Comm that led to Denver obtaining liens on the Properties before turning to the

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460 U.S. 462 (1983) (explaining federal district courts may not review constitutional claims that are inextricably intertwined with state court decisions).

[2] Although we accept the complaint's uncontroverted facts about the Properties' history as true for purposes of this motion, we do not confine our review to the facts in the complaint when evaluating a factual challenge to subject matter jurisdiction on a motion to dismiss. *Paper, Allied-Indus., Chem. And Energy Workers Int'l Union v. Cont'l Carbon Co.*, 428 F.3d 1285 (10th Cir. 2005) (explaining that, when addressing a factual challenge to subject matter jurisdiction, the court has wide discretion to consider evidence outside the complaint bearing on the court's jurisdiction).

state court proceedings Denver initiated to collect the funds Tele Comm owed (the "State Court Litigation"). We then provide an overview of Mr. Bruce's federal complaint and the district court's dismissal of the complaint under the *Rooker-Feldman* doctrine.

A. State Procedural History

1. Administrative Proceedings

Records from Denver's Office of Community Planning and Development[3] (the "Department") reflect that by 2005, the York Property was vacant and had been placed under Department supervision for violations of municipal ordinances forbidding neglected and derelict properties. At a 2010 administrative hearing, a city inspector testified about ongoing violations and the failure of Tele Comm's representative, Mr. Bruce, to submit a satisfactory remediation plan. The hearing officer noted that Mr. Bruce had participated in prior interactions with the Department and raised objections, but neither Mr. Bruce nor any other representative of Tele Comm appeared at the hearing. The hearing officer imposed fines of up to $999 per day on Tele Comm and granted Denver's request for

[3] These records were later filed in the State Court Litigation and then submitted to the district court, and they are in the appendix submitted on appeal. In ruling on a motion to dismiss, a federal court may take judicial notice of another court's publicly filed records if they have a direct relation to matters at issue. *See Tal v. Hogan*, 453 F.3d 1244, 1265 n.24 (10th Cir. 2006); *see also St. Louis Baptist Temple, Inc. v. F.D.I.C.*, 605 F.2d 1169, 1172 (10th Cir. 1979). However, "the documents may only be considered to show their contents, not to prove the truth of matters asserted therein." *Tal*, 453 F.3d at 1265 n.24 (quotation marks and brackets omitted).

appointment of a receiver pursuant to the Denver Revised Municipal Code ("DRMC" or the "Municipal Code") §§ 10-139(k)[4] and 10-140(2).[5]

Department records show that Tele Comm failed to appear at another hearing in 2014, this time about the Lipan Property. Denver presented evidence that the Lipan Property had changed hands multiple times among Mr. Bruce, Tele Comm, and another individual, allegedly to conceal ownership and to avoid enforcement of ordinances on neglected and derelict buildings. The hearing officer found the property to be in violation of the Municipal Code and imposed fines of up to $999 per day up to 110% of the actual property value. The hearing officer also noted existing unpaid fines of over $180,000 and imposed further fines and penalties for other violations.

2. State Court Litigation

Denver sued Tele Comm repeatedly to obtain judgments against it for unpaid fines and penalties. Mr. Bruce's federal complaint arises from a set of cases consolidated in 2015.[6] Among Tele Comm's asserted defenses in the State Court Litigation was that Tele Comm did not own the Properties.

Mr. Bruce participated in the State Court Litigation on his own behalf as a lienholder. He made over a dozen filings in the case and participated in

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[4] As of 2010, DRMC § 10-139(k) allowed a civil penalty of up to $999 per day for each day any building or property was found to have violated ordinances prohibiting neglected or derelict buildings or properties.

[5] As of 2010, DRMC § 10-140(2) authorized appointment of a receiver to abate a violation of ordinances prohibiting neglected or derelict buildings or properties if the owner failed to abate a violation or comply with abatement deadlines.

[6] Appellee Machol & Johannes, LLC represented Denver.

several hearings.[7] We now review the aspects of the State Court Litigation relevant to Mr. Bruce's federal complaint.

a. Mr. Bruce's objection to summary judgment and receivership.

In 2016, Denver moved for summary judgment and for the appointment of a receiver to manage the disposition of the Properties. The state court granted both motions over Tele Comm's objection. The court explained that Tele Comm should have raised its defenses at the administrative hearing at which it failed to appear. The court appointed Sterling Consulting Corporation (the "Receiver") to oversee the management and disposition of the Properties.[8]

Several months after the state court granted summary judgment against Tele Comm and after the Receiver was appointed, Mr. Bruce filed an objection to the appointment of a receiver, submitted a "partial" claim "under protest," and requested a continuance. App. Vol. I at 109. He explained that he had never received any papers in the case other than an invoice from the Receiver and noted he was not a named defendant. He alleged he had tried to foreclose on the Lipan Property earlier that year and viewed the State Court Litigation as an "attempt to pre-empt the equity

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[7] These hearings concerned a contempt citation, not the merits of the State Court Litigation or Mr. Bruce's claim in the receivership. They are relevant to our analysis insofar as Mr. Bruce argued he was not subject to the state court's jurisdiction because he was not a named party. At the final hearing, the judge stated, "[T]he Court previously found that Mr. Bruce had submitted himself to the jurisdiction of the Court by his filings [and] his . . . appearances. So I just wanted to make sure the record was clear about that." App. Vol. 2 at 185.

[8] Appellee Fairfield & Woods, P.C. represented the Receiver.

in his two promissory notes," which he believed had priority over Denver's liens. App. Vol. 1 at 111. Mr. Bruce argued he could not defend himself adequately against what he viewed as an unconstitutional effort to deprive him of his property interest without due process because he was in prison at the time of the litigation.

