

No. 26-_____

**IN THE
SUPREME COURT OF THE UNITED STATES**

MYER'S LAWN CARE SERVICES, INC.

Petitioner

v.

ROBERT L. PRYOR, TRUSTEE and RUSSELL FRAGALA

Respondents

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Second Circuit**

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

TABLE OF CONTENTS

Court of Appeal's Amended Summary Order.....	1a
Court of Appeal's Order Denying Petition for Panel Rehearing.....	7a
Court of Appeal's Summary Order.....	8a
Court of Appeal's Order Denying Petition for Panel Rehearing.....	13a
District Court's Opinion and Order.....	14a
District Court's Memorandum and Order.....	56a
Bankruptcy Court's Decision After Trial.....	60a
Bankruptcy Court's Order.....	78a

24-2345-bk
Myer's Lawn Care Servs., Inc. v. Pryor

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

AMENDED SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 8th day of October, two thousand twenty-five.

PRESENT:

REENA RAGGI,
GERARD E. LYNCH,
MICHAEL H. PARK,
Circuit Judges.

IN RE: RUSSELL FRAGALA,
Debtor.

MYER'S LAWN CARE SERVICES, INC.,
Creditor-Appellant.

v.

24-2345-bk

ROBERT L. PRYOR,
*Trustee-Appellee.**

FOR CREDITOR-APPELLANT:

WILLIAM M. BURKE, William M. Burke,
P.C., Manchester, MD

FOR TRUSTEE-APPELLEE:

ROBERT L. PRYOR, Pryor & Mandelup,
L.L.P., Westbury, NY

* The Clerk of Court is respectfully directed to amend the caption accordingly.

Appeal from the August 14, 2024 judgment of the United States District Court for the Eastern District of New York (Choudhury, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Appellant Myer's Lawn Care Services, Inc. ("Myer's") filed a proof of claim in Russell Fragala's individual Chapter 7 bankruptcy case, alleging that Fragala personally owed a debt to Myer's arising out of contracts between Myer's and the Russ Fragala Landscape Corporation (the "Corporation"). The bankruptcy court granted a motion filed by the Chapter 7 trustee, Appellee Robert L. Pryor, to expunge Myer's' claim in its entirety. The district court upheld the ruling on appeal, and Myer's now appeals to this Court. We assume the parties' familiarity with the underlying facts, the rulings by the bankruptcy court and district court, and the issues on appeal.

"The [[d]istrict [[c]ourt operated as an appellate court in its review of the [[b]ankruptcy [[c]ourt's judgment, and we too, in turn, engage in plenary, or de novo, review of the [[d]istrict [[c]ourt's decision. We thus apply the same standard of review that the [[d]istrict [[c]ourt employed, reviewing the bankruptcy court's findings of fact for clear error and its legal determinations de novo." *In re Tingling*, 990 F.3d 304, 307 (2d Cir. 2021) (alterations added; italics, citations, and quotation marks omitted).

The bankruptcy court correctly determined that Pryor's motion to expunge Myer's' proof of claim was timely. Pryor brought the motion under Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 3007 or, alternatively, Bankruptcy Rule 3008. Under Bankruptcy Rule 3007, "[a]n objection to a claim . . . must be filed and served at least 30 days before a scheduled hearing on the objection or any deadline for the claim holder to request a hearing." Fed. R. Bankr. P. 3007(a)(1). When Pryor filed the motion, the bankruptcy court had not scheduled any hearing

on claim objections or set any deadline for claim holders to request a hearing on claim objections, nor had the court set its own deadline for filing claim objections. By the plain terms of Bankruptcy Rule 3007, Pryor's motion was timely. See also *In re Best Payphones, Inc.*, 523 B.R. 54, 68 (Bankr. S.D.N.Y. 2015) (“[B]ankruptcy law does not impose a statute of limitations on claims objections.”); *In re Tesmetges*, 87 B.R. 263, 269 (Bankr. E.D.N.Y. 1988) (“The trustee may object to any proof of claim right up to the time the case is ready to be closed in a Chapter 7 case.”).

Myer's argues that Pryor was barred from filing his motion to expunge under res judicata based on the bankruptcy court's ruling in a separate adversary proceeding. There, the court held that Myer's had “an allowed claim” because it was “uncontested.” ECF No. 2-21,¹ at 83-84. But the adversary proceeding was between only Myer's and Fragala—Pryor was not a party. “A person who was not a party to a suit generally has not had a full and fair opportunity to litigate the claims and issues settled in that suit,” and, as a result, such a nonparty typically cannot be bound by that suit. *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008) (quotation marks omitted).² While this rule is subject to an exception where there is a “substantive legal relationship[] between the person to be bound and a party to the judgment,” the relationship between Fragala and Pryor does not qualify. *Id.* at 894 (quotation marks omitted). The Third Circuit has explained that “even though a trustee in bankruptcy has a substantive legal relationship with the pre-bankruptcy debtor, the trustee is not simply the successor in interest to the [d]ebtor: he represents the interests of all

¹ All ECF citations are to *Myer's Lawn Care Services, Inc. v. Pryor*, Case No. 2:23-cv-03346, E.D.N.Y.

² Myer's argues in its reply brief that the preclusion standard espoused in *Taylor v. Sturgell* does not apply to bankruptcy proceedings. It claims that the relevant standard is instead laid out in *EDP Medical Computer Systems, Inc. v. United States*, 480 F.3d 621, 624 (2d Cir. 2007). Even if Myer's had not forfeited this point by failing to raise it in its opening brief, the argument is incorrect as a matter of law. See *Esquire Trade & Fin., Inc. v. CBQ, Inc.*, 562 F.3d 516, 520-21 (2d Cir. 2009) (citing *EDP Medical* for general res judicata test as applied to bankruptcy proceedings before noting that *Taylor* applies insofar as *Taylor* modifies *EDP Medical's* privity analysis).

creditors of the [d]ebtor's bankruptcy estate." *In re Montgomery Ward, LLC*, 634 F.3d 732, 738 (3d Cir. 2011) (quotation marks omitted and alterations added). As a result, where there are "misaligned incentives," the trustee and debtor lack a "substantive legal relationship . . . of the kind contemplated in *Taylor*." *Id.* In the adversary proceeding, Myer's sought a declaration that its claim was non-dischargeable so that the debt would survive Fragala's bankruptcy. Fragala was therefore incentivized to argue only that the claim not non-dischargeable. It did not matter to Fragala whether the claim was otherwise valid, in which case Myer's would become a creditor of the estate and Fragala would not be liable to Myer's outside of bankruptcy. Pryor, meanwhile, as the representative of the creditors, was tasked with "[p]reserv[ing] the property of the estate for the purpose of maximizing distributions," *Surabian v. Picard*, 2014 WL 917091, at *2 (S.D.N.Y. Mar. 7, 2014), a responsibility that included "examin[ing] proofs of claims and object[ing] to the allowance of any claim that [was] improper," 11 U.S.C. § 704(a)(5).³ Given this divergence, Pryor's interests were not represented during the adversary proceeding, and he could not be bound under nonparty preclusion.⁴ Res judicata thus did not preclude Pryor from filing his motion to expunge.

The bankruptcy court did not err in granting Pryor's motion on the merits. Myer's claims

³ Pryor's obligation to "examine proofs of claims" for impropriety would be triggered only "if a purpose would be served" by such assessment. 11 U.S.C. § 704(a)(5). The Bankruptcy Code thus contemplates that a trustee would have no interest in the merits of any given proof of claim in the event of a no-asset bankruptcy. *See id.*; *cf.* Fed. R. Bankr. P. 2002(e) ("In a Chapter 7 case, if it appears from the schedules that there are no assets from which to pay a dividend, . . . filing proofs of claim is unnecessary."). Here, the parties do not dispute that when the adversary proceeding was brought—and for much of the period during which it was pending—Fragala's personal estate appeared to have no assets available for distribution. This fact reinforces the conclusion that Fragala did not represent Pryor's interests, which did not even materialize until well into the adversary proceeding.

⁴ Myer's asserts that Pryor could have challenged the validity of its claim only by filing in the adversary proceeding a motion under Bankruptcy Rule 9024, which incorporates Federal Rule of Civil Procedure 60's standard for relief from a judgment. But because Pryor was not bound by the judgment in the adversary proceeding, he had no obligation to do so and was free to file his motion to expunge in accordance with Bankruptcy Rule 3007.

that Fragala is personally liable for the Corporation's alleged debts because he used the Corporation to defraud Myer's. The parties dispute whether Myer's forfeited this fraud argument for piercing the corporate veil by failing to make it before the bankruptcy court when opposing Pryor's motion in the Chapter 7 case despite raising a fraud argument earlier in the separate adversary proceeding. Assuming without deciding that Myer's did not forfeit the fraud argument in this case, we hold that the argument fails on the merits. Under Maryland and New York law, a party asserting fraudulent inducement to pierce a corporate veil must affirmatively prove that a false representation was made for the purpose of defrauding that party. See *Dynacorp Ltd. v. Aramtel Ltd.*, 56 A.3d 631, 660 (Md. App. 2012); *New Hackensack Realty, LLC v. Lawrence Dev. Realty, LLC*, 226 A.D.3d 799, 801 (2d Dep't 2024).⁵ In the adversary proceeding, the bankruptcy court found that Myer's did not carry this burden. The court determined that, except for one conclusory affidavit, Myer's "did not present any evidence . . . to prove that Fragala knew when [the Corporation] and Myer's entered into the [contracts] . . . that he was going to hold Myer's liable . . . for damages it did not cause." ECF No. 2-21, at 85. The bankruptcy court instead found that "[w]hile Fragala may have made false statements" at the time the contracts were breached, "all this would amount to is a false representation as to why [the Corporation] failed to pay Myer's." *Id.* "The alleged false representation," the court explained, "came after the services were provided and the debt incurred." *Id.* at 86. In sum, the bankruptcy court concluded that there was no evidence that Fragala intended to use the Corporation to defraud Myer's at the time the contracts were formed. We identify no basis to conclude that the bankruptcy court clearly erred in these factual findings. Myer's' efforts to pierce the corporate

⁵The parties dispute whether Maryland or New York law governs the veil-piercing analysis. We do not decide this issue because the relevant legal standards are the same in both jurisdictions. See also *infra* at 6.

veil and to hold Fragala personally liable thus fail on the merits.

We also reject the argument that Fragala forfeited a corporate veil defense when he individually answered Myer's' complaint and filed a counter-complaint in the Maryland case. Under Maryland and New York law, the corporate-veil doctrine is not a defense the defendant can forfeit; rather, the plaintiff bears the burden of showing the defendant committed fraud that warrants piercing the corporate veil. See *Turner v. Turner*, 809 A.2d 18, 62 (Md. App. 2002); *TNS Holdings, Inc. v. MKI Sec. Corp.*, 92 N.Y.2d 335, 339 (1998). Myer's' forfeiture argument thus runs afoul of the law on veil piercing and cannot provide a basis for holding Fragala personally liable for the Corporation's conduct.

We have considered all of Myer's' remaining arguments and find them to be without merit.

For the foregoing reasons, the judgment of the district court is **AFFIRMED**.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

A handwritten signature in cursive script, reading "Catherine O'Hagan Wolfe". The signature is written in black ink and is positioned to the right of a circular court seal.



UNITED STATES COURT OF APPEALS
for the
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 30th day of October, two thousand twenty-five,

Present: Reena Raggi,
 Gerard E. Lynch,
 Michael H. Park,

 Circuit Judges,

In Re: Russell Fragala,

 Debtor.

ORDER
Docket No. 24-2345

Myer's Lawn Care Services, Inc.,

 Creditor - Appellant,

v.


Robert L. Pryor,


 Trustee - Appellee.

Appellant Myer's Lawn Care Services, Inc., having filed a petition for panel rehearing and the panel that determined the appeal having considered the request,

IT IS HEREBY ORDERED that the petition is DENIED.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court

 Catherine O'Hagan Wolfe



24-2343-bk
Myer's Lawn Care Servs., Inc. v. Fragala

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 7th day of October, two thousand twenty-five.

PRESENT:

REENA RAGGI,
GERARD E. LYNCH,
MICHAEL H. PARK,
Circuit Judges.

IN RE: RUSSELL FRAGALA,
Debtor.

MYER'S LAWN CARE SERVICES, INC.,
Creditor-Plaintiff-Appellant.

v.

24-2343-bk

RUSSELL FRAGALA,
*Debtor-Defendant-Appellee.**

FOR CREDITOR-PLAINTIFF-APPELLANT:

WILLIAM M. BURKE, William M. Burke,
P.C., Manchester, MD

FOR DEBTOR-DEFENDANT-APPELLEE:

Russell Fragala, pro sc, Lake Grove, NY

* The Clerk of Court is respectfully directed to amend the caption accordingly.

Appeal from the August 16, 2024 judgment of the United States District Court for the Eastern District of New York (Choudhury, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Appellant Myer's Lawn Care Services, Inc. ("Myer's") filed a proof of claim in Appellee Russell Fragala's individual Chapter 7 bankruptcy case. Myer's then brought an adversary proceeding seeking a declaration that the claim was non-dischargeable. The bankruptcy court ruled that the claim was dischargeable, and Myer's appealed the ruling to the district court. The bankruptcy court later issued an order expunging the proof of claim in the Chapter 7 proceeding, and the district court affirmed that order on appeal. The district court then dismissed the dischargeability appeal as moot. Myer's appealed the mootness ruling to this Court. We assume the parties' familiarity with the underlying facts and the rulings by the bankruptcy court and district court.

"We review *de novo* the district court's conclusion that [a party's] claims are moot." *County of Suffolk, N.Y. v. Sebelius*, 605 F.3d 135, 139 (2d Cir. 2010).

