No.

IN THE

Supreme Court of the United States

RICHARD SHARIF, ESTATE OF SOAD WATTAR, HAIFA SHARIFEH, RAGDA SHARIFEH AND MAURICE SALEM, PETITIONERS

v.

HORACE FOX, JR., TRUSTEE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

1. Whether a bankruptcy court has the jurisdiction to overrule an Aleppo Syria foreign probate court order or whether the *Rooker-Feldman* doctrine applies to a foreign court order?

2. Whether a bankruptcy trustee is a federal agent who can be sued under a *Bivens* action? (there is a split between the Third and Ninth Circuit Courts on this issue)

3. Whether the lower court's holding that knowledge of a bankruptcy action satisfies the Notice requirement of due process is unconstitutional, particularly when there is overwhelming evidence showing Petitioner having no knowledge of the action?

4. Whether Bankruptcy Rule 9011 sanctions require a finding of one of the four requirement listed in 9011(b)(1)-(4) or a finding of bad faith to allow for punitive fines?

PARTIES TO THE PROCEEDING

The Petitioners include Estate of Soad Wattar, Haifa Sharifeh as Executrix, an intervenor, and Ragda Sharifeh who is creditor. These Petitioners are sisters of the Debtor Richard Sharif in the underlying bankruptcy court action. However, the Debtor is not a party in the appeals below or this Petition for Writ. Petitioner Maurice James Salem is counsel of record the parties. The Respondent is Horace Fox Jr., is the Bankruptcy Trustee.

STATEMENT OF RELATED CASES

United States Court of Appeals for the Seventh Circuit's *en banc* decision, Estate of Soad Wattar, *et al.*, v. Horace Fox Jr., Consolidated Appeal Nos. 17-1615, 18-2197 & 22-2826, decision dated: May 30, 2023 (App. 35a)

United States Court of Appeals for the Seventh Circuit, reissued decision, Estate of Soad Wattar, *et al.*, v. Horace Fox Jr., Consolidated Appeal Nos. 17-1615, 18-2197 & 22-2826, decision dated: June 16, 2023 (App. 2a)

United States ex rel. Sharifeh v. Fox Jr., Case No. 18-cv-8508, U.S. District Court for the Northern District of Illinois, decision dated: Sep. 15, 2022. (App. 16a).

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JURISDICTION

The judgment of the court of appeals was entered on May 7, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) based on the Seventh Circuit June 16, 2023, reissued final judgment (App. 2a).

RELEVANT PROVISIONS INVOLVED

42 U.S.C. § 1983

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act

of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

11 U.S.C. § 105(a):

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

Bankr. R. 9011(b) & (c):

> (b) Representations to the Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,— [1]
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.
(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

INTRODUCTION

This appeal is three consolidated appellate cases from the district court. District Court Case Nos17-1615, 18-2197 & 22-2826. They have been consolidated from the underlying original 2009 bankruptcy matter, *in re Richard Sharif*, debtor, case no.09-bk-05868. The Petitioners' in this case does not include the debtor Richard Sharif ("Sharif"). The Petitioners here are Sharif's two sisters, Haifa and Ragda Sharifeh who are intervenors and creditors and Haifa is an intervenor in her capacity as Executrix of the Estate of Soad Wattar. The third Petitioner is the counsel of record, *pro se*, Maurice James Salem ("Salem"). The Respondent is the bankruptcy trustee Horace Fox jr.

The appeal in this 14-year-old bankruptcy case, was submitted in the Seventh Circuit on April 13, 2023, and eight (8) days later, on April 21, 2023, the Seventh

Circuit rendered a decision denying Petitioners' appeal in a six-page unpublished and nonprecedential decision. (Seventh Circuit Appeal No. 22-2869, Document # 174). Thereafter, all the bankruptcy court judges in the Bankruptcy Court for the Northern District of Illinoi, Eastern Division, filed a joint motion asking the Seventh Circuit to publish the decision and make it precedential. On June 16, 2023, the Seventh Circuit did exactly that in its reissued decision, which is published and precedential (Doc 190, App. 2a).

This Petition argues exceptionally important issues, which include: 1) whether a United States Bankruptcy Court has **the jurisdiction to overrule an Aleppo Syria foreign probate court order or whether the *Rooker-Feldman* doctrine applies to a foreign court order**? 2) whether a bankruptcy trustee is a federal agent who can be sued under a *Bivens* action? (there is a split between the Third and Ninth Circuit Courts on this issue) 3) whether a holding, that having just knowledge of an action satisfies the Notice requirement of due process, is unconstitutional, particularly when there is overwhelming evidence showing the party never had any knowledge of the action? 4) whether Bankruptcy Rule 9011 requires a finding of one of the four requirement listed in 9011(b)(1)-(4) or a finding of bad faith to allow for punitive fines?

STATEMENT

I. Legal Background

A. Aleppo Syria Probate Court Order

The Second Will is this action, which is certified with an attached Aleppo Syria probate court order that found it to be authentic, was overruled by a U.S. Bankruptcy Court Judge by finding that the Second Will was a forgery. Even if the Second Will is a forgery, it was probated by the Aleppo probate court in Syria, where it was found to be authentic. The Second Will was presented in the U.S. Bankruptcy Court at the Remand Trial had an Aleppo Syrian probate court order with it, which certified it and creating the Estate of Soad Wattar in Syria. Notwithstanding the overwhelming evidence supporting the authenticity of the Second Will, the U.S. **Bankruptcy Court did not have jurisdiction or authority to overrule the Aleppo Probate Court Order, in Syria**. U.S. bankruptcy courts have routinely recognized and enforced orders of foreign bankruptcy and insolvency courts as a matter of international comity. In, *In re Condor Flugdienst GMBH*, 2021 WL 1166016 (Bankr. N.D. Ill. Mar. 26, 2021), the court held that it was expressly authorized under section 1521 of the Bankruptcy Code, as guided by section 1522, to recognize and enforce a foreign court order of a German debtor. The principle of international comity, or "the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws." *Hilton v. Guyot*, 159 U.S. 113, 164 (1895).

Section 1506 sets forth a public policy exception to the relief otherwise authorized in chapter 15, providing that "[n]othing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States." Section 1506, however, it requires a "narrow reading" and "does not create an exception for *any* action under Chapter 15 that may conflict with public policy, but only an action that is '*manifestly* contrary.'" *In re Fairfield Sentry Ltd.*, 714 F.3d 127, 139 (2d Cir. 2013).

In this case, the U.S. Bankruptcy Court adjudicated that the Second Will was a forgery even though the foreign Aleppo Syrian court found it to be authentic and certified it. What's particularly sad and a gross injustice in this case is that there was overwhelming evidence that the Second Will was authentic.

B. Bankruptcy Trustee is a federal agent who can be sued under a *Bivens* action.

Standing trustees are "private individual[s] appointed by the Executive Branch to perform a public office under the Bankruptcy Code." *In re Brookover*, 352 F.3d 1083, 1089 (6th Cir. 2003). They perform a "variety of functions previously performed by bankruptcy judges." *In re Castillo*, 297 F.3d 940, 950 (9th Cir. 2002). Common sense should lead to the obvious conclusion that bankruptcy trustees are federal agents who can be sued under a *Bivens* action.

Moreover, the Third Circuit held that a bankruptcy trustee was a "government official," and thus a federal agent. *In re J&S Props., LLC*, 872 F.3d 138, 143 (3d Cir. 2017) (holding that "bankruptcy trustees are government officials, entitled . . . to qualified immunity

from § 1983 claims"). While the Ninth Circuit held: *In re Greene*, 980 F.2d 590, 597 (9th Cir. 1992) (holding that "the trustee is a representative of the estate, not an officer, agent, or instrumentality of the United States"). Thus, given the split between the Third and Ninth Circuit Courts on this issue and the fact that all the Bankruptcy Court Judges in the Northern District of Illinois jointly moved to have the Seventh Circuit decision published and made precedential, then this is not such a frivolous issue for which Petitioner Salem was sanction with a punitive $20,000 fine for relying on the belief that a bankruptcy trustee can be sued under a *Bivens* action.

C. Notice and Due Process

To simply require that a party need only have knowledge of a legal proceeding for a court to have personal jurisdiction over that party is a gross injustice and a blatant violation of the due process clause of the Fifth Amendment. Nonetheless, based on all the evidence submitted in the Bankruptcy Court Remand Trial, including the evidence from the bankruptcy trustee's own witness, Luma Sharif, who stood to financially benefit in supporting the bankruptcy trustee, Petitioner Haifa never had knowledge of the bankruptcy case until December 2011, after the August 5, 2010, turnover order was entered. Moreover, there is overwhelming evidence that showed Haifa could not have had knowledge because she did not attend her brother's wedding and that she met his wife in Illinois for the first time when her first baby was born in December 2011.

With respect to laches, Haifa could not have possibly filed her Motion to vacate the turnover order or

default order between December 2011, when she received notice, and August 2013, when the Seventh Circuit vacated the default order because her case was pending on appeal in the District Court and then in this Court within that period and thus the Bankruptcy Court did not have jurisdiction because the issue was pending on appeal in that District Court.

Moreover, in a separate malpractice action against prior counsel William Stevens, the District Court ruled that Stevens was representing Haifa on appeal from the turnover order, which is the default order, during that period. This allowed Haifa to proceed to trial against Stevens for malpractice. *Stevens v. Sharif*, Case No. 15-cv-01405. Since the August 5, 2010, turnover order was on appeal prior to August 2013, the Bankruptcy Court did not have jurisdiction for Haifa to file a Motion to Vacate the turnover order because the issue was on appeal in the District Court and then in the Seventh Circuit until the Seventh Circuit vacated the order in August 2013. Therefore, the Seventh Circuit Court erred when it held that Haifa could have filed her Motion prior to August 2013, because it failed to recognize that there was an appeal pending in the District Court and the Bankruptcy Court did not have jurisdiction while that appeal was pending. Thus, laches could not have possibly applied.