The state court denied Mr. Bruce's motion, explaining this was the first time it had been notified Mr. Bruce might have an interest in the Properties and his imprisonment would not have prevented earlier participation in the case. The state court found Mr. Bruce's objection to the receivership untimely, denied a continuance, and instructed Mr. Bruce to file his claims with the Receiver.

b. Mr. Bruce's motion to enjoin sale of Properties and dismiss the case

In 2017, Mr. Bruce filed a motion requesting that the court enjoin the Receiver's sale of the Properties and dismiss the case. He accused the Receiver and the court of an illegal scheme and the Receiver of fraudulently paying himself inflated amounts out of Mr. Bruce's equity. He argued that the municipal ordinances giving priority to Denver's liens were unconstitutional because they were enacted after his trust deeds were recorded. Finally, Mr. Bruce argued that Denver's fines were unjustified, unlawful, and motivated by personal hatred because of his past political activism. The state court docket does not indicate whether the state court ruled on Mr. Bruce's motion, but the court did not enjoin the sale of the Properties or dismiss the case as Mr. Bruce requested.

c. Mr. Bruce's objection to determination of lien priority

In 2018, Denver filed a "Motion to Determine Priority of Liens," to which Mr. Bruce filed an objection. Mr. Bruce renewed several motions he claimed the court had ignored, including motions to dismiss the receivership and to dismiss the case with prejudice. He stated he was "still not a party," claimed he was not being allowed to defend his interests, and accused the state court and Denver of acting unlawfully and unconstitutionally. *Id.* at 140.

In its Order Determining Priority of Liens, the state court explained that Denver had lawfully assessed the penalties against Tele Comm under DRMC § 10-139. The court noted that DRMC § 10-140 allowed Denver to bring an action for a receiver for abatement of a neglected or derelict building and DRMC § 10-140(4) converted "all costs, expenses and fees of the receivership, and penalties assessed against the owner" for violations of the relevant provisions into liens on the Properties. App. Vol. 1 at 154. The court explained that § 10-140(4) made such liens "superior to all other liens of record, except liens for general taxes and special assessments." *Id.*

In its order, the state court acknowledged that Mr. Bruce held trust deeds on the Properties. The court stated it had previously ordered Mr. Bruce's claims disallowed in the receivership and Mr. Bruce had not sought reconsideration of that order within the allotted thirty-five days. The court also explained why it rejected Mr. Bruce's arguments. The court determined that the relevant sections of the Municipal Code had been enacted before Mr. Bruce recorded his trust deeds, so Mr. Bruce should have been on notice of the priority of Denver's liens.

Reviewing relevant case law, the court concluded that statutes giving priority to municipal liens were valid if they were enacted before the recorded trust deeds and if the penalties underlying the liens were for violations of ordinances advancing public health, safety, and welfare. The court determined that Denver's liens met both criteria and were therefore superior to Mr. Bruce's. The state court authorized the sale of the Properties to pay the penalty assessment liens and the 10% penalty for the cost of the assessment, as well as interest to Denver, the costs of the receivership, and attorney fees and expenses.

d. Denver's motion to add Mr. Bruce as a defendant

The docket originally referred to Mr. Bruce as "Non-Party" on his filings. In 2018, Denver moved unsuccessfully to add Mr. Bruce as a party defendant. Although the court denied the motion, it had already begun listing "Douglas Bruce" as the "Party" making filings prior to Denver's motion. Under "Party Information," the docket listed Mr. Bruce as an "Other Interested Party." *Id.* at 101.

e. Mr. Bruce's objections to acts of the Receiver

In 2018, Mr. Bruce objected to the sale of the Lipan Property, but the state court confirmed the sale. He later objected to the sale of the York Property, but the sale appears to have fallen through on its own. He continued to file objections to at least two more of the Receiver's motions in late 2018 and early 2019, and filed various other letters and documents. The court

granted the Receiver's motions over Mr. Bruce's objections.

f. State court's certification of orders for appeal

The Receiver filed a motion to certify as final the Order Determining Priority of Liens and the sales of the Properties. In its motion, the Receiver stated, "The Receiver has conferred with all parties to this action. All parties support this motion except Mr. Bruce, who opposes it." *Id.* at 168. The Receiver expressed concern that (1) Mr. Bruce had indicated he "intends to continue to litigate this matter forever," and (2) if the orders were not appealable until the entire case was resolved then the Receiver might be without funds to defend the appeal. *Id.* at 169. The Receiver explained the orders were certified as final, and "if Mr. Bruce intends to appeal, he will have to do so immediately. If he does not, all appeals will be waived, and it will be much easier to wrap up the Estate." *Id.* at 170. Mr. Bruce did not file any response, the state court certified the orders as final, and Mr. Bruce never appealed them.

B. Federal Procedural History

1. Complaint

After the completion of the State Court Litigation, Mr. Bruce filed a federal complaint. At the heart of Mr. Bruce's complaint is his contention that his trust deeds should be given priority over Denver's liens. He challenges Denver's ordinances allowing Denver to levy hefty fines and penalties and then assert priority over earlier-filed liens, claiming the

ordinances do not advance any legitimate public purpose and exist as a method for Denver and other Appellants to enrich themselves at the expense of property owners and prior lienholders. Mr. Bruce claims damages of at least $7 million.

a. Constitutional claims (42 U.S.C. § 1983)

Mr. Bruce asserts four constitutional claims against Denver and Colorado under 42 U.S.C. § 1983. These include takings, denial of procedural due process, and denial of substantive due process under the Fifth and Fourteenth Amendments, as well as excessive fines under the Eighth and Fourteenth Amendments. In all these claims, Mr. Bruce alleges that Denver maintains unconstitutional policies, practices, and ordinances through which it issues excessive or arbitrary fines against real property and then places any such lien ahead of those held by others. Mr. Bruce further contends that Colorado actively participated in these constitutional violations "through its judicial branch and the employment of judicial officers," whose "explicit consent and affirmative actions" allowed Denver to enforce its unconstitutional laws. *Id.* at 18, 19, 21, 22. In his complaint, Mr. Bruce states that Colorado "permitted the action to proceed in this fashion and in fact actively encouraged the same through the decisions of the judges who oversaw the State Court Litigation." *Id.* at 13.