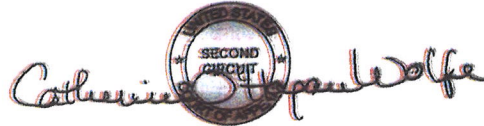
"The duty of an Article III court is to decide live controversies, not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. Accordingly, when, during the pendency of an appeal, events occur that would prevent the appellate court from fashioning effective relief, the appeal should be dismissed as moot." *In re Chateaugay Corp.*, 988 F.2d 322, 325 (2d Cir. 1993) (quotation marks and citations omitted); see *Fox v. Bd. of Trs. of State Univ. of N.Y.*, 42 F.3d 135, 140 (2d Cir. 1994) ("When a case becomes moot, the federal courts lack subject matter jurisdiction over the action.") (quotation marks omitted and alterations adopted).

The bankruptcy court expunged the proof of claim by Myer's against Fragala's bankruptcy estate, and we uphold that ruling in a summary order issued today in *Myer's Lawn Care Services, Inc. v. Pryor*, No. 24-2345. Myer's no longer has a claim in Fragala's bankruptcy case, so there is no "live controvers[y]" over whether the claim is dischargeable. *Chateaugay*, 988 F.2d at 325. The appeal of the dischargeability order is thus moot.

For the foregoing reasons, the judgment of the district court is **AFFIRMED**.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

The image shows a handwritten signature in cursive that reads "Catherine O'Hagan Wolfe". The signature is written over a circular seal. The seal features the text "SECOND CIRCUIT" in the center, with "U.S. COURT OF APPEALS" around the perimeter. The signature is written in dark ink and is positioned to the right of the seal.

**United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007**

DEBRA ANN LIVINGSTON
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

Date: October 7, 2025

Docket #: 24-2343

Short Title: In Re: Russell Fragala

DC Docket #: 2:22-cv-5980

DC Court: EDNY (CENTRAL
ISLIP)

DC Judge: Trial Judge - Nusrat Jahan
Choudhury

BILL OF COSTS INSTRUCTIONS

The requirements for filing a bill of costs are set forth in FRAP 39. A form for filing a bill of costs is on the Court's website.

The bill of costs must:

- * be filed within 14 days after the entry of judgment;
- * be verified;
- * be served on all adversaries;
- * not include charges for postage, delivery, service, overtime and the filer's edits;
- * identify the number of copies which comprise the printer's unit;
- * include the printer's bills, which must state the minimum charge per printer's unit for a page, a cover, foot lines by the line, and an index and table of cases by the page;
- * state only the number of necessary copies inserted in enclosed form;
- * state actual costs at rates not higher than those generally charged for printing services in New York, New York; excessive charges are subject to reduction;
- * be filed electronically or if counsel is exempted with the original and two copies.

**United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007**

DEBRA ANN LIVINGSTON
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

Date: October 7, 2025
Docket #: 24-2343
Short Title: In Re: Russell Fragala

DC Docket #: 2:22-cv-5980
DC Court: EDNY (CENTRAL ISLIP)
DC Judge: Trial Judge - Nusrat Jahan Choudhury

VERIFIED ITEMIZED BILL OF COSTS

Counsel for

respectfully submits, pursuant to FRAP 39 (c) the within bill of costs and requests the Clerk to prepare an itemized statement of costs taxed against the

and in favor of

for insertion in the mandate.

Docketing Fee _____

Costs of printing appendix (necessary copies _____) _____

Costs of printing brief (necessary copies _____) _____

Costs of printing reply brief (necessary copies _____) _____

(VERIFICATION HERE)

Signature

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 28th day of February, two thousand twenty-five.

Before: Alison J. Nathan,
Circuit Judge.

In Re: Russell Fragala
Debtor,

ORDER

Docket No. 24-2343

Myers Lawn Care Services, Inc.,

Plaintiff-Counter-Defendant-
Appellant,

v.

Russell Fragala, AKA Russell L. Fragala,

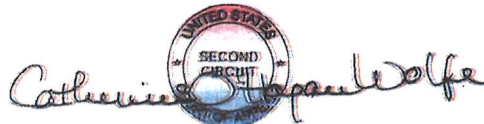
Defendant-Counter-Claimant-
Appellee.

Appellant moves for an extension of time to file the opening brief.

IT IS HEREBY ORDERED that the motion is DENIED.

For the Court:

Catherine O'Hagan Wolfe,
Clerk of Court

The signature of Catherine O'Hagan Wolfe is written in blue ink over a circular blue seal. The seal contains the text "UNITED STATES" at the top, "SECOND CIRCUIT" in the center, and "NEW YORK" at the bottom.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

Myer's Lawn Care Services, Inc., Appellant, -v- Robert Pryor, Appellee.	2:23-cv-3346 (NJC)
---	--------------------

OPINION AND ORDER

NUSRAT J. CHOUDHURY, District Judge:

This appeal arises from a contract dispute between Appellant Myer's Lawn Care Services, Inc. ("Myer's") and Russ Fragala Landscape Corporation (the "Corporation"). Myer's seeks to recover damages for breach of contract from Russell Fragala ("Fragala"), the president of the Corporation, in Fragala's individual bankruptcy proceeding ("Bankruptcy Action"¹).² Appellee Robert Pryor ("Pryor"), the trustee of Fragala's bankruptcy estate, moved to expunge Myer's claim against the estate. (Bankr. ECF No. 85, **R. at 961**.) After receiving full briefing and conducting two hearings on the motion,

¹ The Bankruptcy Action is docketed as *In re Russell Fragala*, 19-br-75714 (Bankr. E.D.N.Y.). "Bankr. ECF" refers to citations to the electronic record in that proceeding.

² See Appellant's Br. ("Myer's Br.") at 2, ECF No. 24; Appellee's Br. ("Pryor's Br.") at 3, ECF No. 26; Bankr. ECF No. 21-8 ¶¶ 2, 4, **R. at 226**; Bankr. ECF No. 94-3, **R. at 998**.

the bankruptcy court issued an order expunging Myer's claim ("Expungement Order").³ Myer's now appeals. For the following reasons, I affirm the bankruptcy court's order.⁴

BACKGROUND

I. State Court Action

In September 2017, Myer's sued the Corporation and Fragala, who was alleged to be an "employee/agent" of the Corporation, in Maryland state court for breach of a series of snow-removal contracts ("State Court Action").⁵ (*See* Bankr. Claims Register, Claim No. 11-1 ("Proof of Claim"), Ex. 2; Bankr. ECF No. 97-1, **R. at 1020–224**.)⁶ Myer's alleged that the Corporation and Fragala failed to provide full payment to Myer's for its snow-removal services. (*Id.*) The snow-removal contracts at issue are not in the record on this appeal.

On January 1, 2018, Fragala and the Corporation together served a counter-complaint on Myer's alleging that Myer's damaged the work sites from which snow was removed, requiring the Corporation to incur \$83,755 in expenses for repairs. (Bankr. ECF No. 21-8, **R. at 230**.) Myer's filed an amended complaint. (*See* Bankr. ECF No. 21-8, **R.**

³ *See* Bankr. ECF Nos. 85, 94, 102, 106, 108, 110 (Expungement Order), 118, 120; **R. at 961–1068, 1116–1149**; *see also* Bankr. ECF No. 126.

⁴ I deny Myer's request for oral argument on this appeal. (Myer's Br. at 50.) The facts and legal arguments regarding this appeal are adequately presented in the briefs and in the record, and my decisional process would not be significantly aided by oral argument. *See* Fed. R. Bankr. P. 8019(b)(3).

⁵ The State Court Action is docketed as *Myer's Lawn Care Services, Inc. v. Russ Fragala and Russ Fragala D/B/A Russ Fragala Landscape Corporation*, No. 06-C-17-074219 (Carroll Cnty., Maryland).

⁶ "Bankr. Claims Register" refers to the electronic claims register docket in *In re Russell Fragala*, 19-br-75714 (Bankr. E.D.N.Y.).

at 226.) On May 31, 2018, Fragala moved to dismiss the amended complaint against him, arguing that, as president of the Corporation, he could not be held liable for any breach of the Corporation's contracts with Myer's. (*Id.* ¶¶ 2, 4.)

II. Bankruptcy Action

Fragala filed an individual petition for bankruptcy under Chapter 7 of the Bankruptcy Code on August 15, 2019. (Bankr. ECF No. 1, **R. at 10.**) On October 7, 2019, the Maryland court issued an order staying and suspending the State Court Action because of the pending Bankruptcy Action. (Bankr. ECF No. 12 at 76, **R. at 166.**)⁷

On November 19, 2019, Myer's filed a proof of an unsecured claim in Fragala's Bankruptcy Action (the "Claim"), claiming that Fragala individually owed Myer's a debt of \$92,366.80 for breach of the snow-removal contracts. (Proof of Claim, Bankr. Claims Register, Claim No. 1-1, **R. at 1020–22.**) Myer's attached two supporting exhibits. (*Id.*) First, Myer's submitted a short document titled "Statement of Account of Russell Fragala" stating that Fragala owed Myer's \$92,366.80, which was calculated by adding a \$58,4600 "Unpaid Balance as of March 3, 2017" and \$33,906.80 in "[I]ate charges @ 2% per month up to August 3, 2019." (Proof of Claim, Ex. 1, **R. at 1023.**)

⁷ Before the state court issued this order, Fragala had initiated an adversary proceeding related to the Bankruptcy Action against Myer's and Myer's' counsel, William Burke, by filing a complaint alleging that Myer's and Burke had been litigating the State Court Action in violation of the automatic stay of proceedings against Fragala under 11 U.S.C. § 362(a), which went into effect when Fragala filed for bankruptcy. Fragala moved for a preliminary injunction prohibiting Myer's and Burke from litigating the State Court Action. (Bankr. ECF Nos. 11–12, **R. at 85–92.**) Myer's opposed the request, asserting that it had filed a motion to stay the State Court Action on September 28, 2019 in response to a demand letter from Fragala's then-counsel. (Bankr. ECF No. 19 at 1, 12, **R. at 178, 189.**) The state court granted Myer's' motion to stay the State Court Action on October 7, 2019, and the adversary proceeding Fragala initiated against Myer's was closed on November 15, 2019. (Bankr. Not., Nov. 15, 2019, **R. at 1228.**)

Second, Myer's submitted a document filed in the State Court Action titled "Plaintiffs' [sic] Pretrial Statement." (Proof of Claim, Ex. 2, **R. at 1024**.) In this document, Myer's referred to Fragala and the Corporation collectively as "Fragala." (*Id.* at 1, **R. at 1024**.) The Pretrial Statement asserts that the Corporation was "neither registered as a Corporation or a Limited Liability Company with the Maryland State Department of Assessments and Taxation on the date of the contracts[] from which this case arises." (*Id.*) It further asserts that "Fragala"—defined as the individual and Corporation collectively—"withheld \$58,460.00[] rightfully owed Myer's" under snow-removal contracts "under the false representation that Myer's had caused considerable damage to all of the [snow-removal] sites." (*Id.* at 9, **R. at 1032**.) It also alleges that "Fragala filed a Counter-Complaint against Myer's, dated January 10, 2018, demanding[] '\$83,755.00 plus travel expenses, reasonable attorney fees, interest and costs' as compensation for expenses Fragala allegedly incurred to repair the damages he claims Myer's caused." (*Id.* at 6, **R. at 1029**.) The Pretrial Statement references numerous exhibits, but none of them were filed in support of Myer's' Proof of Claim in Fragala's Chapter 7 bankruptcy proceeding. (*See* Proof of Claim.) While Myer's represents in its briefing to this Court that the snow removal contracts were in writing, Myer's did not file any written contracts in connection with the Claim. (*See* Myer's' Br. at 3, ECF No. 24 ("The Subcontracts were signed on November 3, 2016."); *see also* Proof of Claim, Ex. 2 at 2, **R. at 1025**.)

III. Adversary Proceeding

On November 25, 2019, Myer's initiated a related adversary proceeding against Fragala (the "Adversary Proceeding"), alleging that Myer's' Claim against Fragala's estate was not dischargeable in the Bankruptcy Action pursuant to the statutory

exceptions to discharge for cases of “false representation” or “willful and malicious injury” under 11 U.S.C. §§ 523(a)(2)(A) and (a)(6). (Bankr. ECF No. 27, **R. at 286–305.**)⁸

IV. Lack of Assets in the Bankruptcy Action

On April 12, 2021, Pryor filed a report of no distribution in the Bankruptcy Action. (Bankr. Not., Apr. 12, 2021, **R. at 1100.**) In that report, Pryor reported that he

ha[d] neither received any property nor paid any money on account of this estate; that [he] . . . made a diligent inquiry into the financial affairs of the debtor(s) and the location of the property belonging to the estate; and that there is no property available for distribution from the estate over and above that exempted by law.

(*Id.*)

V. Trial in the Adversary Proceeding

In May 2022, Judge Grossman presided over a two-day bench trial in the Adversary Proceeding. (*See Adv. Proc. Min. Entries, May 2, 2022 & May 3, 2022.*) On September 22, 2022, the bankruptcy court issued a memorandum of decision (“Dischargeability Opinion”) in which the court made several factual findings and legal determinations. (*See Dischargeability Op., Bankr. ECF No. 120, R. at 1154–70.*) First, the court found that New York law governed Myer’s’ allegations in the adversary complaint, and that the allegations “did not satisfy the necessary elements of corporate veil piercing under New York law.” (*Id.* at 9, **R. at 1162.**) The court found, however, that “the outcome of this veil piercing analysis is not determinative of whether Myer’s has a claim against the Debtor [Fragala] in this case,” and that “as of this writing [on

⁸ The Adversary Proceeding is docketed as *Myer’s Lawn Care Services, Inc. v. Fragala et al.*, No. 19-ap-08150 (Bankr. E.D.N.Y.). “Adv. Proc. ECF” refers to citations to the electronic record of the Adversary Proceeding.