D. Bankr. Rule 9011 Sanctions

The three Petitioners herein were sanctioned for: 1) attempting to enforce an Aleppo Syria foreign probate court order, 2) filing motions to sue the bankruptcy trustee under a *Bivens* action, and 3) moving to vacate the turnover order and the default order because Haifa was admittedly never served with process. The sanc-

tions imposed against the three Petitioners were restricting their ability to file any documents without leave from the bankruptcy court and their counsel Salem fined $20,000 in punitive sanctions. A gross injustice!

The Seventh Circuit ruled out the repetitiveness of the 2016 Motions as a basis for sanctions (App. 14a). If the proposed complaint by Petitioners Haifa & Ragda in their 2016 Motions did not state a *prima facie* case on the basis that a *Bivens* action is precluded, then there must be some other basis for the proposed complaint to be so frivolous and designed to harass because the bankruptcy court ruled that the repetitiveness was the harassment. Moreover, the Seventh Circuit failed to explain how the Third Circuit could have held that a bankruptcy trustee was a "government official," which is a federal agent who can be sued under *Bivens*, and now rule that it is so frivolous legal theory as to warrant punitive sanctions against Salem. *In re J&S Props., LLC*, 872 F.3d 138, 143 (3d Cir. 2017) (holding that "bankruptcy trustees are government officials, entitled . . . to qualified immunity from § 1983 claims").

Given the split between the Third and Ninth Circuit Courts on this issue of whether a bankruptcy trustee is a federal agent who can be sued under a *Bivens* action. *In re Greene*, 980 F.2d 590, 597 (9th Cir. 1992) (holding that "the trustee is a representative of the estate, not an officer, agent, or instrumentality of the United States") and the fact that all the Bankruptcy Court Judges in the Northern District of Illinois jointly moved to have the Seventh Circuit decision in this case published and made precedential, for which it was (App. 4a), then this is not such a frivolous issue for which Petitioner Salem was sanction with a punitive $20,000 fine and restricted from filing any documents

without leave of the court, for relying on the belief that a bankruptcy trustee can be sued under a *Bivens* action.

Ultimately, the Seventh Circuit held that Bankruptcy Rule 9011 sanctions allows for a $20,000 punitive fine and does not require a finding of one of the four requirement listed in 9011(b)(1)-(4) or a finding bad faith or repetitive frivolous filings to impose punitive sanctions. (it's shocking and unbelievable)

II. Factual Background and Procedural History

Petitioners Haifa and Ragda's brother Richard Sharif, filed a Chapter 7 bankruptcy in 2009. His mother, Soad Wattar, had established a living trust, of which he was the initial trustee and later Ragda became the trustee. After Soad Wattar died on March 17, 2010, Sharif's counsel Stevens was given five (5) legal size boxes of documents to produce to opposing counsel in a discovery, which he admittedly failed to give to opposing counsel.

On July 26, 2010, in a creditor's adversary proceeding against Sharif, bankruptcy court Judge Cox ruled that because Sharif's counsel failed to produce all documents requested, **she entered a default order against Sharif and seized all of the Trust's assets** as part of the bankruptcy estate on the basis that the Trust was Sharif's alter ego. On the motion of the Chapter 7 bankruptcy trustee, Horace Fox Jr., the bankruptcy court then ordered the trust assets and Soad Wattar's life insurance proceeds, which were not part of the Trust to be turned over to the bankruptcy estate. (The parties refer to this **August 5, 2010, order** as the turnover order, which is based on the **July 26, 2010, default order**.)

Only after Sharif appealed was ruled upon by the Supreme Court, see *Wellness International Network, Ltd. v. Sharif*, 727 F.3d 751 (7th Cir. 2013), *rev'd*, 575 U.S. 665 (2015), and the Seventh Circuit remanded the case to Judge Cox, see *Wellness Int'l Net work, Ltd. v. Sharif*, 617 F. App'x 589, 591 (7th Cir. 2015), did Haifa file her September 13, 2015, Motion to Vacate the Default Order (a/k/a turnover order). Haifa could not file such a motion ant earlier because the issue was pending on appeal first in the district court and then in the Seventh Circuit. After the trustee opposed the motion, Haifa attached to her reply brief a copy of the Second Will, dated April 28, 2007, but at that time the Second Will was neither certified nor had a probate court order stamped on it.

Haifa argued that the turnover order was void because the court had no jurisdiction to dispose of the Wattar estate's assets until she was served with notice. Haifa's Motion was denied by Judge Cox and Haifa appealed to the district court. The district court, Judge Dow Jr. granted Haifa's appeal and remanded the case to Judge Cox. On remand Judge Cox denied Haifa's motion finding: (1) Haifa had knowledge of the proceedings and that provided the bankruptcy court with personal jurisdiction over Haifa; (2) the Second Will, for which a certification and an Aleppo Syria probate court order was obtained, was forged; (3) even if it were genuine, Haifa still lacked an interest in the disputed assets, which were property of the trust no matter who the Will's executor was; and (4) laches barred Haifa's claim because she had unreasonably delayed pursuing it. Along the way, the court found that Haifa's testimony that she had not received notice of the bankruptcy proceedings or turnover order was not credible, although there was overwhelming evidence that she did

not have any knowledge of the bankruptcy court proceeding and the bankruptcy court Judge Cox did not cite to any evidence to support her contention that Haifa was not credible.

In 2016, Haifa and Ragda requested leave of the bankruptcy court to sue Trustee Fox Jr. and his attorney for violating their rights when the trustee moved for the transfer of trust assets to Sharif's bankruptcy estate. Advance permission from the bankruptcy court is required to sue a trustee for actions taken in that capacity. See *In re Linton*, 136 F.3d 544, 545 (7th Cir. 1998). The proposed action was based a Fifth Amendment due process claim under *Bivens v. Six Unknown Named Agents of Federal Bu reau of Narcotics*, 403 U.S. 388 (1971). At the same time, Ragda moved for funds from the bankruptcy estate to reimburse herself for mortgage and tax payments she claimed to have made on the family home between 2010 and 2015. The proposed complaint sought to sue the Trustee and his attorney under *Bivens* for depriving them of property without "notice and a hearing." Another claim was that Wattar's life insurance policy was not part of the trust and Wattar's daughters were the beneficiary of the proceeds. Moreover, the proceeds because they were exempt from bankruptcy under Illinois law. See 735 ILCS 5/12 1001(f).

Judge Cox summarily found from the bench when the Motions were first presented that the sisters' 2016 motions were so frivolous as to violate Federal Rule of Bankruptcy Procedure 9011. Judge Cox further concluded that because the motions were repetitive that they were filed "to harass the bankruptcy trustee, cause unnecessary delay and ... increase the cost of litigation," and sanctioned the Petitioners by restricting their ability to file anymore documents without leave of

the court and fined their counsel $20,000 in punitive sanctions.

REASONS FOR GRANTING THE PETITION

I. To resolve whether a United States Bankruptcy Court has jurisdiction to overrule foreign probate court order from Aleppo Syria or whether the *Rooker-Feldman* doctrine applies to a foreign court order.

The Seventh Circuit erred because the Second Will, although found to be a forgery by Bankruptcy Court Judge Cox, was certified with a probate court order on it. The Second Will was probated by the Aleppo Syria probate court where it was found to be authentic. The Petitioners argued that the bankruptcy court had no jurisdiction to overrule the Aleppo probate court's order. Even if the Second Will was a forgery, it was probated by the Aleppo probate court in Syria and adjudicated to be authentic. The Second Will was presented at the Bankruptcy Court Remand Trial (see Remand Trial **Exhibit Z-1**), where it had a signed probate court order attached to it, certifying it and creating the Estate of Soad Wattar.

Notwithstanding the fact that there was overwhelming evidence supporting the authenticity of the Second Will, where it is shocking to even consider it a forgery, **how on earth can a U.S. Bankruptcy Court obtain jurisdiction to overrule the Aleppo Probate Court Order in Syria**? Typically, the *Rooker-Feldman* doctrine would require opposing counsel to appeal a state order to the appellate court. However, in this case opposing counsel would have to appeal the Aleppo probate court order authenticating the Second Will to the appellate court in Aleppo Syria. *Rooker v. Fidelity*

Trust Co., 263 U.S. 413 (1923); *District of Columbia Ct. of App. v. Feldman*, 460 U.S. 462 (1983); *Banister v. Bank Nat'l Ass'n*, 2021 U.S. App. LEXIS 28565 (7th Cir. 2021).

II. To resolve the issue of whether a bankruptcy trustee is a federal agent who can be sued under a *Bivens* action because there is a split on this issue between the Third and Ninth Circuit Courts.

Although the Seventh Circuit in this case held that a bankruptcy trustee is not a federal agent who can be sued in a *Bivens* action, the Third Circuit held that bankruptcy trustees are "government officials" who can be sued. *In re J&S Props., LLC*, 872 F.3d 138, 143 (3d Cir. 2017) (holding that "bankruptcy trustees are government officials, entitled . . . to qualified immunity from § 1983 claims"). However, the Ninth Circuit held: *In re Greene*, 980 F.2d 590, 597 (9th Cir. 1992) (holding that "the trustee is a representative of the estate, not an officer, agent, or instrumentality of the United States").

A bankruptcy trustee or receiver derives their qualified immunity from the judge who appointed him. *Lonneker Farms, Inc. v. Klobucher*, 804 F.2d 1096, 1097 (9th Cir.1986); *Mosher v. Saalfelt*, 589 F.2d 438, 442 (9th Cir.1978), *cert. denied*, 442 U.S. 941, 99 S.Ct. 2883, 61 L.Ed.2d 311 (1979). Thus, the trustee also loses their qualified immunity in the same way a receiver or a police officer loses their qualified immunity. Since a bankruptcy trustee is so closely affiliated with a federal court judge and is a government official, according to the Third Circuit but not the Ninth Circuit, then this Petition for Writ should be granted to resolve the issue of whether a bankruptcy

trustee is a federal agent who can be sued under a Bivens action.