Mr. Bruce also makes a § 1983 conspiracy claim against all Appellees (Claim 6). He alleges Appellees reached an agreement to (1) proceed in the State Court Litigation against Tele Comm, rather than the alleged true owner, knowing Tele Comm had neither

the resources, the incentive, nor the ability to defend against Denver's claims; (2) deny Tele Comm's right to appear and defend its interest by claiming it had to be done through counsel;[9] (3) deny Mr. Bruce's right to appear and defend his interests by arguing against making Mr. Bruce a party to the State Court Litigation; (4) use the State Court Litigation to sell the Properties and keep the proceeds for themselves; and (5) time the State Court Litigation to transpire when he was in prison. Mr. Bruce suggests Appellees were motivated by a desire to retaliate against him for his past political activism.

b. Breach of fiduciary duty

Mr. Bruce claims the Receiver breached its fiduciary duty by committing waste for its own benefit in the management of the receivership and failing to treat his claims fairly and pay what was owed to him. He alleges the Receiver baselessly treated Mr. Bruce's trust deeds as fraudulent or illegitimate and lied in order to void them; prevented Mr. Bruce from foreclosing on the Lipan trust deed; and otherwise worked for the Receiver's own benefit.

2. Dismissal

In two separate motions, Appellees moved to dismiss for lack of jurisdiction under the *Rooker-Feldman* doctrine. Mr. Bruce responded that the *Rooker-Feldman* doctrine did not bar his suit because he was not a party to the State Court Litigation.

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[9] Colorado law requires limited partnerships to be represented by counsel if the amount in controversy exceeds $15,000. Colo. Rev. Stat. § 13-1-127(1)(e), (2)(a).

The district court disagreed with Mr. Bruce, determining he was a "party" for purposes of the *Rooker-Feldman* doctrine because he had a reasonable opportunity to, and did, raise his claims in the State Court Litigation and the remedies he sought would be available only by effectively undoing the state court judgment. The district court concluded it did not have jurisdiction over Mr. Bruce's claims and dismissed the complaint without prejudice.

Mr. Bruce timely appealed.

II. DISCUSSION

Mr. Bruce challenges the district court's dismissal of his complaint, arguing the *Rooker-Feldman* doctrine does not bar his federal suit because he was not a party to the State Court Litigation. "We review the district court's dismissal for lack of subject matter jurisdiction de novo, and any factual findings relevant to the court's jurisdiction for clear error." *Mo's Express, LLC v. Sopkin*, 441 F.3d 1229, 1233 (10th Cir. 2006). We disagree with Mr. Bruce and affirm the district court's dismissal of his complaint.

A. The Rooker-Feldman *Doctrine*

The Rooker-Feldman doctrine[10] prevents lower federal courts from exercising jurisdiction "over cases

[10] The doctrine is named for *Rooker*, 263 U.S. 413 (holding lower federal courts lack jurisdiction to reverse or modify state court judgments) and *Feldman*, 460 U.S. 462 (explaining federal district courts may not review constitutional claims that are inextricably intertwined with state court decisions). After several decades of expansion of the doctrine in lower federal courts, the Supreme Court narrowed it to its current form in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005).

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." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005); *see also Lance v. Dennis*, 546 U.S. 459, 466 (2006) (explaining the *Rooker-Feldman* doctrine applies "where a party in effect seeks to take an appeal of an unfavorable state-court decision to a lower federal court"). This reflects Congress's decision to locate federal appellate jurisdiction over state court judgments exclusively in the Supreme Court. *Exxon Mobil*, 544 U.S. at 283 (citing 28 U.S.C. § 1257; *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923)).

The Rooker-Feldman doctrine recognizes a jurisdictional bar on lower federal courts' review of claims where (1) the plaintiff lost in state court, (2) the state court judgment caused the plaintiff's injuries, (3) the state court rendered judgment before the plaintiff filed the federal claim, and (4) the plaintiff is asking the district court to review and reject the state court judgment. *Id.* at 284. Where these factors exist, we lack subject matter jurisdiction. *See Lance*, 546 U.S. at 465.

Although the *Rooker-Feldman* doctrine represents a firm jurisdictional bar, it is narrow in scope. *See id.* at 464 ("[O]ur cases since Feldman have tended to emphasize the narrowness of the *Rooker-Feldman* rule." (citing *Exxon Mobil*, 544 U.S. at 292)). It generally does not bar a suit by a federal-court plaintiff who was not a party in the state court litigation, nor does it bar a claim that does not seek to modify or set aside a state court judgment. *See Johnson v. Rodrigues (Orozco)*, 226 F.3d 1103, 1111–12 (10th Cir. 2000), *as amended on denial of reh'g and*

reh'g en banc (Oct. 12, 2000) (holding *Rooker-Feldman* did not bar claim for declaration of adoption laws' unconstitutionality where plaintiff had not been a party to adoption proceeding and mounted only a general challenge to the validity of state adoption laws); *cf. Mayotte v. U.S. Bank Nat'l Ass'n*, 880 F.3d 1169, 1174–76 (10th Cir. 2018) (explaining the doctrine does not bar a federal claim "just because it could result in a judgment inconsistent with a state-court judgment"); *Bolden v. City of Topeka*, 441 F.3d 1129, 1145 (10th Cir. 2006) ("*Rooker-Feldman* does not bar federal-court claims that would be identical even had there been no state-court judgment; that is, claims that do not rest on any allegation concerning the state-court proceedings or judgment.").

B. Analysis

We first address Mr. Bruce's contention that the *Rooker-Feldman* doctrine does not bar his federal lawsuit because he was not a party to the State Court Litigation. We conclude that Mr. Bruce's status in the State Court Litigation does not prevent application of the *Rooker-Feldman* doctrine. We then evaluate whether the *Rooker-Feldman* doctrine bars his claims and conclude that it does.