September 22, 2022] Myer's has an allowed claim in the amount of \$93,366.80" against Fragala's estate "by virtue of the uncontested proof of claim filed by Myer's against [Fragala]" under 11 U.S.C. § 502(a) and Rule 3001(f), Fed. R. Bankr. P. (*Id.* at 1, 8, **R. at 1154, 1161.**)

Lastly, the court found that the Claim was dischargeable in bankruptcy because Myer's failed to prove that the Claim satisfied the exception to discharge for "false representation" or for "willful and malicious injury" under 11 U.S.C. §§ 523(a)(2)(A) or (2)(6). (*Id.* at 12–15, **R. at 1165–68.**) Judgment was entered for Fragala in the Adversary Proceeding on September 22, 2022. (Bankr. ECF No. 121, **R. at 1172.**) On October 5, 2022, Myer's filed a notice of appeal of the Dischargeability Opinion. *Fragala et al. v. Fragala*, No. 22-cv-5980, ECF No. 1 ("Dischargeability Appeal").)

VI. Discovery of Assets in the Bankruptcy Action

On May 18, 2022, after the conclusion of trial in the Adversary Proceeding, Pryor rescinded his prior report of no distribution in the Bankruptcy Action. (Bankr. ECF No. 56, **R. at 584.**) Pryor filed this rescission when he became aware that Fragala had understated the value of real property he owned, and that contrary to Pryor's previous belief, this property was likely not encumbered by a mortgage. (Pryor's Br. at 5, ECF No. 26; *see also* Bankr. ECF No. 64 at 4–5, **R. at 590–91.**) Based on this new information, Pryor determined that the estate likely had "significant equity" due to the property. (Bankr. ECF No. 64 at 4–5, **R. at 590–91.**) On November 28, 2022, two months after judgment entered in the Adversary Proceeding, the court issued an order in the Bankruptcy Action authorizing Pryor to sell Fragala's real property. (Bankr. ECF No. 80, **R. at 933.**)

VII. The Bankruptcy Court's Ruling on Pryor's Motion to Expunge

On February 2, 2023, Pryor filed a Motion to Expunge Myer's Claim against Fragala's estate pursuant to 11 U.S.C. §§ 502(a), 502(b)(1) and Rule 3007 of the Federal Rules of Bankruptcy Procedure or, in the alternative, to "reconsider[] the Court's decision of September 22, 2022 [the Dischargeability Opinion]" pursuant to 11 U.S.C. § 502(j) and Rule 3008, Fed. R. Bankr. P. (Bankr. ECF No. 85 at 1, 6, **R. at 963, 968.**) The parties submitted briefing, and the bankruptcy court heard argument on Pryor's Motion on March 13, 2023 and April 14, 2023.⁹ The court heard argument on the two primary contested issues raised by the parties: (1) whether Pryor's objection was timely, and (2) whether Myer's could recover from Fragala's individual bankruptcy estate damages for the Corporation's alleged breach of contract on the theory that Fragala waived the protections of the corporate form by answering and filing a counter-complaint in his individual capacity in the prior State Court Action. (Bankr. ECF Nos. 85, 94, 97, **R. at 966, 970, 1013**; Mar. 13 Hr'g, **R. at 1116**; Apr. 24 Hr'g.)

The court orally ruled that Pryor's motion was timely and permitted the parties to submit supplemental briefing relating to the second issue, which concerned whether Pryor, when objecting to a claim, is bound by Fragala's positions and statements in the State Court Action. (Mar. 13 Hr'g at 12, 21, **R. at 1127, 1136.**) The parties submitted supplemental briefing and, on April 24, 2023, the court held a second hearing and issued an oral ruling granting the motion and expunging Myer's Claim. (Bankr. ECF Nos. 102, 108, **R. at 1036, 1063**; Apr. 24 Hr'g.)

⁹ Bankr. ECF Nos. 85, 94, 97, **R. at 966, 970, 1013**; Tr. Mot. Hr'g, Mar. 13, 2023 ("Mar. 13 Hr'g"), Bankr. ECF No. 118, **R. at 1116**; Tr. Mot. Hr'g, Apr. 24, 2023 ("Apr. 24 Hr'g"), Bankr. ECF No. 126.

A. Timeliness of Pryor's Objection to the Claim

At the March 13, 2023 hearing, the court orally ruled, over the objection of Myer's, that Pryor's Motion to Expunge the Claim was timely. (Mar. 13 Hr'g. at 12, **R. at 1127**.) Myer's had argued that because the court ruled in the Dischargeability Opinion that its Claim was "allowed" and judgment had entered reflecting that ruling, Pryor could only object to Myer's' Claim in the Bankruptcy Action through a motion for relief from a judgment or order, which is governed by Federal Rule of Bankruptcy Procedure 9024 ("Bankruptcy Rule 9024") and Federal Rule of Civil Procedure 60 ("Rule 60"). (Bankr. ECF No. 94 at 7, **R. at 976**.) Myer's argued that Pryor's objection was improper because Pryor failed to comply with Rule 60 for two independent reasons: (1) the motion failed to set forth an appropriate basis for relief from a judgment as required by Rule 60(b), and (2) the four and a half month delay between when judgment entered in the Adversary Proceeding and when Pryor's filed an objection to the Claim in the Bankruptcy Action was unreasonable, in violation of Rule 60(c)(1). (Bankr. ECF No. 94 at 7-8, **R. at 976-77**.)

The court disagreed with Myer's' analysis for two reasons. (Mar. 13 Hr'g at 11-12, **R. at 1126-27**.) First, the court held that its conclusion in the Dischargeability Opinion was a due to "blackletter law [that] a claim filed for which there is no objection is a prima facie claim," but that "nothing in that statement . . . then says . . . someone can't file an objection, . . . because to do that, [the court] would be cutting off the rights that only the Trustee has to object to claims." (Mar. 13 Hr'g at 11, **R. at 1126**.)

Second, the court reasoned that in bankruptcy cases where the debtor's estate has no assets, "trustees do not object to claims" because there is "[n]o point in objecting to a

claim for which no money” can be paid, and Fragala’s estate did not initially have sufficient assets to make distributions to creditors. (*Id.*) The court found that:

the argument that Mr. Pryor as the Trustee is precluded from exercising his obligation as a Trustee to determine the validity of claims in an estate that now sits with money is misplaced. I think he absolutely has the right to do that. I don’t think he was precluded by statute, by time.

(Mar. 13 Hr’g. at 12, **R. at 1127**.) The court also questioned Myer’s about whether Rule 60 applied to Pryor, given that he was not a party to the Adverse Proceeding, although the court did not explicitly resolve this issue in its oral or written rulings. (Mar. 13 Hr’g. at 10–12, **R. at 1125–27**; Expungement Order.)

B. Protections of the Corporate Veil

After finding that Pryor timely filed the Motion to Expunge, the court heard argument on the merits. (Mar. 13 Hr’g at 19–20, **R. at 1134–35**; *see also* Apr. 24 Hr’g.) Pryor argued that the Pretrial Statement Myer’s attached to its Proof of Claim was “inadequate to support the Claim filed in this case,” which sought to hold Fragala personally liable for the Corporation’s obligations. (Bankr. ECF No. 85 ¶ 16, **R. at 966**.) Pryor further asserted that Myer’s was collaterally estopped from raising any argument that it should be able to hold Fragala personally liable for the Corporation’s alleged breach of contract because, in the Adverse Proceeding, the court had ruled that Myer’s failed to establish that it could pierce the corporate veil. (Bankr. ECF No. 85 ¶¶ 19–22, **R. at 966–67**.)

Myer’s made three arguments in response. First, Myer’s asserted that it did not need to show that it could pierce the corporate veil under New York law because Fragala waived the protections of the corporate form when, acting in his personal capacity, he filed an answer and counter-complaint against Myer’s in the State Court Action. (*See*

Bankr. ECF No. 94 at 13, **R. at 982** (“Myer’s did not have to pierce the corporate veil in the [State Court Action] because Debtor Fragala made the choice to conduct the [State Court Action] personally.”)). Myer’s counsel, William Burke (“Burke”), made clear that this was Myer’s position at the March 13, 2023 hearing:

THE COURT: . . . So is your argument that the Trustee, that you believe in this action, you wish to establish that Mr. Fragala – that the veil should be pierced? I mean, tell me if you were litigating this with Mr. Pryor, what is the litigation?

MR. BURKE: **That there was no corporate veil to pierce.** Mr. Fragala clearly is—he admitted to it, he testified to it in his deposition, he is suing my client personally. The facts that are in evidence are that there was nothing stopping Mr. Fragala from pursuing my client as his corporation.

(Mar. 13 Hr’g, at 14–15, **R. at 1129–30 (emphasis supplied)**). Burke confirmed this position at the April 24, 2023 hearing when he told the bankruptcy court: “[Fragala] did not use his corporate veil or corporate shield when he pursued the case [in state court]. He chose to pursue it personally” (Apr. 24 Hr’g at 11.)

In support of this argument, Myer’s attached to its opposition to the Motion to Expunge a document titled “Addendum to 2016-2017 Snow Removal Contract” (“Addendum”), which set a timeline for payments and interest on late payments pursuant to the contracts. (Bankr. ECF No. 94-3, **R. at 998**.) The Addendum is signed by “Russ Fragala – President Russ Fragala Landscape Corp.” and “Rob Meyers, Myer’s Lawn Care Services.” (Bankr. ECF No. 94-3, **R. at 998**.)

Second, Myer’s argued that Pryor, as trustee to Fragala’s estate, was bound by Fragala’s actions in the State Court Action. (Mar. 13 Hr’g at 20, **R. at 1135**.) In supplemental briefing, Myer’s argued that previous statements made by Fragala could be used as evidence to support Myer’s Claim. (Bankr. ECF No. 102 at 4–5, **R. at 1039–40**.)

Myer's also relied on its motion to stay the State Court Action, which it filed shortly after Fragala filed for bankruptcy. (Bankr. ECF No. 106, **R. at 1059**.)

Myer's did not argue in opposition to the Motion to Expunge that the corporate veil should be pierced because Fragala had engaged in fraudulent activity. (See Bankr. ECF Nos. 85, 94, 97, 102, 108, **R. at 966, 970, 1013, 1036, 1063**; Mar. 13 Hr'g, **R. at 1125**; Apr. 24 Hr'g.) At the March 13, 2023 hearing, in response to Judge Grossman's questions, Burke confirmed that Myer's did not seek to pierce the Corporation's veil in order to recover from Fragala as an individual in the Bankruptcy Action and did not seek an evidentiary hearing on this issue:

THE COURT: Please, Mr. Burke. What is before me is the Trustee's objection to your claim. Do you believe that that creates an evidentiary question so that the Court now has to hear this question of whether or not that veil—I'll use veil [piercing], but I'm not sure that's the right term in this case—I remember all your arguments [from the Adversary Proceeding] about Maryland law and this and that. Your argument is . . . **you're seeking a hearing to determine whether or not Mr. Fragala should be held individually liable for the acts of this corporation in this proceeding. Is that right?**

MR. BURKE: **No, Your Honor, I'm not.**

(Mar. 13 Hr'g at 15–16, **R. at 1130–31** (emphasis supplied).)¹⁰

Third, Myer's argued in its supplemental briefing that the bankruptcy court lacked authority to grant the Motion to Expunge because Myer's had already appealed the Adversary Proceeding judgment, which addressed whether Myer's' Claim was allowed.

¹⁰ The March 13, 2024 hearing transcript reflects that the court used the term “veil person” rather than “veil piercing,” but that appears to be a transcription error given that the court just asked Myer's whether it “wished to establish . . . the veil should be pierced . . .” (Mar. 13 Hr'g at 14–15.)

(Bankr. ECF No. 102 at 7, **R. at 1042.**)¹¹ Pryor responded that the Motion to Expunge could still be litigated notwithstanding the pending appeal of the Adversary Proceeding judgment because the only issue in that appeal is whether Myer's met its burden to prove that any claim was not dischargeable—not whether Myer's Claim is allowed or whether Myer's could pierce the corporate veil. (Bankr. ECF No. 108 at 2, **R. at 1064.**)

After hearing additional argument on April 24, 2023, Judge Grossman asked Burke to explain what theory supported Myer's position that it had “an allowed claim in this case” other than “a veil-piercing” theory, which the court “[did not] believe exists in this case.” (Apr. 24 Hr'g at 10–11.) Burke answered that Fragala “did not use his corporate veil or corporate shield when he pursued” a counterclaim in the State Court Action, but rather “[h]e chose to pursue [the claim] personally.” (*Id.* at 11.) The court then orally granted Pryor's Motion to Expunge Myer's Claim. (*Id.*) After the hearing, the court issued a written order, which reflected the oral ruling and expunged the Claim in its entirety. (Expungement Order, **R. at 1067.**) Myer's appealed that order on May 2, 2023, initiating the instant appeal. (ECF No. 1.)

VIII. Appeal

Myer's appeal of the Dischargeability Opinion and its appeal of the Expungement Order were both reassigned to my docket in October 2023. (Elec. Not., Oct. 19, 2023; Dischargeability Appeal, Elec. Not., Oct. 19, 2023.) Myer's moved to consolidate the two appeals. (ECF No. 8.) After hearing argument from the parties, I

¹¹ Myer's does not raise this same argument in this appeal. (*See generally* Myer's Br.)

denied Myer's motion, finding that consolidating the cases would not be fair or efficient. (Min. Entry, Dec. 21, 2023; Elec. Order, Dec. 27, 2023.)¹²

Myer's filed its opening brief in this appeal on March 20, 2024, arguing that the bankruptcy court erred in expunging the Claim for three reasons. (Myer's Br.) First, Myer's contends that the Motion to Expunge failed to comply with the timing requirements of Rules 59(e) and 60(b), Fed. R. Civ. P. (*Id.* at 30–35.) Second, Myer's asserts that Fragala cannot defend against the Claim in the Bankruptcy Action by asserting a corporate veil defense because Fragala waived the protections of the corporate form when he filed an answer and counter-complaint in his individual capacity against Myer's in the State Court Action. (*Id.* at 35–47.) Third, Myer's argues—for the first time on appeal—that even if Fragala had not waived the protections of the corporate form, Myer's could pierce the corporate veil under New York state law because Fragala's conduct constituted actual fraud. (Myer's Br. at 47–49.)