III. To prohibit Bankruptcy Courts from exercising personal jurisdiction over a party based only on that party having knowledge of the action.

A. There is no dispute that there was no service of process on Petitioner Haifa

There is not one piece of evidence that Haifa had knowledge of the bankruptcy action and overwhelming evidence she did not receive knowledge; even evidence presented by the bankruptcy trustee's own witness, which showed Haifa had no knowledge of the case. To blatantly ignore all these undisputed facts without any justification will lead to gross injustice in.

Petitioners' opening Briefs and Reply Briefs in the Seventh Circuit's appeal, they describe all the evidence presented in the Bankruptcy Court Remand Trial, which showed conclusively that Haifa never received notice of her brother's bankruptcy case until December 2011, which is after the August 5, 2010, turnover order and the July 26, 2010, default order. What is extremely compelling is that the bankruptcy trustee's own witness, Luma Sharif, who stood to financially benefit if Haifa had received notice, confirmed that Haifa did not know about the bankruptcy case until December 2011.

Luma confirmed with all other witnesses that Haifa could not have had actual notice because she did not attend her brother's wedding on August 9, 2009, and met with Luma in Illinois for the first time when Luma's first baby was born in December 2011. Trial Tr. 435, Lines 10-15. Luma testified that she never saw Richard and Haifa together in person from the time she was

married, **August 2009, to December 2011.** Trial Tr. 435, Lines 16-22. Luma testified that Haifa: 1) was never in Illinois until December, 2011, 2) that Haifa never resided in Illinois, 3) that Haifa was estranged from Richard and Ragda because Haifa never came to her wedding and that she did not see Haifa until Luma had her first child in December 2011. Trial Tr. 414-419. There is nothing in the record refuting this overwhelming evidence and it was confirmed by all witnesses. It is unbelievable that the bankruptcy court exercised personal jurisdiction over Haifa given the overwhelming evidence she had no knowledge of the action, much less not being served with process.

The turnover order was entered on a default order in bankruptcy case was entered on a legal technicality without the knowledge of the Debtor Sharif knowledge because he was not present in court when his counsel Stevens failed to give the five boxes to opposing counsel. Sharif was never given the opportunity to contest the default order because he and his sisters did give the requested documents to Stevens, but he failed to deliver them. See, *Stevens v. Sharif*, Case No. 15-cv-1405[1].

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[1] Stevens testified that he received all the documents that were requested from Sharif. Stevens was asked "did there come a time that you requested documents concerning the trust, the validity of the trust, from Richard Sharif? (Case No. 15-cv-01405, Doc. 193, Stevens Trial Tr. 370:23-25). Stevens' answer was: ". . ., yes." (Doc. 193, Stevens Trial Tr. 371:3-9). On Page 1449 of the Trial Transcript Stevens testified, over his counsel's objection, that Sharif was cooperative in providing documents requested by Stevens. (Doc 198, Stevens Trial Tr. 1449:6-25). Stevens' testimony was: "**That's my impression too, that Mr. Sharif was cooperating with me**." Regardless of this fact, on July 26, 2010, **Judge Cox entered an order on default** that Sharif mother's trust was his alter

Thus, the bankruptcy court had no personal jurisdiction over Haifa to enter the August 5, 2010, turnover order or the July 26, 2010 default order. To allow a court personal jurisdiction over a party on the speculative basis that the party had knowledge of the court action, will lead to gross injustice and is certainly a violation of the due process clause of the Fifth Amendment.

B. The status of this case between December, 2011, when Haifa received knowledge of this case and the Seventh Circuit vacating the default order, in August 2013, show that it was impossible for laches to apply because the Bankruptcy Court did not have jurisdiction to hear Haifa's Motion, while the issue was on appeal in the District Court and then in the Seventh Circuit.

The Seventh Circuit believes that laches apply because Haifa could have filed her Motion to Vacate the turnover order prior to August 2013, when the Seventh Circuit vacated the order. On page #6 third paragraph of the panel's decision, it states: "we issued our decision in August 2013, meaning that Haifa had three years before then to challenge the turnover order." (App. 9a). However, Haifa could not have possibly filed her Motion to vacate the order between December 2011, when she received notice and August 2013, when the Seventh

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ego. Also, the alter-ego determination or adjudication was ON DEFAULT. All legal commentators who follow the development of alter-ego litigation have discarded the bankruptcy court alter-ego ruling in this case because it was not on the merits, it was on default.

Circuit vacated the default order because her case was pending on appeal in the District Court and then in the Seventh Circuit within that period. In the other action concerning Haifa's counsel William Stevens, District Court Judge Durkin's ruled that Stevens was representing Haifa on appeal during that period, which allowed Haifa to proceed to trial against Stevens for malpractice. See *Stevens v. Sharif*, Case No. 15-cv-01405. The Bankruptcy Court did not have jurisdiction over the case for Haifa to file a Motion to Vacate the turnover order because it was on appeal first in the District Court and then in the Seventh Circuit until August 2013, when the Seventh Circuit vacated the default order. Therefore, the Seventh Circuit erred when it held that Haifa had three years to file her Motion prior to August 2013, because the issue was on appeal and the bankruptcy court had no jurisdiction. Thus, laches could not have possibly applied.

In addition, laches is only applicable in equity actions. Equitable laches does not apply in an action where there is applicable law, such as the statute of limitations. *Maksym v. Loesch*, 937 F.2d 1237, 1248 (7th Cir. 1991), is where the Seventh Circuit stated that "[i]n Illinois, . . . the great weight of authority is that laches is a defense only in equity cases," and *Ivani Contracting Corp. v. City of New York*, 103 F.3d 257, 260 (2d Cir. 1997) (quoting *United States v. RePass*, 688 F.2d 154, 158 (2d Cir. 1982)), in which the Second Circuit stated that "[l]aches is not a defense to an action filed within the applicable statute of limitations." The typical application of laches comes in a two-part test: 1) was the plaintiff's delay in bringing suit unreasonable and 2) was the defendant prejudiced by the delay. See *Jarrow Formulas, Inc. v. Nutrition Now, Inc.*, 304 F.3d 829, 838 (9th Cir. 2002); *Tillamook Country Smoker, Inc. v.*

Tillamook County Creamery Association, 465 F.3d 1102, 1108 (9th Cir. 2006). In this case, there are statutes, rules and case law that are applicable and thus laches should not apply.

IV. To resolve whether Bankr. Rule 9011 sanctions require a finding of one of the four 9011(b)(1)-(4) requirements or bad faith or repetitive frivolous files.

The reason the Seventh Circuit upheld the sanctions imposed in this case is (App. 14a):

> Salem's focus on repetitiveness misses the point. The bankruptcy court determined that *no* argument in the 2016 motions was supported by fact or law and that the motions were intended to harass the trustee and increase the cost of litigation. See Fed. R. Bankr. P. 9011(b)(1)–(2). As discussed above, the appellants present no legal basis for their motions, even as they appeal the rulings. And they do not address the bankruptcy court's finding that those motions were intended to harass the trustee and needlessly increase the cost of litigation. They offer only the bare and incorrect assertion that the bankruptcy court's lengthy sanctions order failed to address certain issues. The burden is on the appellants to tell us why the sanctions were so off base that imposing them was an abuse of discretion. They cannot prevail when they fail to engage with the reasons why the bankruptcy court imposed, and the district court upheld, the sanctions. See *Klein v. O'Brien*, 884 F.3d 754, 757 (7th Cir. 2018). We add that barring these litigants from further filings in the bankruptcy action was a sensible re-

> sponse to their frivolous attempts to undermine long settled issues.

The fact all the Bankruptcy Court Judges in the Northern District of Illinois, Eastern Division, filed a joint motion asking the Seventh Circuit to published and make its decision in this case precedential (see Doc. 175, in Appeal No. 22-2826) and the Seventh Circuit complying by reissuing its decision on June 16, 2023, (App. 2a), together with Petitioners' above legal arguments, should debunk the Seventh Circuit's claim of Petitioners' effort to sue the bankruptcy trustee under a *Bivens* action was undermining "long-settled issues."

Since the Seventh Circuit ruled out the repetitiveness of the 2016 Motions as a basis for sanctions, but that because the complaint did not state a *prima facie* case, in that a bankruptcy trustee is not a federal agent who can be sued under a *Bivens* action, then the Seventh Circuit should have explain why, the Motion by all the Bankruptcy Court Judges asked for the decision in this case to be published and made precedential, if such an issue was so frivolous as to warrant sanctions. Moreover, the Third Circuit held that bankruptcy trustees were "government officials" and thus, can be sued under a *Bivens* action. *In re J&S Props., LLC*, 872 F.3d 138, 143 (3d Cir. 2017) (holding that "bankruptcy trustees are government officials, entitled . . . to qualified immunity from § 1983 claims"). It was based on the Third Circuit's *J&S Props* 2017 case, where a bankruptcy trustee is a federal agent who can be sued under a *Bivens* action, that all the Bankruptcy Court Judges in the Northern District of Illinois, Eastern Division, filed a joint motion asking the Seventh Circuit to published and make its decision in this case precedential. (see Doc. 175, in Appeal No. 22-2826). Since the Sev-

enth Circuit complied by reissuing its decision on June 16, 2023, (App. 2a), then it should have retracted its finding that by Salem trying to sue the bankruptcy trustee under a Bivens action was undermining "long-settled issues."