1. Whether Mr. Bruce's Party Status in the State Court Litigation Prevents Application of the *Rooker-Feldman* Doctrine

As a general rule, the *Rooker-Feldman* doctrine does not bar a suit by a federal court plaintiff who was not a party to the state court judgment. *See Lance*, 546 U.S. at 465 (rejecting application of *Rooker-Feldman* doctrine to non-parties who were in privity with a

party); *Mo's Express*, 441 F.3d at 1234–37 (concluding *Rooker-Feldman* doctrine did not bar suit by plaintiffs who were "not parties, they were not bound by the judgment, and they were neither predecessors nor successors in interest to the parties" in the state court litigation, even if they had interests identical to those of a party). The underlying rationale for this general rule is that a federal court cannot be said to be entertaining an appeal from a state court judgment if the individual bringing the challenge is not one who could ordinarily appeal that judgment. *See Lance*, 546 U.S. at 465 (determining *Rooker-Feldman* doctrine did not apply where federal plaintiffs had not participated in state court proceeding and thus were not in a position to appeal it (citing *Karcher v. May*, 484 U.S. 72, 77 (1987) ("[T]he general rule [is] that one who is *not a party or has not been treated as a party* to a judgment has no right to appeal therefrom." (emphasis added)))); *cf. Rodrigues (Orozco)*, 226 F.3d at 1109 (explaining *Rooker-Feldman* doctrine would not apply to non-parties who had not litigated their claims in the action).

Mr. Bruce maintains that the *Rooker-Feldman* doctrine does not bar his claims because he was not a party to the State Court Litigation.[11] Mr. Bruce points to the state court's refusal to name him a defendant as preventing application of the doctrine.[12] But under

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[11] The state court arguably did name Mr. Bruce a "party" to the lawsuit. The state court docket in the record includes an entry for Mr. Bruce under "Party Information." App. Vol. 1 at 101. Under "Party Name" the docket states, "Douglas Bruce"; the "Party Type" is "Other Interested Party"; and the "Party Status" is "Active." *Id.* Although some of Mr. Bruce's early filings were labeled as being filed by a "Non-Party," *id.* at 96, as of early 2018, the docket listed Mr. Bruce as the "Filing Party," *id.* at 83.

[12] It is unclear whether Colorado procedural rules would have allowed the state court to name Mr. Bruce a defendant. Colorado

the *Rooker-Feldman* doctrine, the question is whether a federal claimant seeks to appeal a state court judgment that the claimant could have appealed in state court, not whether the federal claimant was listed as a party on a state court docket. *See Dorce v. City of New York*, 2 F.4th 82, 105 (2d Cir. 2021) (holding the doctrine barred the federal claim of former owners of property foreclosed in an in rem proceeding); *id.* at 103 n.24 (rejecting argument that only named parties are subject to Rooker-Feldman doctrine). The axiom that the doctrine generally applies to the claims of those who were parties in the prior state proceeding does not reflect a requirement; it reflects the reality that the doctrine usually affects such litigants because they are typically the ones bound by the state court judgment and would attempt to undo it. *Lance*, 546 U.S. at 465. But this is not always true.

A claimant in a receivership proceeding, although neither plaintiff nor defendant, is equally bound by a state court judgment and would have a similar right to and interest in appealing it. *See* Ralph Ewing Clark, 3 Clark on Receivers §§ 646 and 649(b) (3d ed. 1959) (explaining that a claimant in a receivership becomes a party to a proceeding ancillary to that between the plaintiff and defendant in which the claimant may challenge the demands of other creditors, assert its own defenses, seek review of the receiver's decisions by the court, and appeal to the reviewing court); *cf. Belknap Sav. Bank v. Lamar Land & Canal Co.*, 64 P. 212, 215–16 (Colo. 1901)

Rule of Civil Procedure 66(d)(2) requires the defendants in a receivership suit to include "the current owner of the property as shown by the records of the clerk and recorder, and any other person then collecting the rents and profits as a result of that person's lien."

(referring to bondholders with interests in property under receivership as "parties" to the "ancillary proceeding of the receivership"). Mr. Bruce had a right to submit his claim for adjudication and he did so. The state court adjudicated the claim with input from and participation by Mr. Bruce; it acknowledged his liens, evaluated his arguments, explained how the law applied to the facts to justify its determination that Denver's liens took priority over his, and addressed his challenge to the validity of the law. Mr. Bruce also had a right to appeal the state court's rulings in state court.[13] Mr. Bruce is materially indistinguishable from a party to the State Court Litigation for *Rooker-Feldman* purposes and a lower federal court has no more jurisdiction to entertain such an appeal than one brought by a named party.

Mr. Bruce's argument that the *Rooker-Feldman* doctrine should not apply because he was "excluded from participating in the State Court Litigation and ignored by the state court," Appellant's Br. at 15, is both incorrect in its premise and an inaccurate representation of the record. A party's ability to participate in the state court litigation does not dictate whether *Rooker-Feldman* applies. *See Shelby Cnty. Health Care Corp. v. S. Farm Bureau Cas. Ins. Co.*, 855 F.3d 836, 840–41 (8th Cir. 2017) (concluding that a federal litigant's ability to have intervened in the state court action was relevant to preclusion, not

[13] At oral argument, counsel for Mr. Bruce expressed doubt that Mr. Bruce had a right to appeal the state court judgment. However, counsel eventually conceded Mr. Bruce had such a right. Indeed, the state court granted Denver's motion to certify its orders as final to enable Mr. Bruce to appeal more quickly. App. Vol. 1 at 167–71. *See* 3 Clark on Receivers § 646 (explaining that a disappointed claimant in a receivership proceeding may appeal the court's decisions).

to the *Rooker-Feldman* doctrine, under the Supreme Court's narrowing of the doctrine in and after *Exxon Mobil*). Even if such a consideration were relevant, Mr. Bruce had a full and fair opportunity to participate in the State Court Litigation. Mr. Bruce filed a claim with the Receiver, motions on which the state court ruled, and objections that the state court considered. The state court did not ignore Mr. Bruce or refuse to allow him to participate; it just disagreed with him.