On April 10, 2024, Pryor filed a brief in response, making five points. (Pryor's Br.) First, Pryor asserts that he timely filed the Motion to Expunge because there is no deadline for a bankruptcy trustee to object to a claim and no authority providing that Rule 60 applies to a nonparty. (*Id.* at 10–12.) Second, Pryor argues that collateral estoppel bars

¹² Despite this ruling, Myer's brief in this appeal of the Expungement Order spends nearly twenty pages recounting evidence presented at the bench trial in the Adversary Proceeding. (*See* Myer's Br. at 2–21 (citing to documents filed in the Adversary Proceeding, Case No. 19-ap-01850).) While the bankruptcy court's post-trial decision in the adversary proceeding is in the record on this appeal (*see* ECF No. 120; **R.** at 1154–70), the evidence to which Myer's cites—including documents and testimony admitted as evidence in the Adversary Proceeding trial—is not included in the record on this appeal. Myer's briefing on this appeal also takes issue with some of the bankruptcy court's rulings in the Dischargeability Opinion. (*See* Myer's Br. at 35–36; Myer's Reply at 21.) I do not consider these arguments because the Dischargeability Opinion is the subject of a separate appeal.

Myer's from litigating the veil piercing issue because the bankruptcy court decided that issue in the Adversary Proceeding. (*Id.* at 12.) Third, Pryor argues that this Court may not consider evidence outside of the record that was before Judge Grossman when he ruled on the Motion to Expunge, including some portions of the record in the Adversary Proceeding. (*Id.* at 13–14.) Fourth, Pryor argues that New York law governs the issue of whether Myer's can pierce the corporate veil because the Corporation is a New York corporation. (*Id.* at 14.) Fifth, Pryor asserts that under New York law, Myer's failed to establish a basis to pierce the corporate veil in the Bankruptcy Action. (*Id.* at 14–17.)

Myer's filed its reply brief on April 24, 2024, making many of the same arguments that it raised in its opening brief. (*See* Myer's' Reply, ECF No. 27.)

STANDARDS OF REVIEW

This Court has jurisdiction to hear this appeal from a bankruptcy court order under 28 U.S.C. § 158, which provides that “[t]he district courts of the United States shall have jurisdiction to hear appeals . . . from final judgments, orders, and decrees . . . of bankruptcy judges.” Bankruptcy court orders expunging claims, like the Expungement Order at issue in this appeal, are final orders for purposes of appeal. *Wilmington Sav. Fund Soc’y, FSB v. Tamisi*, No. 22-cv-01982, 2023 WL 2561787, at *3 (E.D.N.Y. Mar. 17, 2023) (citations omitted).

On appeal, a district court reviews a bankruptcy court's findings of fact for clear error, its conclusions of law de novo, and “[m]atters left to the [bankruptcy] court's discretion . . . for abuse of discretion.” *Liberty Towers Realty, LLC v. Richmond Liberty, LLC*, 569 B.R. 534, 538 (E.D.N.Y. 2017), *aff'd*, 734 F. App'x 68 (2d Cir. 2018).

This Court may “affirm, modify, or reverse a bankruptcy judge’s judgment, order, or decree,” or it may remand with instructions for further proceedings. *Heilbron v. Plaza*, No. 20-cv-00312, 2021 WL 1062034, at *2 (E.D.N.Y. Mar. 19, 2021); *see also* 28 U.S.C. § 2106. The court “may affirm on any grounds for which there is a record sufficient to permit conclusions of law.” *Mader v. Experian Info. Sols., Inc.*, 56 F.4th 264, 268 (2d Cir. 2023) (alterations omitted). This includes “grounds not relied upon by the bankruptcy court.” *In re Stallmer*, 792 F. App’x 856, 857 (2d Cir. 2019) (citing *Chelsey v. Union Carbide Corp.*, 927 F.2d 60, 68 (2d Cir. 1991) (brackets omitted)).

DISCUSSION

I. Legal Standards

“When a debtor declares bankruptcy, each of its creditors is entitled to file a proof of claim — *i.e.*, a document providing proof of a ‘right to payment’ — against the debtor’s estate.” *Rora LLC v. 404 East 79th Street Lender LLC*, 630 B.R. 876, 887 (E.D.N.Y. 2021) (citing *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 449 (2007) (quoting 11 U.S.C. § 101(5)(a)); *see also* 11 U.S.C. § 501(a). A claim or interest “is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). Where a party in interest objects to a claim, the bankruptcy court is required to determine the amount of the claim and “shall allow such claim in such amount” unless it falls into one of nine categories enumerated under 11 U.S.C. § 502(b) (“Section 502(b)"). Under Section 502(b), a court is not required to allow a claim when it “is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured” *Id.* § 502(b)(1). Only a creditor that has an allowed claim may receive a distribution from the bankruptcy

estate. *In re Brancato*, No. 8-19-75686, 2023 WL 5127334, at *6 (Bankr. E.D.N.Y. Aug. 9, 2023) (citing 11 U.S.C. § 726(a)).

Neither the Bankruptcy Code nor the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules” or “Fed. R. Bankr. P.”) sets forth a deadline for a trustee to object to a claim. *See* 11 U.S.C. § 726(a); *In re Best Payphones, Inc.*, 523 B.R. 54, 68 (Bankr. S.D.N.Y. 2015) (“Article VIII reserves jurisdiction to determine claims objections without regard to when they are filed, and bankruptcy law does not impose a statute of limitations on claims objections.”) (collecting cases). The Bankruptcy Rules only require that “[a]n objection to the allowance of a claim and a notice of objection . . . be filed and served at least 30 days before any scheduled hearing on the objection or any deadline for the claimant to request a hearing.” Fed. R. Bankr. P. 3007(a).

Where a bankruptcy court issues an order allowing or disallowing a proof of claim, “[a] party in interest may move for reconsideration” of that order under Rule 3008, Fed. R. Bankr. P. (“Bankruptcy Rule 3008”), and 11 U.S.C. § 502(j) (“Section 502(j)”). Fed. R. Bankr. P. 3008; 11 U.S.C. § 502(j) (“A claim that has been allowed or disallowed may be reconsidered for cause.”).¹³

Courts in this Circuit treat a motion for reconsideration under Section 502(j) and Bankruptcy Rule 3008 as either a motion to alter or amend a judgment, as governed by Rule 9023, Fed. R. Bankr. P. (“Bankruptcy Rule 9023”), which incorporates Rule 59, Fed. R. Civ. P. (“Rule 59”), or as a motion for relief from a judgment or order governed

¹³ “Courts generally do not distinguish between motions filed under [Bankruptcy Rule 3008] and motions filed under [S]ection 502(j).” *In re Enron Corp.*, 352 B.R. 363, 366 n.2 (Bankr. S.D.N.Y. 2006). I will refer to motions filed under these provisions as “Section 502(j) motions.”

by Bankruptcy Rule 9024, which incorporates Rule 60. *Matter of AMR Corp.*, 566 B.R. 657, 665 (S.D.N.Y. 2017); *see also In re Tender Loving Care Health Servs., Inc.*, 562 F.3d 158, 163 (2d Cir. 2009) (analyzing a Section 502(j) motion for reconsideration under the requirements set forth in Bankruptcy Rule 9024 and Rule 60). Courts determine which Bankruptcy Rule to apply based on when the motion was filed. *Matter of AMR Corp.*, 566 B.R. at 665. Bankruptcy Rule 9023 requires a motion for reconsideration to be filed within fourteen days of the order to be reconsidered. Fed. R. Bankr. P. 9023. Where a movant files a Section 502(j) motion for reconsideration more than fourteen days after the order allowing the claim, courts analyze the motion under Bankruptcy Rule 9024. *Matter of AMR Corp.*, 566 B.R. at 665; *Tender Loving*, 562 F.3d at 162; *see also* Fed. R. Bankr. P. 9023.¹⁴

II. Pryor's Motion was not Time-Barred.

Myer's first asserts that the bankruptcy court erred in finding that Pryor's Motion to Expunge was timely. (Myer's Br. at 30.) According to Myer's, because the court's judgment in the Adversary Proceeding stated that the Claim was allowed, Pryor's subsequent objection to the Claim was governed by Bankruptcy Rule 9042 or 9043, but was not filed within the time requirements of either rule. (*Id.* at 30–35.) Pryor argues in

¹⁴ Throughout its brief, Myer's asserts that Bankruptcy Rule 9023 requires a movant to file a motion to alter or amend a judgment within ten days of the challenged order's entry. (Myer's Br. at 3, 11, 18, 33–34.) That is incorrect. At all times during the events underlying this appeal, Bankruptcy Rule 9023 required that "a motion . . . to alter or amend a judgment" in a bankruptcy case must "be filed . . . no later than 14 days after entry of judgment." Fed. R. Bankr. P. 9023. Although the timeline to file a Bankruptcy Rule 9023 motion was previously ten days from entry of the challenged judgment, that deadline was extended to fourteen days by the 2009 amendments to Bankruptcy Rule 9023. *See* Fed. R. Bankr. P. 9023 advisory committee note to 2009 amendments; *see also* Fed. R. Civ. P. 59 advisory committee note to 2009 amendments; *In re Levelbest, LLC*, No. 19-11673, 2023 WL 187631, at *3 (Bankr. N.D.N.Y. Jan. 13, 2023).

opposition that his motion was not governed by Bankruptcy Rule 9042 or 9043 because he was not a party to the Adversary Proceeding, and thus was not bound by the judgment in that action. (Pryor's Br. at 10–12.)

These arguments present legal questions, and I therefore conduct de novo review of the bankruptcy court's ruling. I find that the Motion to Expunge was timely.

a. The Adversary Proceeding Judgment did not Preclude Pryor From Subsequently Objecting to the Claim in the Bankruptcy Action.

Myer's initiated the Adversary Proceeding against Fragala on November 25, 2019, to determine whether its Claim was dischargeable in the Bankruptcy Action. (Bankr. ECF No. 27, **R. at 286–305**.) Pryor was not named as a party in the complaint and was not added as a party to the Adversary Proceeding at any point during the course of that action. (*See* Compl., Bankr. ECF No. 27, **R. at 286**; *see also* Dischargeability Op.)

Myer's argument that Pryor could object to its Claim only by moving to reconsider the bankruptcy court's Dischargeability Opinion pursuant to Section 502(j) and Bankruptcy Rules 9023 and 9024 assumes that Pryor was bound by the judgment in the Adversary Proceeding. Myer's fails to provide any legal authority for this conclusion. (Myer's Br. at 30–35).¹⁵ Pryor asserts that his Motion was not governed by either Bankruptcy Rule 9042 or 9043 because Pryor was not bound by the judgment in the Adversary Proceeding under res judicata principles. (Pryor's Br. at 10–12.) Myer's

¹⁵ In its opening brief, Myer's appears to acknowledge Pryor's argument that he was not bound by the Dischargeability Opinion because he was not a party to the Adversary Proceeding, but Myer's retorts only: "Co-Appellee Pryor cites no authority in support of his opinion. However, the **JUDGMENT** [in the Adversary Proceeding] is supported by the **DECISION AFTER TRIAL**, which was issued by the Bankruptcy Court that Co-Appellee [Pryor] cites to multiple times in the Objection to Claim No. 1." (Myer's Br. at 31 (emphasis in original).)

argues that, under principles of claim and issue preclusion, Pryor is bound by the Dischargeability Opinion because he “is a party in interest” to the Adversary Proceeding or was “a privy” with Fragala, who was a party to that action. (Myer’s Reply at 3, 17–18.)

“The preclusive effect of a judgment is defined by claim preclusion and issue preclusion, which are collectively referred to as ‘res judicata.’” *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008). These preclusion doctrines “apply in bankruptcy proceedings.” *In re Snyder*, 939 F.3d 92, 100 (2d Cir. 2019). “Under the doctrine of claim preclusion, a final judgment forecloses successive litigation of the very same claim, whether or not relitigation of the claim raises the same issues as the earlier suit.” *Taylor*, 553 U.S. at 892; see also *Brown Media Corp. v. K&L Gates, LLP*, 854 F.3d 150, 157 (2d Cir. 2017).

Issue preclusion forecloses litigation of an issue of fact or law where:

(1) the identical issue was raised in a previous proceeding; (2) the issue was actually litigated and decided in the previous proceeding; (3) the party had a full and fair opportunity to litigate the issue; and (4) the resolution of the issue was necessary to support a valid and final judgment on the merits.

In re Snyder, 939 F.3d 92, 100 (2d Cir. 2019).¹⁶ With respect to the third element required for issue preclusion, generally, “[a] person who was not a party to a suit . . . has not had a ‘full and fair opportunity to litigate’ the claims and issues settled in that suit.” *Taylor*, 553 U.S. 880, 892–93 (2008) (citation omitted).

¹⁶ These elements derive from “[f]ederal principles of collateral estoppel,” which courts apply when determining whether a “prior federal judgment has preclusive effect.” *Ball v. A.O. Smith Corp.*, 451 F.3d 66, 69 (2d Cir. 2006).