There was no finding that the Petitioners acted in bad faith. The bankruptcy court's reasoning for imposing sanctions was only that the "harassment" was based on the repetitiveness of the two 2016 Motions filed by Salem. Given, Salem's history of successfully suing corrupt government officials, billion-dollar corporations and never being successfully sanctioned before, the Seventh Circuit should have taken this fact into consideration to determine the issue of whether Petitioners acted in good faith. There was no finding of bad faith by the bankruptcy court. The Second Circuit held that the bankruptcy's inherent power does not allow punitive fines without a finding of *bad faith.* For a bankruptcy court to be able to exercise its inherent power to impose punitive fines there must be a finding of bad faith. See *Phh mortg. corp. v. Sensenich* (In re gravel), 6 F.4th 503 (2d Cir. 2021); *Schlaifer Nance & Co. v. Estate of Warhol*, 194 F.3d 323, 338 (2d Cir. 1999) ; *Chambers v. NASCO, Inc.*, 501 U.S. 32, 47, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991).The sanctions imposed under these circumstances will not only chill legitimate litigation, but also further erode the loss of public confidence in the judicial branch of our government, particularly given the public's current record low confidence in our court system.

CONCLUSION

Using Debtor counsel's failure to submit documents, which counsel admitted receiving from the Petitioners a in subsequent malpractice case, as justification

for seizing Petitioners' Mother's trust and the life insurance proceeds of over two million dollars, together with the blatant violations of the law as shown above, constitutes gross injustice that will shock the conscience of any reasonable person. Together with punitive sanctions under these circumstances, further erodes public's confidence in our judicial system. Thus, this Petition for a Writ of certiorari should be granted for the reasons stated above.

Respectfully submitted,

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APPENDIX

4/21/23

United States Court of Appeals, Seventh Circuit.

No. 17–1615

ESTATE OF Soad WATTAR, et al., Intervenors-Appellants,
v.
Horace FOX, Jr., Trustee-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 16-cv-4699 — **Robert M. Dow, Jr.**, *Judge.*

No. 18–2197

In re: Richard Sharif. Debtor,

Appeal of: Maurice Salem

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 17-cv-1500 — **Robert M. Dow, Jr.**, *Judge.*

No. 22–2826

Haifa Sharifeh, Intervenor-Appellant,
v.
Horace Fox, Jr., Trustee-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 18-cv-8508 — **Martha M. Pacold**, *Judge.*

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Before Easterbrook, Wood, and Kirsch, Circuit Judges.

Opinion

Per Curiam.

In 2010, the United States Bankruptcy Court for the Northern District of Illinois ruled that all assets held by the Soad Wattar Revocable Living Trust—including the Wattar family home—were part of the bankruptcy estate of Richard Sharif. Sharif was the son of Soad Wattar, now deceased. As the sole trustee of the Wattar trust, Sharif had full control of its assets. Sharif's sisters, Haifa and Ragda Sharifeh, soon launched an effort to keep the trust proceeds out of their brother's bankruptcy estate; their strategy was to show that it was they who owned the trust assets, not their brother.

At issue in these appeals are the bankruptcy court's rulings on three motions: (1) Haifa's 2015 motion

to vacate the court's decision that all trust assets belonged to the bankruptcy estate; (2) the sisters' joint 2016 motion for leave to sue the Chapter 7 trustee assigned to Sharif's bankruptcy for purported due-process violations; and (3) Ragda's 2016 motion seeking both reimbursement of money she allegedly spent on the family home and the proceeds from Wattar's life insurance policy, which the court had found to be an asset of the trust and therefore part of the bankruptcy estate. The bankruptcy court denied all three motions and sanctioned the sisters and their lawyer, Maurice Salem. Each ruling was affirmed on appeal to the district court. We are no more persuaded by the appellants' arguments (to the extent they develop any) than were the judges who already rejected them, and so we affirm.

I

Sharif filed for Chapter 7 bankruptcy in 2009. His mother, Soad Wattar, had established a living trust, of which he was the sole trustee. (His sisters would later argue that a 2007 trust amendment had made Ragda the sole trustee, but that led no-where.) When Wattar died in March 2010, Sharif produced a will that named him executor of her estate and provided for all Wattar's assets to pass into the trust. In June 2010, in a creditor's adversary proceeding against Sharif, the bankruptcy court ruled that the trust's assets were part of the bankruptcy estate because Sharif had sole control over them and treated them as if they were his personal property. On the motion of the Chapter 7 bankruptcy trustee, Horace Fox, the bankruptcy court then ordered the trust assets to be turned over to the bankruptcy estate. (The parties refer to this as the turnover order.)

While Sharif appealed this ruling, see *Wellness International Network, Ltd. v. Sharif*, 727 F.3d 751 (7th Cir. 2013), *rev'd*, 575 U.S. 665, 135 S.Ct. 1932, 191 L.Ed.2d 911 (2015), Haifa and Ragda sought control of the trust assets, first in state court and then as intervenors in Sharif's bankruptcy case. None of their efforts succeeded. By the bankruptcy court's count, at least ten rulings between 2010 and 2015 addressed who owned the trust assets and ruled against the sisters. Among these decisions was our 2015 affirmance of the bankruptcy court's initial decision that the trust and Sharif were alter egos, issued on remand from the Supreme Court of the United States. See *Wellness Int'l Network, Ltd. v. Sharif*, 617 F. App'x 589, 591 (7th Cir. 2015).

These rulings also included the bankruptcy court's denial of Haifa's 2015 motion on behalf of her mother's estate to vacate the turnover order. See Fed. R. Civ. P. 60(b)(4). When the trustee opposed the motion, Haifa attached to her reply brief a theretofore-unknown second will. Dated April 28, 2007—two days after the will Sharif had produced five years earlier—it purported to name Haifa the executor of their mother's estate. Haifa argued that the turnover order was invalid because the court had no power to dispose of the Wattar estate's assets until the true executor received notice, and Haifa allegedly had not been notified at the proper time.

The bankruptcy court denied Haifa's motion after making some critical findings: (1) Haifa had in fact received notice of the proceedings; (2) the second will was forged; (3) even if it were genuine, Haifa still lacked an interest in the disputed assets, which were property of the trust no matter who the will's executor was; and (4) in any event, laches barred Haifa's claim

because she had unreasonably delayed pursuing it. Along the way, the court found that Haifa's testimony that she had not received notice of the bankruptcy proceedings or turnover order was not credible. The district court (Judge Pacold) affirmed.

In 2016, the sisters requested leave of the bankruptcy court to sue Trustee Fox and his attorney for violating their rights when the trustee moved for the transfer of trust assets to Sharif's bankruptcy estate. Advance permission from the bankruptcy court is required to sue a trustee for actions taken in that capacity. See *In re Linton*, 136 F.3d 544, 545 (7th Cir. 1998). The sisters, now represented by Maurice Salem, identified their prospective suit as a Fifth Amendment due-process claim under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971). At the same time, Ragda moved for funds from the bankruptcy estate to reimburse herself for mortgage and tax payments she claimed to have made on the family home between 2010 and 2015. She also asserted that she was the proper beneficiary of Wattar's life insurance policy and was owed the proceeds because they were exempt from bankruptcy under Illinois law. See 735 ILCS 5/12-1001(f).

The bankruptcy court denied the sisters leave to sue after concluding that they failed to make the required initial showing that their claims had some foundation. Their one-page motion trailed off midsentence, and the attached complaint sought to sue Fox and his attorney under *Bivens* for depriving them of property without "notice and a hearing." As for Ragda's motion, the bankruptcy court concluded that she cited no statutory or contractual basis for recouping her alleged expenditures on the home. Indeed, Ragda

conceded that the payments were voluntary. Further, the bankruptcy exemption she invoked for the insurance proceeds did not apply to her; it is for dependents of the insured, which Ragda was not. Furthermore, only debtors can invoke exemptions, and Ragda had no claim to be the debtor.

The bankruptcy court then ordered Salem, Ragda, and Haifa to show cause why they should not be sanctioned. After receiving their responses and holding a hearing, the bankruptcy court concluded that their 2016 motions violated Federal Rule of Bankruptcy Procedure 9011 because they lacked a basis in law or evidence. The court further concluded that the motions had been filed "to harass the bankruptcy trustee, cause unnecessary delay and ... increase the cost of litigation," and actually had increased the bankruptcy estate's litigation expenses. After reviewing in detail the history of the decade-plus bankruptcy litigation and the sisters' attempts to siphon off assets controlled by Sharif (and his other creditors), the court further determined that Salem, Ragda, and Haifa displayed "repeated disregard for the facts and the law" and that "[t]ime and again, [they] have shown a complete disregard for the judicial system, making blatant attempts to circumvent it." On that basis, the court issued sanctions: it barred Salem, Ragda, and Haifa from any further filings in the bankruptcy case and fined Salem $20,000. On appeal, the district court (Judge Dow) affirmed the denial of the motions and imposition of sanctions.

These events resulted in three separate appeals to this court. We initially consolidated the appeals of the rulings on the 2016 motions and sanctions, while Haifa's appeal of the denial of her motion to vacate proceeded in parallel. We now conclude that further

consolidation is desirable. All three appeals spring from the same bankruptcy case and rest on a common factual background, and so it makes sense to resolve them together. We note that Salem has been suspended from the practice of law and, because he is proceeding *pro se*, he may represent only himself. Nevertheless, in their joint brief Haifa and Ragda adopt Salem's appellate arguments about their 2016 motions and sanctions. See Fed. R. App. P. 28(i).