In an effort to show why his claims survive the *Rooker-Feldman* doctrine, Mr. Bruce points to *Dorce*, 2 F.4th 82. In *Dorce*, former property owners brought a § 1983 due process challenge to the foreclosure of their buildings for non-payment of property taxes on the basis that they received inadequate notice of the *in rem* proceedings. 2 F.4th at 92. The Second Circuit held that the *Rooker-Feldman* doctrine barred the claim, explaining that their ownership gave them a right to participate in the proceedings. *Id.* at 104. Mr. Bruce tries to distinguish *Dorce* on the basis that it was an *in rem* proceeding so "the owners had the chance to participate in the state court litigation through their ownership of the real estate at issue." Appellant's Br. at 15; *see also* Reply at 4–5. But receivership proceedings are *quasi in rem* and, like *in rem* proceedings, allow parties not named in the suit to have their interests adjudicated and to appeal. *See* 1 Clark on Receivers §§ 46, 70, 289(f). Furthermore, the Second Circuit applied the doctrine even though the plaintiffs had not participated in the state court proceedings because their ownership gave them a right to do so. Mr. Bruce not only had such a right but actively exercised it. Far from suggesting the *Rooker-Feldman* doctrine should not apply, *Dorce* supports applying it here.

In sum, Mr. Bruce's status as a non-defendant in the State Court Litigation does not prevent application of *Rooker-Feldman*'s jurisdictional bar.

2. Whether the *Rooker-Feldman* Doctrine Bars Mr. Bruce's Claims

Having concluded that the nature of Mr. Bruce's participation in the State Court Litigation does not prevent application of the *Rooker-Feldman* doctrine, we now evaluate whether the doctrine bars his claims. We conclude that it does.

Attempts to recast state court losses as deprivations of constitutional rights do not overcome the *Rooker-Feldman* jurisdictional bar. *See Campbell v. City of Spencer*, 682 F.3d 1278, 1284–85 (10th Cir. 2012) (explaining the doctrine bars a § 1983 claim where "an element of the claim is that the [state] judgment was wrongful"); *see also Mann v. Boatright*, 477 F.3d 1140, 1147 (10th Cir. 2007); *Market v. City of Garden City*, 723 F. App'x 571, 574 (10th Cir. 2017) (unpublished) (holding doctrine barred § 1983 claim where "for [plaintiff] to win, the municipal court's judgment had to be wrong"). The doctrine forbids review of state judgments "based on the losing party's claim that the state judgment itself violates the loser's federal rights," *Johnson v. De Grandy*, 512 U.S. 997, 1006 (1994), or based on a claim that "a state court violated the Constitution by giving effect to an unconstitutional state statute," *Howlett v. Rose*, 496 U.S. 356, 369–70, n.16 (1990).

Mr. Bruce makes just such an attempt. His alleged injuries arose from, and are inseparable from, the state court judgment. He alleges that Denver issued excessive fines against Tele Comm and

enacted/enforced an ordinance giving its own liens priority, and that the state court ignored him. But none of these allegedly unconstitutional acts plausibly injured Mr. Bruce until the state court upheld the fines, adjudicated the liens, and ordered the sale of the Properties and the distribution of funds. Mr. Bruce objected to all these acts in the State Court Litigation and had a right to appeal to seek relief for injuries from these acts. Tellingly, Mr. Bruce now seeks monetary relief that would directly compensate him for losses caused by the state court's determination of lien priority and other decisions, which would effectively undo those decisions. This is precisely the relief the *Rooker-Feldman* doctrine says lower federal courts are powerless to provide. *Cf. Rodrigues (Orozco)*, 226 F.3d at 1105–07 (determining the doctrine did not bar a request for a declaration of adoption law's unconstitutionality where plaintiff did not ask the federal court to undo the adoption).

Mr. Bruce's claim for breach of fiduciary duty fares no better. He alleges the Receiver converted Mr. Bruce's property to itself "through the imposition of exorbitant receivership fees, and to Denver through Denver's retention of the remaining sale proceeds." App. Vol. 1 at 23. But the Receiver carried out the state court's orders; without the state court's orders, there was no injury. *See McDonald v. Arapahoe Cnty.*, 755 F. App'x 786, 789–90 (10th Cir. 2018) (unpublished) (holding *Rooker-Feldman* barred Fifth and Eighth Amendment claims against county for evicting plaintiff where eviction was ordered by court).

Because Mr. Bruce has alleged no injury apart from those caused by the state court judgment and the remedy he seeks would amount to reversal of that judgment, the district court lacked jurisdiction over his complaint.

III. CONCLUSION

Mr. Bruce seeks compensation for injuries caused by his losses in state court. Congress has not authorized lower federal courts to provide such relief. Accordingly, we AFFIRM the district court's dismissal of Mr. Bruce's complaint for lack of subject matter jurisdiction.

FILED United States Court of Appeals, Tenth Circuit, January 10, 2023, Christopher M. Wolpert, Clerk of Court.

APPENDIX 2

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

DOUGLAS BRUCE, an individual,

Plaintiff – Appellant,

v.

CITY AND COUNTY OF DENVER, a municipal government within the State of Colorado; **STERLING CONSULTING CORPORATION**, a Colorado corporation; **STATE OF COLORADO**; **FAIRFILED & WOODS, P.C.**, a Colorado professional corporation; **MACHOL & JOHANNES LLC**, a Colorado limited liability corporation,

Defendants – Appellees.

Appeal from the United States District Court
For the District of Colorado
No. 21-1388
(D.C. No. 1:20-CV-02099-RBJ) (D. Colo.)

Before **McHUGH**, **BALDOCK**, and **BRISCOE**, Circuit Judges.

JUDGMENT

This case originated in the District of Colorado and was argued by counsel.

The judgment of that court is affirmed.

Entered for the Court

/s/ Christopher M. Wolpert
Christopher M. Wolpert, Clerk

APPENDIX 3

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

DOUGLAS BRUCE, an individual,

Plaintiff – Appellant,

v.

CITY AND COUNTY OF DENVER, a municipal government within the State of Colorado; **STERLING CONSULTING CORPORATION**, a Colorado corporation; **STATE OF COLORADO**; **FAIRFILED & WOODS, P.C.**, a Colorado professional corporation; **MACHOL & JOHANNES LLC**, a Colorado limited liability corporation,

Defendants – Appellees.

Appeal from the United States District Court
For the District of Colorado
No. 21-1388
(D.C. No. 1:20-CV-02099-RBJ) (D. Colo.)

Before **McHUGH**, **BALDOCK**, and **BRISCOE**, Circuit Judges.

ORDER

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court

/s/ Christopher M. Wolpert

Christopher M. Wolpert, Clerk

FILED United States Court of Appeals, Tenth Circuit, January 10, 2023, Christopher M. Wolpert, Clerk of Court.