Thus, in *Taylor v. Sturgell*, the Supreme Court held that nonparty preclusion is only appropriate in one of six established exceptions and described them as follows:

First, a person who agrees to be bound by the determination of issues in an action between others is bound in accordance with the terms of his agreement[;] Second, nonparty preclusion may be justified based on a variety of pre-existing ‘substantive legal relationship[s]’ between the person to be bound and a party to the judgment[;] Third, . . . in certain limited circumstances, a nonparty may be bound by a judgment because she was adequately represented by someone with the same interests who was a party to the suit[;] Fourth, a nonparty is bound by a judgment if she assumed control over the litigation in which that judgment was rendered[;] Fifth, a party bound by a judgment may not avoid its preclusive force by relitigating through a proxy[;] [and] Sixth, in certain circumstances a special statutory scheme may expressly foreclose successive litigation by nonlitigants . . . if the scheme is otherwise consistent with due process.

Id. at 892–93 (quotation marks and alterations omitted); see also *Sacerdote v. Cammack Larhette Advisors, LLC*, 939 F.3d 498, 509 (2d Cir. 2019). The Supreme Court recognized that “[t]he substantive legal relationships justifying preclusion are sometimes collectively referred to as ‘privity,’” but cautioned that “the term . . . has come to be used more broadly, as a way to express the conclusion that nonparty preclusion is appropriate on any ground.” *Taylor*, 553 U.S. at 894 n.8. Thus, rather than using the term “privity,” the Supreme Court emphasized that the six “discrete exceptions” permitting nonparty preclusion “apply in limited circumstances.” *Id.* at 892–93.

Myer’s fails to recognize the six established exceptions to the general rule against nonparty preclusion, much less argue that any of these exceptions apply to Pryor’s Motion to Expunge. (Myer’s’ Reply at 3, 17–18.) I find that none of the six *Taylor* exceptions apply, and that Pryor therefore was not bound by Dischargeability Opinion’s ruling allowing Myer’s’ Claim.

First, there is no indication that Pryor agreed to be bound by the judgment in the adversary proceeding to which he was not a party. *See Taylor*, 553 U.S. at 893. Indeed, Pryor took the contrary position in opposing the Motion to Expunge before the bankruptcy court.

Second, while the debtor and trustee in a bankruptcy action may have some kind of “substantive legal relationship,” courts have concluded that this relationship does not permit nonparty preclusion because the trustee represents the interests of the estate and its creditors, rather than the interests of the debtor. *See e.g., In re Montgomery Ward, LLC*, 634 F.3d 732 (3rd Cir. 2011); *In re DLC, Ltd.*, 295 B.R. 593, 602 (B.A.P. 8th Cir. 2003), *aff’d sub nom. Stalnaker v. DLC, Ltd.*, 376 F.3d 819 (8th Cir. 2004); *In re Jadeco Constr. Corp.*, 606 B.R. 169, 187 (Bankr. E.D.N.Y. 2019); *In re Bryant*, 630 B.R. 671, 676–77 (Bankr. M.D. Ga. 2021); *In re Tzanides*, 574 B.R. 489, 520 (Bankr. D.N.J. 2017); *In re Worldcom, Inc.*, 401 B.R. 637, 650 (Bankr. S.D.N.Y. 2009); *Matter of Silver Mill Frozen Foods, Inc.*, 32 B.R. 783, 786 (Bankr. W.D. Mich. 1983). As the Third Circuit explained:

[E]ven though a trustee in bankruptcy has a substantive legal relationship with the pre-bankruptcy debtor, the [t]rustee is not simply the successor in interest to the Debtor: he represents the interests of all creditors of the Debtor’s bankruptcy estate. Because the trustee also represents the general creditors’ interests, the legal relationship between the trustee and the pre-bankruptcy debtor is incomplete, particularly when the interests of the creditors diverge from those of the debtor.

Montgomery, 634 F.3d at 738 (quotation marks omitted).

Third, Pryor was not “adequately represented by someone with the same interests who was a party to the” Adversary Proceeding under the circumstances recognized in *Taylor*, 553 U.S. at 894. The Adversary Proceeding was not a class action, and Pryor at no point was a “fiduciary” of Fragala. *See id.* Nor has Myer’s established that Fragala, in

litigating the Adversary Proceeding, had the same interests as Pryor, who “represents the interests of all creditors.” *Montgomery*, 634 F.3d at 738.

With respect to the fourth and fifth exceptions, there is no indication that Pryor exercised any control over Fragala’s defense of the Adversary Proceeding or that Pryor brought the Motion to Expunge as the “designated representative” of Fragala. *Taylor*, 553 U.S. at 895. And nothing in the record suggests that Pryor was Fragala’s proxy, or vice versa.

Sixth, Myer’s has identified no statutory scheme that forecloses successive objections by nonlitigants to the Adversary Proceeding. *Id.* And I am aware of no such authority.

Myer’s fails to provide any legal authority for its argument in reply that Pryor was in privity with Fragala such that he was bound by the judgment in the Adversary Proceeding. (*See* Myer’s’ Reply at 17.)¹⁷ This argument is entirely undeveloped in Myer’s’ briefing, which offers no discussion of the caselaw on privity or application to the facts. Indeed, Myer’s’ general gesture toward privity is contrary to the Supreme Court’s warning against the application of “a diffuse balancing approach” to justify nonparty preclusion as in tension with the “fundamental nature of the general rule that a litigant is not bound by a judgment to which she was not a party.” *Taylor*, 553 U.S. at 898–900.

¹⁷ To the extent that Myer’s’ use of the term “party in interest” is a reference to Bankruptcy Rule 3008, which provides that a “[a] party in interest may move for reconsideration” of a court’s order allowing or disallowing a claim, Fed. R. Bankr. P. 3008, that rule governs who may move to reconsider a claim but does not address the circumstances when a litigant is bound by a ruling in a separate action to which that litigant is not a party.

Moreover, where a party refers to an issue in only “a perfunctory manner, unaccompanied by any effort at developed argumentation, it must be deemed waived[]— or, more precisely, *forfeited*.” *In re Demetriades*, 58 F.4th 37, 54 (2d Cir. 2023) (alterations omitted). For example, in *Genomma Lab USA, Inc. v. Carruitero*, the Second Circuit found that an appellant had waived an argument because its brief “did not contain the applicable standard of review” and “neglect[ed] to apply the case law to facts to raise an argument for reversing the district court’s conclusions.” No. 22-3109-CV, 2023 WL 8520181, at *2–3 (2d Cir. Dec. 8, 2023). Myer’s briefs on this appeal are similarly “tantamount to an invitation for [the Court] to scour the record, research any legal theory that comes to mind, and serve generally as an advocate for appellant.” *Id.* In counseled cases like this one, that is “simply not [the] job” of a reviewing court. *Id.* By raising the concept of privity in only a conclusory and perfunctory manner, Myer’s has forfeited his ability to argue that Pryor, a nonparty, should have been precluded from objecting to the allowance of Myer’s Claim in the Bankruptcy Action.

Myer’s has thus failed both to establish that any exceptions to the general rule against nonparty preclusion applies to Pryor’s Motion to Expunge and to adequately present this issue for appeal. Accordingly, I decline to find that the Dischargeability Opinion had a preclusive effect on Pryor¹⁸ and need not determine whether any of the

¹⁸ Myer’s emphasis that “[t]he Bankruptcy Court sent Appellee Pryor a copy of the judgment [in the Adversary Proceeding],” (Myer’s Br. at 18), does not compel a different outcome. As Myer’s notes, the bankruptcy clerk was required under Rule 9022(a), Fed. R. Civ. P., to “forthwith transmit to the United States trustee a copy of [a] judgment or order” entered by the bankruptcy court. While Appellee Pryor had notice of the judgment in the Adversary Proceeding, notice of a judgment does not establish that Pryor was in privity with any party to the Adversary Proceeding. *See generally Taylor*, 553 U.S. at 593–94.

remaining elements of claim or issue preclusion are satisfied in this case. *See Taylor*, 553 U.S. at 892 (setting forth claim preclusion requirements); *Brown Media Corp.*, 854 F.3d at 157; *In re Snyder*, 939 F.3d at 100 (setting forth issue preclusion requirements).

For all of these reasons, Pryor was not bound by the Dischargeability Opinion in the Adversary Proceeding and did not need to file a motion to reconsider the judgment in that action under Section 502(j) and Bankruptcy Rules 9023 or 9024 in order to object to Myer's Claim in the Bankruptcy Action. I therefore do not need to address the parties' arguments on whether the Motion to Expunge complied with Bankruptcy Rules 9023 and 9024.¹⁹

b. No Other Deadline Governs Pryor's Objection to the Claim.

Under the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, an objection to a claim may be brought at any time, so long as it is "filed and served at least 30 days before any scheduled hearing on the objection or any deadline for the claimant to

¹⁹ Myer's argues that Pryor unreasonably delayed filing his objection to the Claim by waiting three years after it was filed, causing Myer's to spend "significant resources conducting discovery in the Bankruptcy case." (Myer's Br. at 1–2.) This argument presumes that the Motion to Expunge was a motion to reconsider the Dischargeability Opinion under Section 502(j) and Bankruptcy Rule 9024, which requires a motion to be made within a reasonable time. *See Fed. R. Bankr. P. 9024* (incorporating Rule 60(b)(1)); *Fed. R. Civ. P. 60(c)(1)* ("A motion under Rule 60(b) must be made within a reasonable time"). I have found, however, that Bankruptcy Rule 9024 does not apply to Pryor's Motion to Expunge. Myer's provides no other legal authority requiring a court to consider whether a trustee objected to a claim within a "reasonable" amount of time. (*See generally* Myer's Br.; Myer's Reply.) Indeed, the plain language of Section 502 requiring the bankruptcy court to rule on objections is mandatory. *See* 11 U.S.C. § 502(b) ("[I]f [an] objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except" when one of the enumerated exceptions applies.) (emphasis supplied)); *see also In re C.P. Hall Co.*, 513 B.R. 540, 544 (Bankr. N.D. Ill. 2014) ("The court's obligation to rule on a claim objection is mandatory. . . ."). The bankruptcy court was thus required to rule on the Motion to Expunge, even though Pryor filed it three years after Myer's filed its Claim.

request a hearing.” Fed. R. Bankr. P. 3007(a); *see also In re Best Payphones, Inc.*, 523 B.R. at 68 (“[B]ankruptcy law does not impose a statute of limitations on claims objections.”) (collecting cases); *see generally* 11 U.S.C. § 726(a). At the time Pryor filed the Motion to Expunge on February 2, 2023, the bankruptcy court had not set any deadline for objections to claims or hearings on such a request, nor had the bankruptcy court scheduled any hearings on objections to claims. (See Docket, Bankr. ECF No. 25, **R. at 1–7**.) Because no statute, rule, or court order had established any deadline to file an objection to a proof of claim, Pryor’s filing of the Motion to Expunge was timely.

Accordingly, Myer’s has failed to show that the Dischargeability Opinion precluded Pryor from filing the Motion to Expunge in the Bankruptcy Action, or that any statute, rule, or court order required Pryor to object to the Claim within a particular timeframe. I therefore find that the bankruptcy court did not err in finding that the Motion to Expunge was timely filed.

III. The Bankruptcy Court Did Not Err in Granting Pryor’s Motion on the Merits.

The bankruptcy court granted the Motion to Expunge, reasoning that there was no legal basis to hold Fragala, as an officer of the Corporation, personally liable for the Corporation’s obligations on its snow removal contracts with Myer’s. (See Myer’s’ Br. at 35–49.) I affirm the bankruptcy court’s ruling for three reasons.

First, in opposition to the Motion to Expunge, Myer’s failed to argue to the bankruptcy court that its Claim was allowable because the record supported piercing the Corporation’s veil. Myer’s’ attempt to raise this argument for the first time on appeal is improper, and I do not address this argument for the reasons discussed below.

Second, I reject Myer's argument that Fragala can be held personally liable for the Corporation's snow-removal contracts because his act of filing an answer and counter-complaint in the State Court Action "waived a defense under a corporate veil theory" and "conceded personal liability." (Myer's Br. at 35–39 (emphasis supplied).) Myer's provides no legal support for this argument. Moreover, under Maryland law, a theory of personal liability for a corporation's debts is not a waivable defense, but a theory of liability that Myer's had to affirmatively plead and prove.

Third, Myer's failed to provide sufficient evidence of the Claim. This basis, alone, is sufficient to affirm the bankruptcy court's ruling on the Motion to Expunge.

A. Myer's Waived its Argument That it can Pierce the Corporate Veil due to Fragala's Fraudulent Actions by Failing to Raise it Before the Bankruptcy Court.

Myer's argues that the bankruptcy court erred in expunging the Claim because Fragala engaged in fraud, thereby permitting Myer's to pierce the corporate veil under New York state law. (Myer's Br. at 47–49.) Pryor argues that the bankruptcy court rejected this argument in the Dischargeability Opinion issued in the Adversary Proceeding and that, under principles of collateral estoppel, Myer's therefore cannot raise it in opposition to the Expungement Order. (Pryor's Br. at 12.) Pryor also argues that the record in the Bankruptcy Action fails to satisfy the New York law requirements for piercing the corporate veil. (*Id.* at 14–17.) The record below does not support Pryor's invocation of collateral estoppel. Nevertheless, I do not reach Myer's veil piercing argument because Myer's failed to raise it in the bankruptcy court in opposition to the Motion to Expunge.

“Nonmutual offensive collateral estoppel, a form of issue preclusion, precludes a defendant from relitigating an issue the defendant has previously litigated and lost to another plaintiff.” *Bifolck v. Philip Morris USA Inc.*, 936 F.3d 74, 79 (2d Cir. 2019) (brackets and quotation marks omitted). A party that seeks to invoke this doctrine must establish the following:

(1) the issues in both proceedings must be identical, (2) the issue in the prior proceeding must have been actually litigated and actually decided, (3) there must have been a full and fair opportunity for litigation in the prior proceeding, and (4) the issue previously litigated must have been necessary to support a valid and final judgment on the merits.

Id. at 79–80.