II

On appeal, Haifa challenges the denial of her 2015 motion to vacate the turnover of trust assets; Haifa and Ragda challenge the denial of their 2016 motions; and the two sisters and Salem all challenge the sanctions. Each of the challenged rulings pertains to a discrete matter within the overarching bankruptcy, and the bankruptcy court disposed of each one definitively. Both the district court and this court thus have jurisdiction over the appeals. 28 U.S.C. §§ 158(a), (d)(1); *Ritzen Grp., Inc. v. Jackson Masonry, LLC*, —— U.S. ——, 140 S. Ct. 582, 586–87, 205 L.Ed.2d 419 (2020). We review the bankruptcy court's findings of fact for clear error and the legal conclusions of both the bankruptcy court and district court *de novo*, with special deference to the bankruptcy court's assessment of credibility. *In re Dimas*, 14 F.4th 634, 639–40, 642 (7th Cir. 2021). We may affirm on any basis supported by the record, as long as it was raised below and the appellants had the opportunity to contest it. *McHenry County v. Raoul*, 44 F.4th 581, 588 (7th Cir. 2022); *In re Airadigm Commc'ns, Inc.*, 616 F.3d 642, 652 (7th Cir. 2010) (bankruptcy appeal).

A. Motion to Vacate the Turnover of Trust Assets

Recall that in 2015 Haifa moved to vacate the court's order requiring the trust assets to be turned over to the bankruptcy estate. Haifa contends that this step was necessary because, after the bankruptcy court's ruling, she obtained a newer version of the second will—this one certified by a Syrian court—that proves its veracity. She repeats her argument that her mother's estate was not bound by the turnover order because she, as purported executor, never received notice.

Though Haifa primarily challenges the bankruptcy court's finding that the second will is a forgery, we can resolve her appeal without wading into that morass. Even if Haifa were really the executor, she simply waited too long to assert the estate's rights. In the bankruptcy and district courts, the trustee raised the equitable defense of laches, which cuts off the right to sue when (1) the plaintiff has inexcusably delayed bringing suit, and (2) that delay harmed the defendant. See *Teamsters & Emps. Welfare Tr. v. Gorman Bros. Ready Mix*, 283 F.3d 877, 880 (7th Cir. 2002). Haifa does not meaningfully dispute the assertion that the delay was prejudicial to the bankruptcy estate, nor could she: if the second will controls, the trustee has been allocating assets improperly for years. We therefore focus on whether the delay is excusable.

Haifa's explanation for her years-long delay in producing and seeking to enforce the second will is unconvincing. She first argues that she lacked notice of the bankruptcy proceedings or turnover order. But even if, despite being a creditor, she was not served with filings or copies of rulings, we see no error in the

bankruptcy court's determination that Haifa had actual notice. Among other things, the record shows that Haifa and Ragda filed a state-court complaint in July 2010 that discussed the bankruptcy and the alter-ego order. Haifa gives us no reason not to defer to the bankruptcy court's assessment—based on inconsistent statements in other proceedings and her participation in the state-court litigation—that Haifa's testimony about when she learned of the bankruptcy was not credible. *Dimas*, 14 F.4th at 642.

Haifa next argues that she could not act until 2015 because the Supreme Court was considering a decision of this court, which, according to Haifa had "vacated" the turnover order in Sharif's appeal. Our decision, Haifa says, meant that the probate estate was "winning the trust" back from the bankruptcy estate, and she had to wait for her brother's Supreme Court appeal to conclude. That was not the nature of Sharif's appeal. But, in any case, we issued our decision in August 2013, meaning that Haifa had three years before then to challenge the turnover order. After all, she purports to have been aware of the second will from the time it was executed in 2007 and does not explain why she did not invoke it as soon as her brother began to act as executor. Further, Haifa's assertion is simply that she was the executor, and in that capacity was entitled to notice—she never has disputed that even under her version of the will, her mother's assets passed directly to the trust, which Haifa has never controlled. In short, her reasons for waiting are muddled at best and do not outweigh the prejudice to the bankruptcy estate.

The district court gave other reasons, including collateral estoppel, for rejecting Haifa's attempt to

invalidate the turnover order. We have no reason to reach these issues and express no opinion on them.

B. The 2016 Motions

Next, both sisters assert that the district court applied the wrong standard when it reviewed the bankruptcy court's denial of their motion for leave to sue the trustee. They assert that the district court should have reversed because the bankruptcy court failed to assess whether they made a *prima facie* case for the trustee's violation of their rights. But the bankruptcy court committed no such error. In its lengthy order discussing the motion's failings, the court simply made an assessment with which they disagree.

The bankruptcy court correctly concluded that the motion did not set forth a *prima facie* case for a right to relief against the trustee. It made no case at all: the motion trails off and does not even present a complete argument. And the argument it does attempt to present is frivolous. The sisters did not explain then—nor do they now—why they could sue a Chapter 7 trustee under *Bivens*.

The Supreme Court has repeatedly "emphasized that recognizing a cause of action under *Bivens* is 'a disfavored judicial activity.' " *Egbert v. Boule*, —— U.S. ——, 142 S. Ct. 1793, 1802, 213 L.Ed.2d 54 (2022) (quoting *Ziglar v. Abbasi*, 582 U.S. 120, 135, 137 S.Ct. 1843, 198 L.Ed.2d 290 (2017)). To determine whether a plaintiff has stated a *Bivens* claim, we first must "ask whether the case presents 'a new *Bivens* context'—*i.e.*, is it 'meaningful[ly]' different from the three cases in which the Court has implied a damages action." *Id.* at 1803 (quoting *Ziglar*, 582 U.S. at 139, 137 S.Ct. 1843). If so, we consider whether

"there are 'special factors' indicating that the Judiciary is at least arguably less equipped than Congress 'to weigh the costs and benefits of allowing a damages action to proceed.' " *Id.* (quoting *Ziglar*, 582 U.S. at 136, 137 S.Ct. 1843). "[E]ven a single reason to pause" is sufficient to bar the recognition of a new *Bivens* theory. *Id.* (internal quotations omitted).

The proposed claim here fails both steps. First, there is no doubt that the sisters' claim that the Chapter 7 trustee and his counsel violated their Fifth Amendment due-process rights represents a new *Bivens* context. See *id.* at 1803 (stating that cases involving "a new category of defendants" represent new contexts (internal quotations omitted)). Second, the unique nature of a bankruptcy trustee's role is more than sufficient reason to pause before recognizing a *Bivens* action against a trustee. Trustees have attributes of both private and state actors. They are not federal employees; they are private representatives appointed or elected to protect a bankruptcy estate. See 11 U.S.C. § 701(a)(1) (granting the U.S. Trustee the power to appoint a "disinterested person" from "the panel of private trustees" as an interim trustee). Nor are Chapter 7 trustees fully on the government's payroll. Aside from a nominal fee of $60 to $120 per case, trustees are paid by the bankruptcy estate, not the federal government. See 11 U.S.C. §§ 330(b), 330(e) (nominal flat fees); 11 U.S.C. §§ 326(a), 330(a) (variable compensation tied to the value of assets in the estate). And like public defenders, who the Supreme Court has held are not state actors for purposes of section 1983 claims despite their government employment, see *Polk County v. Dodson*, 454 U.S. 312, 325, 102 S.Ct. 445, 70 L.Ed.2d 509 (1981), private trustees must represent the interests of the

bankruptcy estate, not the interests of the government. See *Dechert v. Cadle Co.*, 333 F.3d 801, 802 (7th Cir. 2003) (explaining that trustees "hav[e] fiduciary obligations exclusively to the estate in bankruptcy"). Indeed, like public defenders, trustees may sometimes find themselves to be the state's adversaries. See, *e.g.*, *United States v. Nordic Village Inc.*, 503 U.S. 30, 112 S.Ct. 1011, 117 L.Ed.2d 181 (1992) (abrogated by statute) (involving a suit brought by a trustee against the IRS).

In some contexts, however, the bankruptcy trustee may be viewed as a sort of "court officer." See Norton Bankr. L. & P. 3d § 28:1, Westlaw (database updated May 2023). From this perspective, "a trustee in bankruptcy is working in effect for the court that appointed or approved him, administering property that has come under the court's control by virtue of the Bankruptcy Code." *In re Linton*, 136 F.3d at 545. For that reason, courts have long held that a plaintiff seeking to sue a trustee "concerning actions taken by him in the course of his trusteeship must obtain the permission of the bankruptcy court." See *id.* at 545–47 (discussing the development of the doctrine and affirming its applicability to suits against trustees in state court). Relatedly, courts have recognized that trustees enjoy some degree of immunity for acts taken pursuant to court orders or within the scope of their trusteeship, though the contours of this doctrine remain unsettled. See, *e.g.*, *In re McKenzie*, 716 F.3d 404, 413 (6th Cir. 2013) (explaining that, although "[b]ankruptcy trustees serve in a variety of functions and may be immune for some but not all of those functions, ... a bankruptcy trustee is ordinarily entitled to quasi-judicial (or derivative) immunity from suit by third parties for actions taken in his official capacity"); *In re*

Harris, 590 F.3d 730, 742 (9th Cir. 2009) ("Bankruptcy trustees are entitled to broad immunity from suit when acting within the scope of their authority and pursuant to court order." (quoting *Bennett v. Williams*, 892 F.2d 822, 823 (9th Cir. 1989))).

In sum, the unique nature of the trustee's role is sufficient to counsel hesitation before recognizing an implied cause of action for money damages against a trustee, especially in light of Congress's broad power to "establish ... uniform Laws on the subject of Bankruptcies throughout the United States." U.S. Const. art. I, § 8, cl. 4. We therefore decline to recognize the proposed *Bivens* claim.

The sisters also develop no argument supporting a legal basis for Ragda to recoup the mortgage and tax payments she allegedly made, or to receive the life insurance proceeds that were payable to the trust as beneficiary (and then transferred to the bankruptcy estate). The sisters' challenges to the denial of the 2016 motions are underdeveloped and unsupported by law. Indeed, we would have been within our rights to consider them waived, see *Puffer v. Allstate Ins. Co.*, 675 F.3d 709, 718 (7th Cir. 2012), but we have attempted to address the arguments we can discern.