APPENDIX 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

DOUGLAS BRUCE, an individual,

Plaintiff,

v.

CITY AND COUNTY OF DENVER, a municipal government within the State of Colorado; **STERLING CONSULTING CORPORATION**, a Colorado corporation; **STATE OF COLORADO**; **FAIRFILED & WOODS, P.C.**, a Colorado professional corporation; **MACHOL & JOHANNES LLC**, a Colorado limited liability corporation,

Defendants.

Case No. 1:20-CV-02099-RBJ
Judge R. Brooke Jackson

ORDER GRANTING MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

This matter is before the Court on Defendants' motions to dismiss (ECF Nos. 24, 49). For the reasons discussed below, the motion to dismiss is GRANTED.

I. BACKGROUND

The following facts do not appear to be disputed. This case arises from a receivership created in state court to oversee the management of two parcels of real estate located in Denver, Colorado. ECF No. 1. One parcel is located at 601-609 Lipan Street (the Lipan property). The other is at 47th and

York Street (the York property). *Id.* In 1997, plaintiff Douglas Bruce transferred ownership of the Lipan property to Tele Comm Resources, LP (Tele Comm). *Id.* In return, he received a note (the Lipan trust deed) for $230,000. *Id.* Plaintiff recorded that deed in 1998. In 2003, Mr. Bruce transferred the York property to Tele Comm for a note (the York trust deed) for $2.4 million. *Id.* He recorded the York trust deed in 2004.

In 2015, defendant City and County of Denver (Denver) filed several lawsuits against Tele Comm in an effort to collect fines and assessments issued against the Lipan and York properties based on alleged violations of various city ordinances. *Id.* These suits were eventually consolidated into one proceeding. Sterling Consulting Corporation ("Sterling" or "the receiver") was appointed by the state court on April 15, 2016 to oversee the claims concerning the properties and their disposition. *Id.* Mr. Bruce was not a party to the state court proceedings, despite repeated requests to be made one. *Id.* Nevertheless, throughout the four-year pendency of the state court litigation, Mr. Bruce filed motions and objections. ECF No. 24.

On April 6, 2018, the state court issued an order that determined the priority of liens on the York and Lipan properties. *Id.* The court determined that Denver's penalty liens for neglected and derelict buildings were superior to all other liens. *Id.* On July 18, 2018, the court entered orders confirming the sale of the Lipan property. On February 22, 2019 the court entered an order confirming the sale of the York property. *Id.* at n.2.

The state court litigation concluded on April 1, 2019. *Id.* At that time the court certified a number of previous orders as final judgments, including the

April 6, 2018 "Order Determining Priority of Liens" and the July 18, 2018 "Order Confirming Sale of Lipan Property." *Id.*

On September 13, 2019, the court approved Sterling's third report and discharged Sterling as receiver. *Id.* The court approved all actions taken by the receiver and found that all the claims allowed by the court had been paid by the receiver. *Id.* It ordered Sterling to pay any balance of funds to Denver once the order was final and could no longer be appealed. *Id.* The court also ordered that anyone who had appeared in the case or who had notice of it was enjoined from raising a dispute regarding the conduct of the receiver in any other court or by proper appeal. *Id.* Plaintiff in the underlying suit, Tele Comm, did not appeal the April 2019 order or the September 2019 order. *Id.* Mr. Bruce did not challenge either order. *Id.* Mr. Bruce filed the instant suit on July 17, 2020.

II. STANDARD OF REVIEW

Under Federal Rule of Civil Procedure 12(b)(1), a court may dismiss a complaint for lack of subject matter jurisdiction. Rule 12(b)(1) motions come in two forms: "a facial attack on the complaint's allegations as to subject matter jurisdiction [that] questions the sufficiency of the complaint" or "a factual attack" on the facts upon which subject matter jurisdiction depends. *Mayotte v. US Bank Nat'l Ass'n*, No. 14-CV-3092-RBJ-CBS, 2016 WL 943781 (D. Colo. 2016) (citing *Holt v. United States*, 46 F.3d 1000, 1002 (10th Cir. 1995)).

When reviewing a facial attack on subject matter jurisdiction, the court must accept the allegations in the complaint as true. *Holt*, 46 F.3d at

1002. When reviewing a factual attack on subject matter jurisdiction, a district court may not presume the truthfulness of the complaint's factual allegations. *Id.* at 1003. The Court has wide discretion to allow affidavits and other documents to resolve disputed jurisdictional facts under Rule 12(b)(1). *Id.* In such instances, a court's reference to evidence outside the pleadings does not convert the motion to dismiss into a Rule 56 motion for summary judgment. *See id.*

III. SUBJECT MATTER JURISDICTION

Defendants contend that this Court does not have subject matter jurisdiction over plaintiff's claims due to the *Rooker-Feldman* doctrine. The *Rooker-Feldman* doctrine provides that because appellate review of state court judgments is vested solely in the United States Supreme Court, that review is not vested in federal district courts. *In re Smith*, 287 F. App'x 683, 684 (10th Cir. 2008) (unpublished) (quoting *Crutchfield v. Countrywide Home Loans*, 389 F.3d 1144, 1147 (10th Cir. 2004)).

Rooker-Feldman disallows "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. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). "What is prohibited under *Rooker-Feldman* is federal action that tries to modify or set aside a state-court judgment because the state proceedings should not have led to that judgment. *Mayotte v. U.S. Bank Nat'l Ass'n for Structured Asset Inv. Loan Tr. Mortg. Pass-Through Certificates*, 880 F.3d 1169, 1174 (10th Cir.

2018) (emphasis omitted). Put another way, *Rooker-Feldman* bars litigations of federal claims that are "inextricably intertwined with a state court judgment." *Merrill Lynch Bus. Fin. Servs., Inc. v. Nudell*, 363 F.3d 1072, 1075 (10th Cir. 2004).