Pryor cannot establish the fourth requirement for collateral estoppel, which requires showing that the bankruptcy court’s resolution of the veil piercing issue was necessary to support a valid and final judgment on the merits of the Adversary Proceeding. “An issue is ‘necessary or essential only when the final outcome hinges on it.’” *Id.* at 82 (quoting *Bobby v. Bies*, 556 U.S. 825, 835 (2009)). The bankruptcy court found in the Dischargeability Opinion that Myer’s did not “satisfy the necessary elements of corporate veil piercing under New York Law.” (Dischargeability Op. at 9, **R. at 1162.**) But the court ultimately concluded that “the outcome of this veil piercing analysis is *not determinative* of whether Myer’s has a claim against the Debtor in this case.” (*Id.* at 8, **R. at 1161** (emphasis supplied).) The final outcome of the Dischargeability Opinion therefore did not, by its plain terms, “hinge[]” on the bankruptcy court’s rejection of Myer’s veil piercing argument. *Bifolck*, 936 F.3d at 82. The doctrine of collateral estoppel, therefore, does not bar Myer’s from raising its veil-piercing argument on appeal from the Expungement Order.

Nevertheless, Myer's cannot raise its veil-piercing argument on appeal from the Expungement Order because it failed to first make this argument to the bankruptcy court. "[I]t is a well-established general rule that an appellate court will not consider an issue raised for the first time on appeal" *Farhane v. United States*, 77 F.4th 123, 126 n.4 (2d Cir. 2023) (quotation marks omitted). While courts have "discretion to entertain new arguments where necessary to avoid a manifest injustice or where the argument presents a question of law and there is no need for additional fact-finding," appellate courts will "not normally" exercise this discretion to hear new arguments on appeal where the "arguments were available to the parties below and [the parties] proffer no reason for their failure to raise th[ose] arguments below." *Spinelli v. Nat'l Football League*, 903 F.3d 185, 198–99 (2d Cir. 2018) (citing *Mhany Mgmt., Inc. v. Cnty. of Nassau*, 819 F.3d 581, 615 (2d Cir. 2016)).

At no point in its briefing or oral argument on the Motion to Expunge did Myer's argue that the Claim was allowable against Fragala's individual bankruptcy estate because the record demonstrated Fragala's fraud and therefore supported piercing the corporate veil. (Bankr. ECF Nos. 85, 94, 97, 102, 108, **R. at 966, 970, 1013, 1036, 1063**; Mar. 13 Hr'g, Bankr., **R. at 1116**; Apr. 24 Hr'g.) Indeed, at the March 13, 2024 hearing, Judge Grossman specifically asked whether Myer's sought a hearing "to determine whether or not Mr. Fragala should be held individually liable for the acts of [the Corporation] in this proceeding." (Mar. 13 Hr'g at 15–16, **R. at 1130–31**.) Myer's counsel responded, "No, your Honor, I'm not." (*Id.* at 16, **R. at 1131**.)

Despite its failure to raise this argument below, Myer's does not articulate any reason why this Court should make an exception to the general rule that an appellate

court will not hear arguments that were not first presented to the trial court. (*See generally*, Myer’s Br. at 35–49.) There is no basis for such an exception here for two reasons. First, the determination of whether Fragala’s actions constituted fraud is not a pure legal question and would require this Court to engage in additional fact-finding. Myer’s did not request an evidentiary hearing in response to the Motion to Expunge, and the bankruptcy court did not hold one or make any factual findings about whether Fragala’s actions permit Myer’s to pierce the corporate veil and hold Fragala personally liable for the Corporation’s obligations under the snow-removal contracts. (*See* Mar. 13 Hr’g at 15–16, **R. at 1130–31**.) Second, Myer’s does not argue that the Court must consider this veil piercing argument in order to remedy an obvious injustice. (*See generally* Myer’s Br.; Myer’s Reply.) Given Myer’s failure to preserve this argument below, the Court declines to consider it for the first time on appeal.²⁰

B. Myer’s Fails to Show that Fragala Waived a Corporate Veil Defense.

Myer’s argues that its Claim is allowable against Fragala’s personal bankruptcy estate because Fragala “waived a defense under a corporate veil theory” when he “answered the [State Court Action] Complaint as an individual” and “used his individual posture as standing to also sue [Myer’s] in the [State Court Action] and the Bankruptcy Court.” (Myer’s Br. at 39.) Pryor did not respond to this argument as Myer’s framed it,

²⁰ Myer’s briefing in this appeal recounts evidence presented solely in the bench trial in the Adversary Proceeding, *see supra* note 12, but does not explain why this Court must consider any specific arguments or evidence solely presented in that separate action in determining whether the bankruptcy court erred in expunging Myer’s Claim in the Bankruptcy Action. Even if Myer’s had pointed to specific arguments or evidence presented solely in the Adversary Proceeding, I would decline to consider them on this appeal because Pryor was not a party to the Adversary Proceeding and thus did not have a full and fair opportunity to respond to those arguments or evidence as discussed above. *See supra* pp. 19–24; *Taylor*, 553 U.S. at 892–93.

and instead argued that Fragala's positions in the State Court Action did not amount to the showing of fraudulent activity necessary to establish that Myer's could pierce the corporate veil. (Pryor's Br at 15–16.)

Myer's argument presents a legal question. I therefore review de novo the bankruptcy court's rejection of this argument. Myer's waiver argument is contrary to Maryland law on piercing the corporate veil, which applies to this question. I therefore find that Myer's fails to show that the Claim is allowable because Fragala purportedly waived a corporate veil defense in the State Court Action.

a. Bankruptcy Law Governing the Allowance of Claims

When resolving an objection to a claim, the bankruptcy court must allow the claim unless one of the exceptions enumerated in Section 502(b) applies. 11 U.S.C. § 502(b). Section 502(b)(1) “bars any claim that ‘is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured.’” *Ogle v. Fid. & Deposit Co. of Maryland*, 586 F.3d 143, 147 (2d Cir. 2009) (citing 11 U.S.C. § 502(b)(1)). The Supreme Court has “construed this wording to mean that ‘any defense to a claim that is available outside of the bankruptcy context is also available in bankruptcy.’” *Id.* (quoting *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 444 (2007)). In order to determine whether a claim is enforceable, courts generally must look to state law, because “when the [Bankruptcy] Code uses the word ‘claim,’ [which the Code defines as] a ‘right to payment,’ it is usually referring to a right to payment under state law.” *Travelers*, 549 U.S. at 444 (citing 11 U.S.C. § 101(5)(A)). Thus, in order to determine whether the bankruptcy court erred in rejecting the argument that the Claim was

enforceable against Fragala personally because he waived any corporate veil defense, I must first determine which state law applies.

b. Choice of Law

The parties both assert that New York law governs Myer's Claim because the Corporation is incorporated in New York. (Myer's Br. at 35; Pryor's Br. at 14, Myer's Reply at 20). I disagree.

The Second Circuit has held that in order to determine which law should govern a claim in a bankruptcy case, bankruptcy courts should apply the "choice of law rules of the state where the underlying prepetition complaint was filed" so long as: "(1) the claim before the bankruptcy court is wholly derived from another claim already pending in a parallel, out-of-state, non-bankruptcy proceeding; and (2) the pending original, or 'source,' claim was filed in a court prior to the commencement of the bankruptcy case. *In re Coudert Bros. LLP* ("Coudert I"), 673 F.3d 180, 191 (2d Cir. 2012); accord *In re Coudert Bros. LLP* ("Coudert II"), 809 F.3d 94, 99 (2d Cir. 2015). In *Coudert I*, the Second Circuit found that a claim in bankruptcy that arose from a prepetition complaint filed in Connecticut should be governed by Connecticut's choice of law rules, rather than the choice of law rules of New York, the forum state of the bankruptcy action, reasoning that:

it would be fundamentally unfair to allow [the debtor's] bankruptcy, coming as it did in the midst of the Connecticut action, to deprive [the claimant] of the state-law advantages adhering to the exercise of its venue privilege. To hold otherwise would be to allow the defendant [debtor] to use a device of federal law (the bankruptcy code) to choose the forum and accompanying choice of law—a practice forbidden by [the Supreme Court in *Klaxon Co. v. Stentor Electric Mfg. Co.*, 313 U.S. 487 (1941)]. It would also lead to the ironic result that New York's anti-forum shopping

borrowing statute would be applied to defeat the claim of a party that did not shop for New York as a forum.

Coudert I, 673 F.3d at 191.

Here, Myer's Claim is "wholly derived" from the complaint Myer's filed in Maryland before Fragala filed his petition for bankruptcy. (Proof of Claim; Bankr. ECF Nos. 2, 94, **R. at 10, 972**.) Accordingly, I apply Maryland choice of law rules to determine which law applies to the issue of whether and when a party may be held individually liable for a corporate debt because they waived the protections of the corporate veil.

Federal district courts in Maryland, when applying Maryland choice of law rules, have found that "Maryland law is not clear about the choice-of-law principles it applies to veil piercing." *Coastal Spray Foaming, LLC v. Reynolds Home Sols., Inc.*, No. CV 17-00701-JMC, 2017 WL 2242666, at *2 n.2 (D. Md. May 23, 2017); *see also Ademiluyi v. PennyMac Mortg. Inv. Tr. Holdings I, LLC*, 929 F. Supp. 2d 502, 513 (D. Md. 2013). Indeed, I am not aware of any Maryland case setting forth any specific choice-of-law principles with respect to a veil piercing analysis. "Maryland courts have applied Maryland law, rather than the law of the state of incorporation, when determining whether a plaintiff may pierce the veil of a corporation. *See Hildreth v. Tidewater Equip. Co.*, 838 A.2d 1204, 1209 (Md. 2003) (applying Maryland law without discussion to find that a shareholder of a New Jersey corporation could not be held personally liable for corporate debts); *Ramlall v. MobilePro Corp.*, 30 A.3d 1003, 1009 (Md. App. 2011) (applying Maryland law where plaintiff sought to pierce the veil of Delaware corporation). Therefore, I will apply Maryland law to determine whether the bankruptcy

court erred in rejecting the argument that Myer's Claim was allowable because Fragala waived the protections of the corporate form due to his conduct in the State Court Action.

c. Liability of Corporate Officers under Maryland Law

It is well established under Maryland Law that “[w]hen an official or agent signs a contract for his corporation it is simply a corporate act[,] . . . not the personal act of the individual, and he is not personally liable for the corporate contract unless the matter is tainted by fraud.” *Turner v. Turner*, 809 A.2d 18, 61 (Md. App. 2002) (citations and alterations omitted); accord *Curtis G. Testerman Co. v. Buck*, 667 A.2d 649, 653 (Md. 1995). “[T]he corporate entity will be disregarded only when necessary to prevent fraud or to enforce a paramount equity.” *Hildreth*, 838 A.2d at 1209 (citations omitted). “[T]he burden of proof of the fraud rests upon the creditor.” *Turner*, 809 A.2d at 61 (citation and brackets omitted).

Thus, a creditor seeking to hold a corporate officer personally liable for a corporate debt bears the burden of proving that the officer's fraud permits piercing the corporate veil. *Turner*, 809 A.2d at 61; see also *Hildreth*, 838 A.2d at 1211 (2003) (“[I]t was [the plaintiff's] burden to prove” the existence of factors establishing a defendant's personal liability for a corporation's debts). Maryland courts have described this to be a “herculean” burden. *Coastal Spray Foaming*, 2017 WL 2242666, at *2 (citing *Residential Warranty Corp. v. Bancroft Homes*, 728 A.2d 783, 790–791 (Md. App. 1999) (“Maryland is more restrictive than other jurisdictions in allowing a plaintiff to pierce a corporation's veil.”)).

Absent fraud, an officer may still be held personally liable for a corporation's breach of contract under Maryland law “when there is . . . evidence . . . that the officer

intended to assume the obligation.” *Testerman*, 667 A.2d at 653 (citation omitted). Courts determining “whether an officer of a corporation, signing an agreement, means to bind himself personally, must, as a general rule” make this determination based on “the face of the paper itself.” *Whitmore v. Hawkins*, 2000 WL 828285, at *4–5 (4th Cir. 2000) (citing *Morrison v. Baechtold*, 48 A. 926, 929 (Md. 1901)). Where a contract is ambiguous on its face, parole evidence is admissible “to prove the circumstances under which the contract was made, or, in other words, to prove the true nature of the transaction.” *Id.* (citing *Morrison*, 48 A. at 929)).

d. Analysis

There is no support in Maryland law for Myer’s argument that the Claim is enforceable against Fragala because he waived a corporate veil defense in the State Court Action by “cho[osing] to openly present himself as acting as an individual when he, in his individual capacity, answer[ed] the [State Court Action] Complaint.” (Myer’s Br. at 36.) Myer’s provides no legal authority for this argument, and instead cites only to a post-trial brief it filed in the Adversary Proceeding. (*Id.*) Even if the Court were to consider the post-trial brief Myer’s filed in a separate action, that brief does not provide any legal support for this argument either. (*See* Adv. Proc. ECF No. 148 at 21–22.) Contrary to Myer’s contentions, under Maryland law, the corporate veil doctrine is not a defense that a defendant can waive if not timely raised. Rather, a creditor attempting to hold a corporate officer or director liable for the corporation’s debts bears the burden of establishing that the defendant officer engaged in fraud such that the creditor may pierce the corporate veil. *Turner*, 809 A.2d at 61.

Myer's repeats the same waiver argument over and over again in various iterations. It asserts that Fragala has waived the protections of the corporate veil because he failed to challenge the state court's personal jurisdiction over him. (*See Myer's Br.* at 39.)²¹ Myer's also asserts that because the Corporation was registered in Maryland and named a resident agent three months before Fragala answered the State Court Action, Fragala's choice to answer the complaint and not to immediately file a motion to dismiss asserting a corporate veil defense further proves that he conceded personal liability for the Corporation's obligations. (*Id.* at 40–41.)²² Myer's provides no legal support whatsoever for these arguments. Each is squarely contradicted by Maryland law establishing that a creditor must prove fraud in order to pierce the corporate veil and hold a corporate officer liable for the debts of the corporation. *See Turner*, 809 A.2d at 61.