C. The Bankruptcy Court's Sanctions

We review for abuse of discretion the bankruptcy court's imposition of sanctions on Ragda, Haifa, and Salem. See *In re Rinaldi*, 778 F.3d 672, 676 (7th Cir. 2015). Those sanctions included a bar on further filings in the bankruptcy case plus a $20,000 fine for Salem. We find no such abuse here—indeed, we find nothing wrong with the court's action. Salem principally argues that sanctions were inappropriate

because the motions he filed were not "another attempt to obtain the same relief" sought in previous motions and were therefore not repetitive. While this may be true in the narrow sense—no party previously sought to sue the bankruptcy trustee under *Bivens*—the bankruptcy court reasonably concluded that these motions represented yet another refusal to accept its decision that the trust assets were part of the bankruptcy estate.

Salem's focus on repetitiveness misses the point. The bankruptcy court determined that *no* argument in the 2016 motions was supported by fact or law and that the motions were intended to harass the trustee and increase the cost of litigation. See Fed. R. Bankr. P. 9011(b)(1)–(2). As discussed above, the appellants present no legal basis for their motions, even as they appeal the rulings. And they do not address the bankruptcy court's finding that those motions were intended to harass the trustee and needlessly increase the cost of litigation. They offer only the bare and incorrect assertion that the bankruptcy court's lengthy sanctions order failed to address certain issues. The burden is on the appellants to tell us why the sanctions were so off-base that imposing them was an abuse of discretion. They cannot prevail when they fail to engage with the reasons why the bankruptcy court imposed, and the district court upheld, the sanctions. See *Klein v. O'Brien*, 884 F.3d 754, 757 (7th Cir. 2018). We add that barring these litigants from further filings in the bankruptcy action was a sensible response to their frivolous attempts to undermine long-settled issues.

III

We have considered appellants' other arguments, including Salem's umbrage at the documentation of his history of litigation misconduct outside of these cases and a frivolous suggestion that the sanctions chill protected speech. None has merit. We thus AFFIRM the judgments of the district courts.

Footnotes

*We have agreed to decide each of the three cases discussed in this opinion without oral argument, because the briefs and the record adequately present the facts and legal arguments, and thus oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

†An earlier version of this opinion was originally issued as a nonprecedential order. Upon request of the bankruptcy judges of the Northern District of Illinois, the court has decided to revise and re-issue it as a formal opinion.

United States District Court, N.D. Illinois, Eastern Division.
IN RE: Richard SHARIF, Debtor.
Haifa Sharifeh, Intervenor-Appellant,
v.
Horace Fox, Jr., in his capacity as the Chapter 7 Trustee of Debtor's Estate, Appellee.
Case No. 18-cv-8508
Signed September 14, 2022

On appeal from the U.S. Bankruptcy Court for the Northern District of Illinois, Eastern Division, Bankr. Case No. 09-bk-05868

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MEMORANDUM OPINION AND ORDER

Martha M. Pacold, Judge

Intervenor Haifa Sharifeh (also known as Haifa Kaj), purporting to act as executrix of the estate of Soad Wattar, filed this appeal from the bankruptcy

court's order denying her motion to vacate the bankruptcy court's earlier order directing the turnover of assets held by Wattar's trust to the bankruptcy estate. In an earlier appeal from the same order denying Haifa's motion to vacate, the prior district court judge assigned to this case remanded for the bankruptcy court to address certain issues. On remand, the bankruptcy court held evidentiary hearings addressing those matters and issued an order with factual findings that supported the court's earlier denial of Haifa's motion to vacate. Haifa now appeals. For the reasons below, the bankruptcy court's order is affirmed.

BACKGROUND

This appeal has a long and complicated history. *See Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 135 S.Ct. 1932, 191 L.Ed.2d 911 (2015); *Wellness Int'l Network, Ltd. v. Sharif*, 617 F. App'x 589 (7th Cir. 2015); *Sharifeh v. Fox (In re Sharif)*, No. 09-BK-5868, 2016 WL 5373199 (N.D. Ill. Sept. 26, 2016), *vacated in part*, 2017 WL 4310538 (N.D. Ill. Sept. 28, 2017); *Sharifeh v. Fox*, No. 11 C 8811, 2012 WL 469980 (N.D. Ill. Feb. 10, 2012). The court assumes familiarity with these prior opinions and limits recitation of the facts to only those essential to resolving the issues addressed in this appeal.

Soad Wattar had multiple children. Three of her children, Richard Sharif, Haifa, and Ragda Sharifeh are involved in this appeal. *Sharifeh v. Fox (In re Sharif)*, No. 15-cv-10694, 2017 WL 4310538, at *1 (N.D. Ill. 2017). In 1992, Wattar established a revocable trust (the "Wattar Trust"). *Id.* Wattar passed away in March 2010. *Id.* at *2.

The debtor, Richard Sharif, filed for bankruptcy in 2009, opening Case No. 09-BK-05868. *Id.* Wellness International Network, Ltd. ("WIN") had a judgment against Richard from another lawsuit and opened an adversary proceeding in the bankruptcy court. *Id.*

WIN filed a motion for sanctions against Richard based upon his failure to comply with WIN's discovery requests in the adversary proceeding, which the bankruptcy court granted on July 6, 2010 (the "Alter Ego Order"). *Id.* The Alter Ego Order granted default judgment against Richard in favor of WIN, as well as a declaratory judgment that the Wattar Trust was Richard's alter ego "because he treats its assets as his own property and it would be unjust to allow [Richard] to maintain that the [Wattar Trust] is a separate entity." [Bankr. 53] at 18.[1]

On July 30, 2010, the bankruptcy trustee ("Trustee") filed a motion for turnover to the bankruptcy estate of certain of the Wattar Trust's assets, including life insurance proceeds held by Hartford Financial Services Group and assets with Wells Fargo Advisors Financial Network, LLC. *Id.* at *3. On August 5, 2010, the bankruptcy court granted the motion and issued a corresponding order directing the turnover of the Wattar Trust's assets (the "Turnover Order"). *Id.*

After Richard's appeals to the Seventh Circuit and Supreme Court regarding the Alter Ego Order ended, on September 12, 2015, Haifa, purporting to act as executrix of Wattar's estate (the "Estate"), moved to vacate the Turnover Order under Federal Rule of Civil Procedure 60(b)(4). *Id.* at *4. Haifa asserted that the Turnover Order should be vacated because she (and therefore the Estate) were never served with notice of the bankruptcy proceeding, so the bankruptcy court

lacked personal jurisdiction over the Estate and the Turnover Order was void for violating due process. *Id.* The Trustee opposed the motion, arguing that, based upon Wattar's April 26, 2007 will, all of Wattar's assets had been left to Richard as the trustee of the Wattar Trust. *Id.* Thus, the Estate (and Haifa as executrix) had no interest in any of the assets at issue in the Turnover Order and were not entitled to notice. *Id.* In her reply, Haifa attached a document purporting to be Wattar's April 28, 2007 will (the "Second Will") that named Haifa as the executrix of Wattar's estate. *Id.* Haifa did not explain the Second Will's significance in her reply brief. *Id.*

The bankruptcy court denied the motion to vacate, concluding that Haifa had not provided any evidence or information that the assets at issue in the Turnover Order "belonged to a person or entity not then before the Court" at the time the Turnover Order was entered. *Id.*

Haifa appealed and the prior district court judge assigned to this case affirmed the bankruptcy court's order denying the motion to vacate. *Id.* at *5. Haifa moved for reconsideration. *Id.*

The prior judge granted the motion for reconsideration and remanded the case to the bankruptcy court for further proceedings. The prior judge directed the bankruptcy court to address "(1) whether [Haifa] waived her right to rely on the [Second] Will (by failing to attach it to her Rule 60(b)(4) motion or to comply with applicable evidentiary rules, or for any other reason), and (2) if there is no waiver, which version of the will is the controlling one." *Id.* at *6. The prior judge also held that the bankruptcy court was "free to invite additional briefing and hearing on any other relevant issues that it

previously identified but did not decide—such as laches and issue preclusion—and to resolve [Haifa's] motion on any of those grounds as the Court sees fit." *Id.* The prior judge further observed that the bankruptcy court was "free to explore further whether [Haifa] had actual notice of [Richard's] bankruptcy and the turnover order and to make additional findings in that regard. The Bankruptcy Court may decide that [Haifa] has waived this issue or consider it on its merits and make factual findings." *Id.* (footnote omitted). Finally, the prior judge requested the bankruptcy court address a 2007 document purporting to revoke Richard's designation as the trustee for the Wattar Trust. *Id.* at *7.

On remand, the bankruptcy court held evidentiary hearings to address the issues identified by the district court. The bankruptcy court ultimately entered an amended order holding, among other things, that Haifa waived her right to rely on the Second Will, her claims against the Trustee were barred by laches and res judicata, she had actual notice of the bankruptcy proceeding before the entry of the Turnover Order, and the Second Will was a forgery. [Bankr. 566]; [Bankr. 566-1]; [Bankr. 566-2]; [Bankr. 566-3]; [Bankr. 566-4]; [Bankr. 566-5].

Haifa filed this appeal.

LEGAL STANDARDS

This court sits as an appellate court when hearing appeals from bankruptcy courts. *Dvorkin Holdings, LLC*, 547 B.R. 880, 886 (N.D. Ill. 2016). "The Bankruptcy Court's factual findings are scrutinized for clear error, while its legal conclusions are reviewed *de novo*." *Id.* "If the bankruptcy court's account of the evidence is plausible in light of the record viewed in its

entirety, the reviewing court will not reverse its factual findings even if the Court would have weighed the evidence differently." *Duggisetty v. Layng*, No. 20 C 2026, 2020 WL 6132233, at *3 (N.D. Ill. Oct. 19, 2020). "A factual finding is clearly erroneous if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Id.* (internal quotation marks omitted).