The *Rooker-Feldman* doctrine should not be applied against persons or entities who were not a party in the underlying state court suit. *See Johnson v. Rodrigues (Orozco)*, 226 F.3d 1103, 1109 (10th Cir. 2000). In determining whether a plaintiff in federal court was a party to an underlying state court case for purposes of a *Rooker-Feldman* analysis, the question is whether that plaintiff had a reasonable opportunity to raise his federal claims in the state court proceedings.[1] *See id.* If the plaintiff in the federal case had no opportunity to litigate the state court case, the state court decision would not be inextricably intertwined with the federal court litigation, and the *Rooker-Feldman* doctrine would not apply. *Id.*

Though I have not found caselaw directly applicable to the facts of this case from the Tenth Circuit, a Second Circuit case, *Dorce v. City of New York*, is instructive. 2 F.4th 82 (2d Cir. 2021). There, federal court plaintiffs had property seized by New York City under the Third Party Transfer Program ("TPT program"). *Id.* at 88. Under that program, the city used its *in rem* foreclosure powers to collect tax liens on abandoned or blighted property. *Id.* at 88–89. Once the property had been foreclosed, the city would transfer the property in fee simple absolute to third

[1] Whether a federal court plaintiff did not have an opportunity to litigate her claims in the underlying state-court proceedings is *only* relevant to the *Rooker-Feldman* analysis to the extent it informs whether the federal court plaintiff was a "party" in the underlying case. *Smith*, 287 F. App'x at 686.

parties authorized to participate in the program. *Id.* at 89. The federal court plaintiffs were not named parties in the state court *in rem* foreclosure actions. *Id.* at 91–92. The plaintiffs requested that the federal court declare the relevant provisions of the New York City Administrative Code unconstitutional. *Id.* at 92–93. They also requested an injunction to prevent the city from beginning any more of this type of *in rem* proceedings, as well as money damages. *Id.*

The Second Circuit held that, though the federal court plaintiffs were not named parties in the state *in rem* foreclosure actions, the *Rooker-Feldman* doctrine could still be applicable. *Id.* at 103. The court wrote that, were they to conclude that *Rooker-Feldman* was inapplicable where the federal court plaintiffs were not named parties in the state *in rem* proceedings, state court decisions based on *in rem* jurisdiction would have "inferior force to state court decisions based on other types of jurisdiction, which could be reviewed only by the Supreme Court." *Id.*

A. Application of *Rooker-Feldman*

1. Mr. Bruce is a Party for Purposes of a *Rooker-Feldman* Analysis.

Mr. Bruce was not a "party" to the state court litigation in the traditional sense. Although a non-party would "ordinarily lack a reasonable opportunity to litigate claims," *Johnson*, 226 F.3d at 1110, if Mr. Bruce still had that ability in this case, he could be a "party" for purposes of the *Rooker-Feldman* analysis. I find that he did have, and exercised, that ability in this instance.

Mr. Machol, counsel for Denver in the state case, when asked whether Mr. Bruce was a party in the state case, responded:

> I guess in this context, the term party is somewhat ambiguous. I would say capital P, Party, Plaintiff or Defendant he is not. . . lowercase P, he is a party, but he's not a capital P, Party, Plaintiff or Defendant.

ECF No. 54-3 at 15. Mr. Tanner, counsel for the receiver in the state case, concurred with that description. *Id.*

Mr. Bruce's circumstances were not ordinary. He was under the jurisdiction of the court in the state court receivership—he voluntarily submitted himself to the court's jurisdiction by filing a claim in the receivership. *See* ECF No. 54-3 at 15. He was permitted to file objections before the state court regarding the receivership. *See* ECF No. 24-5. He was not made a party, despite numerous attempts, but he was able to file motions, appear before the court, and contact the receiver. *See* ECF No. 1. Further, and importantly, there is no reason to believe that he could not have appealed the orders with which he disagreed. *See* Clark, *Clark on Receivers* § 649(b) (3d Ed., 1959) (claimants in a receivership do not become parties to the original proceeding but rather become party to a proceeding ancillary to the jurisdiction between the original parties—and "if aggrieved may ask for review."). Mr. Bruce has not alleged that he appealed or attempted to appeal the final judgment from the state court litigation. *See* ECF No. 1.

Mr. Bruce had reasonable opportunity to raise the issues in this case in the state court proceedings, and he did raise them. He objected to the properties' being placed in a receivership and he objected to the foreclosure and sale of the properties. ECF No. 24-5 at 11. He specifically objected on the grounds that the foreclosure and sale violated his rights to substantive and procedural due process surrounding a deprivation of property and that the fines were so excessive that they violate the Eighth Amendment. ECF No. 24-5 at 15. These are the same claims and theories he pursues before this court.

Receiverships are *quasi in rem* proceedings—personal jurisdiction must exist to commence a receivership, but once appointed, the receiver acts *in rem* over all estate property and against all parties with actual or constructive notice of the receivership. *See* Clark, *Clark on Receivers* § 70 (3d ed., 1959). Mr. Bruce's challenge is analogous to the federal court plaintiffs' challenge in *Dorce*. This was a *quasi in rem* proceeding and Mr. Bruce submitted to the jurisdiction of the court. If *Rooker-Feldman* did not apply in this situation simply because Mr. Bruce was not a named party, the power of a state court acting under *in rem* or *quasi in rem* jurisdiction would be substantially diminished. Mr. Bruce and those similarly situated as "nonparties" for purposes of a *Rooker-Feldman* analysis would be entitled to two appeals, one in state court and one in federal district court.

2. Mr. Bruce Seeks Remedies for Injuries Caused by the State Court Judgment

In his suit before this Court, Mr. Bruce seeks remedies for injuries caused by the state court

judgment. He alleges that the receiver's actions to foreclose on and sell the Lipan and York properties deprived him of property without substantive or procedural due process. ECF No. 1. He further claims that the fines imposed on these properties by Denver violated the Eighth Amendment's prohibition on excessive fines. *Id.* He also alleges that the receiver breached its fiduciary duties to him, and that all defendants engaged in a conspiracy to violate his constitutional rights. *Id.*

Each of these claims seeks a remedy to an injury created by the state court judgment. Though Mr. Bruce tries to claim that the foreclosure and sale of the York and Lipan properties were acts of Denver and the state of Colorado, the foreclosure and sale were direct results of the final judgment of the state court in the receivership. *See* ECF No. 24-8. Though Denver issued the fines, the "deprivation of property," which Mr. Bruce says violated his right to substantive and procedural due process, was the result of the state court judgment. These alleged injuries to Mr. Bruce were caused entirely by the entry of the state court judgment. His first, second, and third causes of actions fall directly within the *Rooker-Feldman* doctrine. This Court does not have jurisdiction over those causes of action.