Finally, Myer's fails to point to any evidence that Fragala intended to personally assume the obligations set forth in the Corporation's snow-removal contracts with Myers. Fragala disavowed that he intended to be bound by these contracts when he filed a motion to dismiss Myer's amended complaint in the State Court Action, arguing that he

²¹ At times, Myer's argues generally that Fragala "conceded personal liability." (*E.g.*, Myer's Br. at 15.) Myer's briefing, however, only advances the argument that Fragala "waived a defense under a corporate veil theory," and not that Fragala waived all defenses applicable to the State Court Action. Thus, I understand that Myer's assertions that Fragala "conceded personal liability" refer to its argument that Fragala "conceded any right he may have had to a corporate veil when he answered the [State Court Action] Complaint as an individual." (Myer's Br. at 37, 39, 49.)

²² Pryor states that Myer's also argues that his Claim should be allowed because Fragala "failed to register [the Corporation], a New York Corporation in Maryland according to Maryland law," (Pryor's Br. at 15), but Myer's has disclaimed this argument as a separate basis for reversal of the Expungement Order. (Myer's Br. at 39 ("Appellant has not contended that Co-Appellee Fragala conceded personal liability because he failed to register [the Corporation] in Maryland."))

“executed” the contracts “in his capacity as President of [the] Corporation and as an agent for the same” and “did not enter into these contracts in his individual capacity, as the terms of said contracts are explicitly between Defendant Corporation and Plaintiff.” (Bankr. ECF No. 21-8 at 2, **R. at 227.**) Myer’s failed to submit the snow removal contracts in support of its Proof of Claim or even in opposition to the Motion to Expunge. Thus, this Court has no basis to conclude that the face of these contracts shows that Fragala “intended to assume the [Corporation’s] obligation[s].” *Testerman*, 667 A.2d at 653; *see Whitmore*, 2000 WL 828285, at *4–5.

For all of these reasons, Myer’s has failed to establish that its Claim for breach of its snow-removal contracts with the Corporation is enforceable against Fragala in his individual Bankruptcy Action.²³ Accordingly, I find that the bankruptcy court’s decision to expunge the Claim was not in error under 11 U.S.C. § 502(b)(1).

²³ Even if New York law applies to the bankruptcy court’s determination as to whether Fragala waived a corporate veil defense, the outcome of this analysis would not change. Like Maryland law, New York law prevents corporate officers from being “held personally liable on contracts of their corporations, provided they did not purport to bind themselves individually under such contracts.” *Lido Beach Towers v. Denis A. Miller Ins. Agency*, 11 N.Y.S.3d 192, 193 (App. Div. 2015) (citations omitted). Thus, under New York law, “when an officer or director acts on behalf of his or her corporation, he or she may not be held liable for inducing the corporation to violate its contractual obligations unless his or her activity involves separate tortious conduct or results in personal profit.” *Stern v. H. DiMarzo, Inc.*, 909 N.Y.S.2d 480, 481 (App. Div. 2010) (citation and brackets omitted). And, as under Maryland law, a creditor seeking hold a corporate officer or director liable for the corporation’s debt or obligation under New York law “bears the heavy burden of showing” that the court may pierce the corporate veil. *Skanska USA Bldg. Inc. v. Atl. Yards B2 Owner, LLC*, 40 N.Y.S.3d 46, 54 (App. Div. 2016) (quotation marks omitted), *aff’d*, 98 N.E.3d 720 (2018). Myer’s fails to meet these standards for enforcing its snow-removal contracts with the Corporation against Fragala personally.

C. Myer's Failed to Provide Sufficient Proof in Support of its Claim.

Lastly, I affirm the bankruptcy court's ruling that the Claim is not allowed because Myer's provided insufficient proof to support the Claim. Although neither the Expungement Order nor the parties address this issue, an appellate court reviewing a bankruptcy order "may affirm on any ground that finds support in the record[] and need not limit its review to the bases raised or relied upon in the decisions below." *Russo v. Wells Fargo N.A.*, No. 23-cv-02359, 2024 WL 1348523, at *3 (E.D.N.Y. Mar. 29, 2024); *Rora*, 630 B.R. at 882 (citation omitted). Even if the bankruptcy court erred in rejecting Myer's argument that the Claim was enforceable against Fragala as an individual because he waived a corporate veil defense in the State Court Action, Myer's failure to provide sufficient proof in support of its Claim is an independent basis to affirm the bankruptcy court.

Rule 3001 of the Federal Rules of Bankruptcy ("Bankruptcy Rule 3001") "governs the substantive and procedural requirements for proof of claims against bankruptcy estates." *Russo*, 2024 WL 1348523, at *4; *see generally* Fed. R. Bankr. P. 3001. Under Bankruptcy Rule 3001, "[w]hen a claim . . . is based on a writing, a copy of the writing shall be filed with the proof of claim." Fed. R. Bankr. P. 3001(c)(1).

To make out a *prima facie* case for the validity of a claim, "[t]he claimant must allege facts sufficient to support the claim and attach supporting documentation to a proof of claim." *Brancato*, 2023 WL 5127334, at *6; *see also* Fed. R. Bankr. P. 3001(f) ("A proof of claim executed and filed in accordance with [Bankruptcy Rule 3001] shall constitute prima facie evidence of the validity and amount of the claim."). Where the claimant has established a *prima facie* case for their claim, the "objecting party must

present to the Court evidence which, if believed, would refute at least one of the allegations essential to the claim.” *Russo*, 2024 WL 1348523, at *4 (quotation marks and citation omitted). Once an objector produces evidence sufficient to “negate a claim’s presumptive legal validity,” the burden then shifts “back to the claimant to prove by a preponderance of the evidence that under applicable law the claim should be allowed.” *Id.* (quotation marks and citation omitted).

Where a proof of claim is “not supported by the requisite documentation,” it “is not presumed to be *prima facie* valid.” *Brancato*, 2023 WL 5127334, at *6; *see also In re Benyamin*, 587 B.R. 243, 249 (Bankr. S.D.N.Y. 2018) (“Failure to attach the documentation required by Bankruptcy Rule 3001 will result in the loss of the *prima facie* validity of the claim.”) (citations omitted), *on reconsideration*, 596 B.R. 789 (Bankr. S.D.N.Y. 2019), *aff’d*, No. 17-12677-MG, 2020 WL 2832815 (S.D.N.Y. June 1, 2020); *In re Aiolova*, No. 11-10503 (BRL), 2013 WL 5818893, at *3 (Bankr. S.D.N.Y. Oct. 29, 2013) (“Here, Jackman has not submitted any documentation to support his Claim, and therefore has not met his *prima facie* burden.”); *cf. In re Zubair*, No. 20-cv-8829, 2021 WL 4974811, at *8 (S.D.N.Y. Oct. 26, 2021) (holding that the proof of claims “contain[ed] all of the requisite elements: (i) they were filed on an Official Form 410; (ii) contain an itemized list including the principal balance, interest, fees, costs, and total debt due; and (iii) include as attachments copies of the Note, recorded Mortgage, recorded Assignment and escrow account disclosure statement.”).

When an objection is raised to a claim that is “not entitled to *prima facie* validity,” the claimant “bears the burden of demonstrating the validity and amount of the Claim by

a preponderance of the evidence.” *In re Brown*, No. 18-10617, 2023 WL 6051957, at *10 (Bankr. S.D.N.Y. Sept. 15, 2023).

Accordingly, courts in this Circuit have sustained objections to claims for insufficient evidence where: (1) the claimant failed to comply with Bankruptcy Rule 3001 and did not merit the presumption of *prima facie* validity, and (2) when faced with an objection, the claimant failed to prove by a preponderance of the evidence that the claim was valid and enforceable against the Debtor under Section 502(b)(1). *See In re Brown*, 2023 WL 6051957, at *10 (disallowing claim under Section 502(b)(1) because claimant “failed to . . . prov[] by a preponderance of the evidence . . . that the Claim [wa]s valid and enforceable against the Debtor” where he failed to attach any documents in support of the claim, including the loan agreement upon which the claim was based); *see also In re Minbatiwalla*, 424 B.R. 104, 119 (Bankr. S.D.N.Y. 2010) (citing *In re DePugh*, 409 B.R. 125, 137–38 (Bankr. S.D.Tex. 2009)).

Reviewing the evidence submitted by Myer’s in support of its Claim in the Bankruptcy Action,²⁴ Myer’s failed to comply with Bankruptcy Rule 3001 and its Claim was not entitled to the presumption of *prime facie* validity. When Pryor objected to Myer’s’ Claim, Myer’s failed to meet its burden of proving that the Claim was valid and enforceable against Fragala personally.

²⁴ Myer’s repeatedly cites to evidence presented in the Adversary Proceeding, but that evidence was not before Pryor or the bankruptcy court when it ruled on Pryor’s Motion to Expunge, as noted above. *See supra* note 20. While Myer’s argues that Pryor had notice of the Dischargeability Order, there is no evidence in the record that Myer’s ever provided Pryor with the evidence admitted and considered in the adjudication of the Adversary Proceeding.

Myer's filed only two documents along with its Proof of Claim: (1) a short document titled "Statement of Account of Russell Fragala" which briefly states that Fragala assertedly owed Myer's \$92,366.80, calculated by adding a \$58,4600.00 "Unpaid Balance as of March 3, 2017" and \$33,906.80 in "[l]ate charges @ 2% per month up to August 3, 2019," (Proof of Claim, Ex. 1, **R. at 1023**); and (2) a document filed in the State Court Action titled "Plaintiffs' [sic] Pretrial Statement," which provided unsworn allegations about the Corporation's breach of contract and referred to the Corporation and Fragala collectively as "Fragala" (Proof of Claim, Ex. 2, **R. at 1024**). This Pretrial Statement was signed only by Burke, counsel for Myer's. (*Id.* at 12, **R. at 1035**.) Although the document refers to other documentary and deposition evidence, no documents or transcripts of depositions were submitted in support of the proof of Claim. (*Id.* at 3, 12, **R. at 1027, 1035**.)

While Bankruptcy Rule 3001(c)(1) requires that "[w]hen a claim . . . is based on a writing, a copy of the writing shall be filed with the proof of claim," Myer's did not submit the 22 snow-removal contracts with the Corporation on which its Claim against Fragala is based. Because Myer's failed to submit documentation required by Bankruptcy Rule 3001(c), it was not entitled to the presumption that its Claim was *prima facie* valid. *In re Brown*, 2023 WL 6051957, at *10; *Brancato*, 2023 WL 5127334, at *6; *In re Benyamin*, 587 B.R. 243, 249 (Bankr. S.D.N.Y. 2018). Thus, when Pryor objected to the Claim, Myer's was required to present sufficient evidence to establish by a preponderance of evidence that its Claim was enforceable against Fragala. *See Russo*, 2024 WL 1348523, at *4.

In response to the Motion to Expunge, Myer's submitted only the following: (1) a copy of the docket sheet in the appeal from the Adversary Proceeding (Bankr. ECF No. 94-1, **R. at 983–85**); an email Burke submitted to Fragala's then-counsel, Richard Kanter, enclosing a short excerpt from the transcript of a deposition of Jerry Bender, who identifies himself as a market account manager of BrightView Enterprise Landscapes, LLC and states that he previously worked with Fragala (Bankr. ECF No. 94-2, **R. at 986–96**); (2) the "Addendum to 2016-2017 Snow Removal Contract," which was signed by "Russ Fragala – President" and "Rob Meyers – Myer's Lawn Care Services" and lists three terms relating to a schedule of payment, including that "all corresponding invoices for monthly services rendered including supporting necessary documentation must be submitted to Russ Fragala Landscape Corp. . . ." (Bankr. ECF No. 94-3, **R. at 997–98**); (4) an unsigned letter from Myer's' counsel to Pryor dated January 26, 2023, discussing the issues Myer's identified with the bankruptcy court's Dischargeability Opinion (Bankr. ECF No. 94-4, **R. at 999–1003**); (5) a copy of registration records showing that the Corporation was registered in Maryland on October 25, 2017 (Bankr. ECF No. 94-5, **R. at 1003–06**); and (6) a copy of record tax liens against the Corporation (Bankr. ECF No. 94-6, **R. at 1007–12**). In a supplemental response to the Motion to Expunge, Myer's re-filed its "Pretrial Statement" (Bankr. ECF No. 102) and submitted the motion Myer's had filed in the State Court Action to stay that proceeding in light of Fragala's pending Bankruptcy Action. (Bankr. ECF No. 106.)

These submissions fail to establish that the contracts on which Myer's' Claim was based were enforceable against Fragala as an individual. Contrary to Myer's' position, the Addendum to 2016-2017 Snow Removal Contract appears to confirm that the

Corporation's debts under the snow-removal contracts flow to the Corporation—not to Fragala, who signed the Addendum in his capacity as the Corporation's president. Accordingly, the bankruptcy court did not err in expunging the claim under 11 U.S.C. § 502(a)(1) because Myer's failed to submit sufficient evidence to establish a *prima facie* case in support of its Claim, and upon objection, failed to establish by a preponderance of evidence that the Claim was valid and enforceable. *In re Brown*, 2023 WL 6051957, at *10.

CONCLUSION

For the reasons stated above, I find that the bankruptcy court did not err in granting Pryor's Motion to Expunge Myer's' Claim. Accordingly, I affirm the bankruptcy court's April 26, 2023 decision (Bankr. ECF No. 110, **R. at 1067**) and deny Myer's' appeal (ECF No. 1) in its entirety.