DISCUSSION

I. Violation Of Bankruptcy Rule 8014

Haifa's briefing does not comply with Federal Rule of Bankruptcy Procedure 8014. Bankruptcy Rule 8014(a) requires an appellant's opening brief to include, among other things: a table of contents, a table of authorities, a jurisdictional statement, "a statement of the issues presented and, for each one, a concise statement of the applicable standard of appellate review," a concise statement of the case setting out the relevant facts and procedural history, and a summary of argument. Haifa's brief contains none of these items.

"Bankruptcy Rule 8014 is not only a technical or aesthetic provision, but also has a substantive function—that of providing the other parties and the court with some indication of which flaws in the appealed order or decision motivate the appeal." *Town of Hingham v. Sirikanjanachai (In re Sirikanjanachai)*, BAP No. 18-059, 2019 WL 6605858, at *3 (B.A.P. 1st Cir. Dec. 4, 2019) (internal quotation marks omitted). "Appellate rules governing the form of briefs do not exist merely to serve the whimsy of

appellate judges. Some of the requirements ... are essential for the proper disposition of an appeal." *Id.* (internal quotation marks omitted) (ellipsis in original).

Here, the bankruptcy court's order is lengthy, addresses a significant number of issues, and analyzes days of witness testimony. The accompanying record is voluminous, and the procedural history spans a decade with numerous appeals and related proceedings. To say the least, Haifa's failure to comply with Bankruptcy Rule 8014 greatly increases the difficulty of discerning the relevant materials and resolving her appeal.

"A court is not required to overlook the procedural and substantive omissions in a party's briefing and to stitch together a cogent argument or to guess what part of the record might be relevant." *Id.* Many arguments and assertions made throughout Haifa's briefs lack any citation to the record or supporting legal authority. Challenges to the bankruptcy court's order that "are wholly unsupported by developed argument citing the record and supporting authority" are forfeited. *Wine & Canvas Dev., LLC v. Muylle*, 868 F.3d 534, 538 (7th Cir. 2017). Nevertheless, the court will still address the merits of Haifa's arguments even though many of her arguments are waived. *See Pesmen v. Bannockburn Lake Office Plaza Assocs. Ltd.*, No. 98 C 5437, 1999 WL 356307, at *3 (N.D. Ill. May 24, 1999) ("Although Pesmen's briefing errors are significant enough to doom his appeal, the Court moves forward for the sake of completeness.").

II. Collateral Estoppel

The Trustee contends that the bankruptcy court's order should be affirmed on the alternative ground that Haifa's motion to vacate was barred by collateral estoppel (also known as issue preclusion) because a court has already determined that the Estate has no interest in the assets subject to the Turnover Order, meaning Haifa was not entitled to notice of the Turnover Order.

In 2016, Haifa, purporting to act as executrix for the Estate, and Ragda filed suit against Hartford and Wells Fargo alleging breach of contract, breach of fiduciary duty, and negligence based upon Hartford and Wells Fargo's compliance with the Turnover Order and transfer of Wattar's life insurance proceeds and the Wattar Trust's assets to the bankruptcy estate. *Estate of Soad Wattar v. Hartford Life & Annuity Ins. Co.*, No. 16-cv-04397, ECF 1 (Apr. 18, 2016). Haifa claimed that the Estate had an interest in these assets and alleged, for example, that "Wells Fargo had been holding assets belonging to the entity, Soad Wattar Revocable Living Trust" that, after Soad Wattar passed away, "belonged to the ... the Estate." *Id.* ¶ 4; *see also id.* ¶¶ 15–16.

Hartford and Wells Fargo moved to dismiss. Wells Fargo argued, among other things, that the Estate lacked standing because the assets held by Wells Fargo were owned by the Wattar Trust and not the Estate. *Estate of Soad Wattar v. Hartford Life & Annuity Ins. Co.*, No. 16-cv-04397, ECF 28 at 9 (N.D. Ill. June 24, 2016). Specifically, Wells Fargo argued that "because the assets were owned by the [Wattar] Trust and did not become property of [the Estate] even after her passing, [the Estate] ha[d] no property

interest in the affected assets and thus suffered no injury in fact when the [Wattar] Trust's assets were turned over to the bankruptcy trustee." *Id.* at 10–11. Hartford also argued that the Estate had no interest in the life insurance policy proceeds and therefore lacked standing as to its claims against Hartford. *Estate of Soad Wattar v. Hartford Life & Annuity Ins. Co.*, No. 16-04397, ECF 25 at 29 (N.D. Ill. June 24, 2016).

The district court granted the motions. Reviewing the life insurance policy, the court held that "[t]he [E]state holds no interest in the insurance proceeds" and therefore could not show that it was "injured by Hartford's conduct." *Estate of Soad Wattar v. Hartford Life & Annuity Ins. Co.*, No. 16-04397, ECF 46 at 6 (Feb. 10, 2017). The court further held that the Estate "fail[ed] to plausibly allege that [it] held an interest in the assets transferred by Wells Fargo." *Id.* at 7. Accordingly, the court concluded that "[w]ithout an interest in the assets transferred by Hartford or Wells Fargo, plaintiffs could not have been injured by those transfers" and lacked standing. *Id.* The court also determined that Ragda and Haifa could not amend the complaint to cure these defects and therefore dismissed the complaint without prejudice and entered final judgment. *Id.* at 11–12; *Estate of Soad Wattar v. Hartford Life & Annuity Ins. Co.*, No. 16-04397, ECF 47 (Feb. 10, 2017).

"[B]ecause the decision sought to be given preclusive effect was rendered by a federal court, federal preclusion law applies." *U.S. ex rel. Conner v. Mahajan*, 877 F.3d 264, 270 (7th Cir. 2017). Collateral estoppel applies if "(1) the issue sought to be precluded is the same as that involved in the prior action; (2) the issue was actually litigated; (3) the determination of the issue was essential to the final judgment; and (4) the

party against whom estoppel is invoked was fully represented in the prior action." *Dexia Credit Local v. Rogan*, 629 F.3d 612, 628 (7th Cir. 2010).

Haifa disputes only the second element. Haifa argues that "the issue was not actually litigated ... because [the court] dismissed the claim without prejudice" and "not on the merits." [80] at 6. But collateral estoppel applies even if a claim is dismissed without prejudice based on a jurisdictional defect—a claim need not be litigated "on the merits." *Robinson v. Sherrod*, 631 F.3d 839, 843 (7th Cir. 2011) (observing that "[c]ollateral estoppel (issue preclusion) will bar relitigation of the grounds on which the present suit was dismissed" even though the plaintiff's suit was dismissed "without prejudice" and there was "no ruling on the merits of his claim"); *Carr v. Tillery*, 591 F.3d 909, 917 (7th Cir. 2010) ("[A] dismissal can be without prejudice yet have preclusive effect."); *Perry v. Sheahan*, 222 F.3d 309, 318 (7th Cir. 2000) ("Although only judgments on the merits preclude parties from litigating the same cause of action in a subsequent suit, that does not mean that dismissals for lack of jurisdiction have no preclusive effect at all. A dismissal for lack of jurisdiction precludes relitigation of the issue actually decided, namely the jurisdictional issue.").

Haifa also contends that the district court's decision is incorrect because the court did not have all the facts before it, as Haifa asserts that she did not have the Second Will during the litigation against Hartford and Wells Fargo. [80] at 5–6. As a factual matter, Haifa's assertion that she could not submit the Second Will is false. Haifa attached the Second Will to her reply in support of her motion to vacate the Turnover Order filed in November 2015, [Bankr. 228-1] at 50–56, that was filed months before Haifa and Ragda

filed suit against Hartford and Wells Fargo in April 2016. Regardless, the correctness of the earlier decision is not a factor in determining whether collateral estoppel applies. *Gulf Power Co. v. FCC*, 669 F.3d 320, 324 (D.C. Cir. 2012) ("[I]f an issue can be turned into a new issue merely by asking whether it had been rightly decided, collateral estoppel would never apply."); *Del. River Port Auth. v. Fraternal Order of Police*, 290 F.3d 567, 576 (3d Cir. 2002) ("Error in a prior judgment is not a sufficient ground for refusing to give it preclusive effect."). Haifa cites no authority that holds otherwise.

Haifa also appears to argue that applying collateral estoppel here would be unfair, but she does not explain how. And the authorities she cites in support apply Illinois, not federal, preclusion law. *See Goodwin v. Bd. of Trs. of Ill.*, 442 F.3d 611, 620–21 (7th Cir. 2006); *Herzog v. Lexington Twp.*, 167 Ill. 2d 288, 212 Ill.Dec. 581, 657 N.E.2d 926 (1995).

Finally, Haifa contends that this issue was not raised in the bankruptcy court. This issue, however, was directly raised by the Trustee on remand. [Bankr. 448] at 2–3. Although the bankruptcy court did not decide this issue, this court may affirm the bankruptcy court's order "on any ground supported by the record." *Peterson v. Anyone Home, Inc. (In re Mack Indus., Ltd.)*, No. 21 CV 1457, 2021 WL 4815270, at *3 (N.D. Ill. Aug. 2, 2021); *Murphy v. Slack*, No. 06 C 2091, 2006 WL 2583726, at *2 (N.D. Ill. Sept. 5, 2006); *see also Marx v. M & I Bank of Watertown*, 17 F.3d 1012, 1014 n.3 (7th Cir. 1994) ("It is well settled that we may affirm the district court on any ground that finds support in the record." (internal quotation marks omitted)).

Accordingly, the bankruptcy court's denial of Haifa's motion to vacate is affirmed because the motion is barred by collateral estoppel.