Likewise, his fourth cause of action, based on the Eighth Amendment, complains of an injury caused by the state court judgment. While the fines were imposed by Denver, they were enforced by the state court judgment. Mr. Bruce states that "Colorado actively participated through its judicial branch and the employment of judicial officers, without whose explicit consent and affirmative actions Denver could not have enforced its unconstitutional fines and

taking." ECF No. 1. This statement admits that the injuries complained of in the fourth cause of action were directly caused by the entry of the state court judgment. If Denver's fines had not been enforced by the state court judgment, Mr. Bruce would not have suffered this alleged injury.

The fifth cause of action, an allegation of breach of fiduciary duty against the receiver is also subject to a Rooker-Feldman analysis. Mr. Bruce stated, "the [r]eceiver converted Plaintiff's property to itself through the imposition of exorbitant receivership fees, and to Denver through Denver's retention of the remaining sale proceeds, all with the imprimatur of the Colorado state court." ECF No. 1. This indicates that, without the state court judgment, without state court approval, the breach of fiduciary duty could not have occurred. As the breach of fiduciary duty was caused by the decisions of the state court, this Court lacks jurisdiction to consider the fifth cause of action.

The sixth cause of action, alleging a conspiracy to violate Mr. Bruce's constitutional rights, also complains of an injury caused by the state court judgment. Mr. Bruce alleges that this conspiracy was to use the state court litigation to "sell the properties, keep the proceeds for themselves, thereby denying plaintiff [Mr. Bruce] the equity therein." ECF No. 1. The object of the alleged conspiracy was the state court judgment that allowed for foreclosure and sale of the York and Lipan properties. Until there was such a judgment, Mr. Bruce had no injury from the alleged conspiracy.

Each of Mr. Bruce's causes of action complains of an injury caused directly by the judgment entered in the state court litigation. Though the United States Supreme Court has been clear that the scope of the

Rooker-Feldman doctrine is limited, these are circumstances in which it applies. A federal court plaintiff is complaining of injuries caused by a state court judgment. His injuries cannot be remedied without undoing the state court judgment. This Court does not have jurisdiction over Mr. Bruce's claims—he must seek his remedies elsewhere.

ORDER

1. The motion to dismiss submitted by defendants City and County of Denver, State of Colorado, Fairfield & Woods, P.C., and Machol & Johannes, LLC, ECF No. 24, is granted. The claims against them are dismissed. As the prevailing parties, defendants are awarded their costs to be taxed by the Clerk pursuant to Fed. R. Civ. P. 54(d)(1) and D.C.COLO.LCivR 54.1.

2. The motion to dismiss submitted by defendant Sterling Consulting Corporation, ECF No. 49, is granted. The claims against it are dismissed. As a prevailing party, Sterling is awarded its costs to be taxed by the Clerk pursuant to Fed. R. Civ. P. 54(d)(1) and D.C.COLO.LCivR 54.1.

3. The case is dismissed without prejudice, and judgment will enter accordingly.

DATED this 4th day of October, 2021.

BY THE COURT

/s/ R. Brooke Jackson
R. Brooke Jackson
United States District Judge

APPENDIX 5

Mr. Bruce has requested that counsel include the following factual addendum with this Petition:

The actions of defendants here were not the first time Denver tried to steal plaintiff's equity. Denver created an asset forfeiture claim years before. Denver had a political hatred of plaintiff because plaintiff had authored a Colorado state constitutional amendment that limited spending growth by the state and all local governments, and required voter approval for all tax increases. It passed voter approval in 1992. A few years later, Denver dropped a bag of white powder in the open on the two-acre parcel (a full city block) on York Street that had eight fourplexes on it. City police "discovered" the alleged cocaine in the yard and filed an asset forfeiture case against plaintiff to seize the entire property.

Denver notified the trial judge in the asset forfeiture case that it would not provide plaintiff any information, discovery, negotiation, etc. because they resented his conduct. The trial judge rightly said plaintiff had rights to participate and ordered the City to act in a professional manner, like other prosecutors. (Plaintiff was a former prosecutor himself.) The City appealed and appellate courts upheld the trial judge, who was named Robert Crew. When the city's appeal reached the Colorado Supreme Court, that court issued a written opinion upholding the order barring the City's vendetta. The prosecution was then assigned to private counsel, who dismissed it.

That prior case explains why the City hired outside counsel, Machol & Johannes, to take plaintiff's property in a second scheme, and why the receiver dragged plaintiff into a frivolous contempt citation.

The City and its agent, the receiver, prevented plaintiff from correcting the trivial code violations issued by the City. City employees cut and took the heavy duty chain plaintiff had installed at both ends of the alley, which had been privatized. Anonymous dumping continued. The receiver also ordered plaintiff's workers off the block when they tried to mow the yard and pick up trash. They also removed Denver's tax-funded trash bins that had been in the alley for decades.

This history explains why Denver courts would not allow plaintiff to be a party in the case, or to participate in a meaningful way to challenge Denver's seizure of plaintiff's equity, or to give him even the pretense of due process of law. No equal protection could be afforded the author of tax limitation. He would be punished even after selling to Tele Comm, and Tele Comm then selling to Mr. McCarville, who was never made a party to this scam either. No due process interfered with Denver's lawless obsession.

Denver manufactured its $3+ million in weed liens and other bad faith claims, then magically leapfrogged them ahead of plaintiff's notes and deeds of trust recorded many years earlier. Denver invented the whole thing 1) to seize title to plaintiff's properties in order to sell them to developers to provide a windfall to Denver worth millions and 2) to destroy Denver's #1 political opponent--financially, cynically, and viciously. It may seem incredible, but such court abuse has been replicated in current national headlines.