III. Personal Jurisdiction And Actual Notice

The bankruptcy court concluded that the Turnover Order did not violate due process because Haifa (and therefore the Estate) had actual notice of the bankruptcy proceeding, including the Alter Ego Order and the Turnover Order. [Bankr. 566-4] at 8–10. "Due process requires notice 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' " *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 272, 130 S.Ct. 1367, 176 L.Ed.2d 158 (2010) (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)). Actual notice of a bankruptcy proceeding can satisfy due process. *Id.*; *In re Pence*, 905 F.2d 1107, 1109 (7th Cir. 1990) ("Due process does not always require formal, written notice of court proceedings; informal actual notice will suffice."). To determine whether notice is sufficient, the court must examine "the totality of the circumstances" to ensure that the notice provided the interested party with adequate opportunity to present objections. *In re Hardej*, 563 B.R. 855, 864 (N.D. Ill. 2017); *In re Marino*, 195 B.R. 886, 895 (N.D. Ill. 1996).

Haifa has not shown that the bankruptcy court erred when it determined that Haifa had actual notice. Although Haifa stated during the evidentiary hearings before the bankruptcy court that she was not aware of the Alter Ego Order until 2011, she also testified that

she had a discussion with her family about the Order shortly after it was entered in July 2010. [Bankr. 552] at 352–54. Indeed, on July 15, 2010, Haifa and Ragda filed a lawsuit in the Circuit Court of Cook County against Richard that discussed both the WIN adversary proceeding as well as the Alter Ego Order. [14-19] at 14–15; *see also* [14-10] at 5–6 (amended complaint filed on July 30, 2010, discussing the same). Addressing that lawsuit, Richard testified that he was cooperating with his "sisters" (*i.e.*, both Ragda and Haifa) because he had "an interest for them to succeed to get their trust back." [Bankr. 553] at 625. Separately, Ragda filed multiple pleadings acknowledging that she filed the Circuit Court of Cook County lawsuit with Haifa. [Bankr. 65] ¶¶ 18, 22 ("Ragda Sharifeh and Haifa Kaj ... caused a complaint to be filed in the Circuit Court of Cook County."); [Bankr. 68] ¶¶ 13, 17 (similar); [14-31] ¶¶ 19, 23 (similar). Based upon this evidence, Haifa was aware of the bankruptcy proceeding, including the Alter Ego Order holding that Richard was the alter ego of the Wattar Trust, weeks before the Turnover Order was entered on August 5, 2010.

Haifa does not dispute that, accepting these facts, she had notice adequate to satisfy due process. Instead, she challenges the facts and contends that she had no notice of the bankruptcy proceedings before the Turnover Order was entered. Among other evidence, Haifa points to her testimony that she did not learn about the bankruptcy proceedings until 2011 and was not involved in the litigation against Richard, as well as the testimony from a variety of witnesses about Haifa's poor relationship with her siblings around 2009 and 2010. Ragda also testified that Haifa was not part of the litigation against Richard.

The bankruptcy court, however, ultimately found that neither Haifa nor Ragda was credible. [Bankr. 566-1] at 5, 8; [Bankr. 566-2] at 4, 9; *see also* [566-3] at 8 (observing that Richard "has little credibility"). Appellate courts "are especially deferential toward [the] trial court's assessment of witness credibility." *Dimas v. Stergiadis (In re Dimas)*, 14 F.4th 634, 642 (7th Cir. 2021) (internal quotation marks omitted) (alteration in original). The court discerns no basis to upset the bankruptcy court's credibility findings.

Ultimately, "it is for the bankruptcy court to assess the credibility of witnesses and weigh evidence, and [the district court] will not second guess the [bankruptcy] court's resolution of conflicting evidence." *Freeland v. Enodis Corp.*, 540 F.3d 721, 734 (7th Cir. 2008). Haifa has not shown any basis to disturb the bankruptcy court's determination that Haifa had actual notice that satisfied due process.

IV. Waiver Regarding The Second Will

The bankruptcy court also held that Haifa waived her ability to rely upon the Second Will by failing to present it with her motion to vacate and instead waiting to submit it with her reply. [Bankr. 566] at 5; [Bankr. 566-3] at 10; [Bankr. 566-5] at 4. Again, the court finds no basis to overturn the bankruptcy court's holding.

Courts have discretion over whether to consider new evidence submitted for the first time in reply. *See Black v. TIC Inv. Corp.*, 900 F.2d 112, 116 (7th Cir. 1990) ("In view of its tardy submission, it is for the district court to decide whether or not to consider Slife's affidavit."). Courts regularly exercise that

discretion and refuse to consider such untimely evidence. *See, e.g.*, *Meek v. Archibald & Meek, Inc.*, No. 21-cv-02397, 2021 WL 2036535, at *3 (N.D. Ill. May 21, 2021) ("It is well-established that a reply brief should not present new arguments or incorporate new evidence for arguments that were not properly supported in an opening brief."); *cf. Mason v. S. Ill. Univ. at Carbondale*, 233 F.3d 1036, 1043 (7th Cir. 2000) ("Because Mason does not dispute this conclusion until his reply brief, this new argument is waived.").

Here, it is undisputed that Haifa did not submit the Second Will until her reply brief in support of her motion to vacate. [Bankr. 228-1] at 35–41. Even then, she did not explain the Second Will's significance. *See* [Bankr. 228]. Thus, it was up to the discretion of the bankruptcy court whether to consider the Second Will. The bankruptcy court declined to do so, and the court discerns no basis on which to reverse that decision.

Haifa argues that she had no obligation to present the Second Will with her motion. But, as the movant, Haifa had the burden of proof to show that the Turnover Order should be vacated. *See Trade Well Int'l v. United Cent. Bank*, 825 F.3d 854, 861 (7th Cir. 2016). The premise of Haifa's motion was that Haifa, as executrix for the Estate, had not been served with process before the Turnover Order was entered and that the bankruptcy court therefore lacked personal jurisdiction over the Estate and could not order the turnover of the Estate's assets. *See* [Bankr. 194]. Haifa was therefore obligated to present evidence that she was in fact the Estate's trustee, executrix, or otherwise had any claim to represent the Estate.[2] Indeed, the bankruptcy court originally denied Haifa's motion because Haifa had not shown what her relationship was

with the Estate or why she was entitled to notice of the Turnover Order. [Bankr. 232] at 4–6. Haifa contends that "there is a presumption made when a company or person first appears in an action that they are who they say they are" but cites no authority in support—waiving the argument. [74] at 5; *see Schaefer v. Universal Scaffolding & Equip., LLC*, 839 F.3d 599, 607 (7th Cir. 2016) ("Perfunctory and undeveloped arguments are waived, as are arguments unsupported by legal authority."). Haifa also ignores that she, as the movant, bore the burden of establishing her entitlement to relief. Here, that meant putting forth evidence that she had an interest in the assets at issue in the Turnover Order. For this same reason—that Haifa as the movant had the burden—her argument that establishing her relationship with the Estate was an "affirmative defense," [74] at 5, is unpersuasive.

Haifa also argues that whether she waived reliance on the Second Will was, in turn, waived by the Trustee because the Trustee did not raise the issue in his response to Haifa's motion to vacate. This is a nonsequitur. First, the bankruptcy court had discretion whether to receive untimely evidence, regardless of whether the Trustee objected. Second, the Trustee could not be expected to object in his response brief to consideration of the Second Will that was not submitted until after the Trustee's response.

Without the Second Will, Haifa had no evidence that she was the executrix of the Estate and, in turn, no evidence that she had an interest in any of the assets at issue in the Turnover Order. Thus, Haifa has not shown that she was entitled to notice, as the bankruptcy court concluded when the court denied her motion to vacate.

V. Other Issues

The bankruptcy court's order addressed numerous other issues that supported denial of Haifa's motion to vacate. The court concluded that Haifa had notice through her agents Richard and Richard's attorney (who the bankruptcy court concluded were acting on the Estate's behalf), Haifa waived personal jurisdiction objections by participating in the bankruptcy proceeding through both Richard and his attorney, and the appeal of the Alter Ego order therefore also bound Haifa and the Estate through res judicata. The court further concluded that Haifa's motion was barred by laches and the Second Will was a forgery. The Trustee also argues for affirmance on the alternative ground that Haifa and the Estate have no interest in the Wattar Trust. The bankruptcy court also determined that the November 1, 2007 Revocation of Trustee was invalid.

The court does not reach these issues because, as explained above, there are already multiple grounds that independently support affirmance of the bankruptcy court's denial of Haifa's motion to vacate. Because resolution of these issues does not alter the ultimate disposition of this appeal, the court does not address them.

CONCLUSION

For the foregoing reasons, the bankruptcy court's order is affirmed. Enter final judgment.

1Bracketed numbers preceded by "Bankr." refer to docket entries in the bankruptcy proceeding, Case No. 09-BK-05868, and are followed by page and / or

paragraph numbers. Bracketed numbers without "Bankr." refer to docket entries in this appeal. All page numbers refer to the CM/ECF page number.

2Haifa, in fact, did not even explain her relationship to the Estate in her reply brief that attached the Second Will. [Bankr. 228].

5/24/23

United States Court of Appeals, Seventh Circuit.

No. 17–1615

ESTATE OF Soad WATTAR, et al., Intervenors-Appellants,
v.
Horace FOX, Jr., Trustee-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 16-cv-4699 — **Robert M. Dow, Jr.**, *Judge.*

No. 18–2197

In re: Richard Sharif. Debtor,

Appeal of: Maurice Salem

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 17-cv-1500 — **Robert M. Dow, Jr.**, *Judge.*

No. 22–2826

Haifa Sharifeh, Intervenor-Appellant,
v.
Horace Fox, Jr., Trustee-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 18-cv-8508 — **Martha M. Pacold**, *Judge.*

Attorneys and Law Firms

ORDER

Appellant, Maurice J. Salem, filed a petition for rehearing and rehearing en banc on May 9, 2023. No judge in regular active service has requested a vote on the petition for rehearing en banc, and all members of the original panel have voted to deny panel rehearing. The petition for rehearing en banc is therefore DENIED.