Dated: Central Islip, New York
August 6, 2024

/s/ Nusrat J. Choudhury
NUSRAT J. CHOUDHURY
United States District Judge

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

Myer's Lawn Care Services, Inc., Appellant, -v- Russell Fragala, Appellee.	2:22-cv-5980 (NJC)
--	--------------------

MEMORANDUM AND ORDER

NUSRAT J. CHOUDHURY, District Judge:

This appeal arises from a contract dispute between Appellant Myer's Lawn Care Services, Inc. ("Myer's") and Russ Fragala Landscape Corporation (the "Corporation"). Myer's appeals from an opinion and judgment issued in an adversary proceeding in the Bankruptcy Court for the Eastern District of New York. ("Adversary Proceeding").¹ The Adversary Proceeding is related to Russell Fragala's ("Fragala") individual Chapter 7 bankruptcy proceeding ("Bankruptcy Action").²

In this appeal, Myer's asserts that the bankruptcy court erred in finding that Myer's claim (the "Claim") against Fragala's bankruptcy estate was dischargeable in bankruptcy

¹ The Adversary Proceeding is docketed as *Myer's Lawn Care Services, Inc. v. Fragala et al.*, No. 19-ap-8150 (Bankr. E.D.N.Y.). "Adv. Proc. ECF" refers to citations to the electronic record of the Adversary Proceeding.

² The Bankruptcy Action is docketed as *In re Russell Fragala*, 19-br-75714 (Bankr. E.D.N.Y.). "Bankr. ECF" refers to citations to the electronic record in that proceeding.

(“Dischargeability Opinion,” Adv. Proc. ECF No. 154, **R. at 535–51**). For the reasons set forth below, this appeal is dismissed as moot.

BACKGROUND

On August 15, 2019, Russell Fragala filed an individual petition for bankruptcy under Chapter 7 of the Bankruptcy Code. (Bankr. ECF No. 1.) On November 19, 2019, Myer’s filed a proof of an unsecured claim in the Bankruptcy Action (the “Claim”), alleging that Fragala was personally liable for \$92,366.80 for the breach of certain snow-removal contracts between Myer’s and the Corporation. (Bankruptcy Action, Claims Register, Claim No. 1-1.) On November 25, 2019, Myer’s initiated the related Adversary Proceeding against Fragala, alleging that its Claim against Fragala’s estate was not dischargeable in the Bankruptcy Action pursuant to the statutory exceptions to discharge in cases of “false representation” or “willful and malicious injury” under 11 U.S.C. §§ 523(a)(2)(A) and (6). (Adv. Proc. ECF No. 1, **R. at 7–26**.)

Judge Robert E. Grossman presided over a two-day bench trial in the Adversary Proceeding in May 2022 and issued a decision on September 22, 2022. (Dischargeability Op., Adv. Proc. ECF No. 154, **R. at 535–551**.) First, the court found that Myer’s had an allowed claim against Fragala’s estate under 11 U.S.C. § 502(a) and Rule 3001(f) of the Federal Rules of Bankruptcy Procedure (“Fed. R. Bankr. P.”), because Myer’s had filed a proof of claim and no party had filed an objection. (Dischargeability Op. at 1, 8, **R. at 535, 545**.) Second, the court found that the Claim was dischargeable in the Bankruptcy Action because Myer’s failed to prove that the Claim satisfied the exceptions to discharge for “false representation” and “willful and malicious injury” under 11 U.S.C. §§ 523(a)(2)(A) or (2)(6). (Dischargeability Op. at 12–15, **R. at 546–49**.)

Judgment entered in the Adversary Proceeding on September 22, 2022. (Bankr. ECF No. 155, **R. at 552**.) On October 5, 2022, Myer's timely filed a notice of appeal of the judgment. (Adv. Proc. ECF No. 156, **R. at 556**.)

On February 2, 2023, after Myer's appealed the Adversary Proceeding judgment, Robert Pryor, the trustee in the Bankruptcy Action, filed a Motion to Expunge Myer's Claim pursuant to 11 U.S.C. §§ 502(a), 502(b)(1) and Rule 3007, Fed. R. Bank. P., or, in the alternative, to "reconsider[] the Court's decision of September 22, 2022 [the Dischargeability Opinion]" pursuant to 11 U.S.C. § 502(j) and Rule 3008, Fed. R. Bankr. P. (Bankr. ECF No. 85-1 at 1, 6.) After receiving briefing and hearing oral argument on the Motion to Expunge,³ Judge Grossman issued an order expunging Myer's Claim in its entirety ("Expungement Order"). (Expungement Order, Bankr. ECF No. 110.)

Myer's timely appealed the Expungement Order. On August 6, 2024, this Court affirmed the bankruptcy court's order expunging Myer's Claim. (*See Myer's Lawn Care Services, Inc. v. Pryor*, No. 2:23-cv-3346 (NJC) (E.D.N.Y. Aug. 6, 2024), ECF No. 30.)

DISCUSSION

Under the doctrine of constitutional mootness, this Court lacks subject matter jurisdiction over an appeal that is moot. *AmeriCredit Fin. Servs., Inc. v. Tompkins*, 604 F.3d 753, 755 (2d Cir. 2010).⁴ "When the plaintiff no longer has a legally cognizable interest in the outcome of the

³ See Bankr. ECF Nos. 94, 97, 102, 106, 108; Bankr. Hr'g, Mar. 13, 2023; Bankr. Hr'g, Apr. 24, 2023.

⁴ The doctrine of "equitable mootness" is not applicable here. In the Second Circuit, "a bankruptcy appeal is presumed equitably moot when the debtor's reorganization plan has been substantially consummated." *In re BGI, Inc.*, 772 F.3d 102, 108 (2d Cir. 2014). The Second Circuit has not applied the doctrine of equitable mootness in the Chapter 7 context, and the Court declines to do so here. *See BGI*, 772 F.3d at 109 n.13 ("[T]he instant appeal arises in the context

action, the case becomes moot and is no longer a ‘case’ or ‘controversy’ for the purposes of Article III.” *Antonyuk v. Chiumento*, 89 F.4th 271, 370 (2d Cir. 2023); *Tompkins*, 604 F.3d at 755 (citing same standard in the bankruptcy appeal context). In other words, an appeal must be dismissed as moot “if an event occurs while a case is pending on appeal that makes it impossible for the court to grant any effectual relief whatever to a prevailing party.” *First Unum Life Ins. Co. v. Wulah*, 506 F. App’x 1, 1 (2d Cir. 2012) (citing *Church of Scientology of California v. United States*, 506 U.S. 9, 12 (1992)) (brackets omitted).

Here, the bankruptcy court expunged Myer’s Claim in its entirety, and I upheld the Expungement Order on appeal. (See *Pryor*, No. 2:23-cv-3346, ECF No. 30.) Myer’s therefore does not have a claim in Fragala’s Bankruptcy Action. Thus, there is no dispute as to whether Myer’s Claim satisfies the exception to discharge for “false representation” or for “willful and malicious injury” under 11 U.S.C. §§ 523(a)(2)(A) or (2)(6). Accordingly, Myer’s appeal from the bankruptcy court’s Dischargeability Opinion is moot and this Court does not have subject matter jurisdiction to entertain it.

CONCLUSION

For the reasons set forth above, this appeal (ECF No. 1) is dismissed as moot.

Dated: Central Islip, New York
August 6, 2024

/s/ Nusrat J. Choudhury
NUSRAT J. CHOUDHURY
United States District Judge

of a Chapter 11 liquidation. Consequently, we leave to a future panel of our Court the question whether a district court may also invoke equitable mootness in the context of a Chapter 7 liquidation.”).

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:

Russell Fragala
aka Russell L. Fragala,

Debtor.

Case No. 8-19-75714-reg

Chapter 7

Myer's Lawn Care Services, Inc.,

Plaintiff,

Adv. No. 19-08150-reg

- against -

Russell Fragala,

Defendant.

DECISION AFTER TRIAL

Before the Court is an adversary proceeding commenced by Myer's Lawn Care Services, Inc. ("Myer's" or "Plaintiff") against the debtor, Russell Fragala ("Fragala" or the "Debtor") seeking: (1) to hold the Debtor individually liable on a fraud theory, and also to pierce the corporate veil and hold the Debtor liable for the alleged obligations of his company, Russ Fragala Landscape Corporation ("Landscape") to Myer's; and (2) a finding that Myer's has an allowed claim in this case in the amount of \$92,366.80 and that such claim is non-dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) and (a)(6). Fragala argues that Myer's is not a creditor in the instant bankruptcy, but even if the Court determines Myer's has an allowed claim that claim is dischargeable.

For the reasons that follow, the Court finds that as of this writing Myer's has an allowed claim in this case in the amount of \$93,366.80 by virtue of the uncontested proof of claim filed by Myer's against the Debtor. *See* 11 U.S.C. § 502(a); Fed. R. Bankr. P. 3001(f). However,

regardless of the basis for the finding that Myer's has an allowed claim Myer's has failed to prove that such claim is non-dischargeable under either § 523(a)(2)(A) or (a)(6).

This case highlights the distinction between establishing an allowed claim and seeking a finding that such claim is non-dischargeable. Courts have been very clear that claims generally should be dischargeable in bankruptcy. That is the basis for our bankruptcy laws—providing an honest debtor with a fresh start. Only where the facts establish that a debtor's actions violate very specific sections of the Bankruptcy Code will a debt be excepted from discharge. *See* 11 U.S.C. § 523(a). What was proven in this case is that Myer's has a claim and is entitled to receive a distribution from the estate. What was not proven is that the conduct of the Debtor satisfies the statutory basis to find the claim non-dischargeable. Judgment will enter in favor of the Debtor.

FACTS AND PROCEDURAL HISTORY

The Debtor owned and operated Russ Fragala Landscape Corporation, a New York corporation, from 2014 through early 2018. Plaintiff, Myer's Lawn Care Services, Inc., is a Maryland corporation. At some point in 2016, Landscape contracted with BrightView Solutions LLC ("BrightView"), as agent for Walmart, Sam's Club and Burlington, to provide snow removal services during the 2016/2017 winter snow season for twenty-two (22) Walmart and Sam's Club stores and a Burlington store (each a "Work Site" and together the "Work Sites") located in Maryland on a fixed-fee basis. Ex. 1.¹ That is, Landscape would be paid a fixed amount under the contract independent of how much or how often it snowed. *Fragala Depo.*, Sept. 2, 2021, Ex. 3 at 37–38. On November 3, 2016, Landscape and Myer's entered into twenty-two (22) subcontracts under which Myer's would provide snow removal services for each Work

¹ In this Decision, Plaintiff's exhibits are numeric. Defendant's exhibits are alphabetic.

Site. *E.g.*, Ex. 2. Payment under the subcontracts was on a per occurrence basis; the amount due under the subcontract depended on the occurrence of a snow event, the amount of snow, and equipment and material used following each snow occurrence. *Id.*; Myer Depo., Aug. 31, 2021, Ex. B at 73–76.

Each subcontract contained the name and address of each Work Site, a breakdown of pricing, and a “Statement of Subcontract Work.” Ex. 2. Under the Statement of Subcontract Work, Myer’s was to document all pre-existing damage present at each Work Site prior to the first snowfall of the season on a pre-season inspection form with notes and photos (“pre-season inspections”). Ex. 2. Myer’s agreed to indemnify and hold Landscape harmless “against all liability for claims and liens for labor performed or materials used or furnished to be used on the job” *Id.* Additionally, the subcontracts contained a “Repair of Damage” provision pursuant to which Myer’s would be held liable for post-season damages attributable to its snow removal activities. *See* Ex. 2.

It is undisputed that Myer’s did not provide a report of pre-season damages at the Work Sites to Landscape prior to the first snowfall. However, in October 2016, BrightView, through several of its employees, conducted pre-season inspections and documented the condition of the Work Sites prior to the snow season, which included varying degrees of damage at nearly all Work Sites. Ex. 9–12. Fragala testified that Landscape’s employee, Mark Hornstein, joined the pre-season inspections but he did not provide a pre-season inspection report to Landscape. Tr. 71–73, May 2, 2022.

Between November 3, 2016 and February 9, 2017, Myer’s performed under the subcontracts. *Id.* at 115–16. As of February 9, 2017, Landscape had paid Myer’s in full under the subcontracts. *Id.* at 118; Ex. 15. In March 2017, there was a significant snow event which

impacted the Work Sites. As a result, Myer's resumed snow removal activities at the Work Sites and invoiced Landscape \$183,460.00 for services performed. *See Myer Depo.*, Aug. 31, 2021, Ex. B at 38, 51; Ex. 15. Landscape paid Myer's \$127,070.00, leaving an unpaid balance of \$58,460.00. Ex. 15. Fragala asserts that the reason Myer's was not paid in full was that there were post-season damages requiring repair. Tr. 135, 138, May 3, 2022.

In June 2017, BrightView conducted post-season inspections of the Work Sites and reported no damages with the exception of damage to a cart corral and some curbs. Exs. 9–12, 32. This was also supported by a letter from BrightView's counsel, dated May 24, 2018, stating that BrightView had not received any communication from Landscape, Walmart, Sam's Club or Burlington stores about damage caused by snow removal services in the 2016/2017 snow season. Ex. 9.

Despite this documentary evidence to the contrary, Fragala testified in a deposition and at trial that BrightView contacted Landscape about post-season damages to the Work Sites. Tr. 121–22, May 2, 2022; Tr. 142, May 3, 2022. As a result, according to Fragala, BrightView withheld \$160,000.00 under their contract until the damages were repaired and Landscape provided to BrightView "job sheets" signed by each store showing the repairs completed. Tr. 110–12, May 2, 2022; *see also* Fragala Depo., Sept. 2, 2021, Ex. 3 at 53, 61–64.

On June 6, 2017, Hornstein, on behalf of Landscape, emailed Myer's stating that Hornstein had conducted Work Site inspections and discovered damage caused by Plaintiff's snow removal services. Hornstein stated that he would forward a list of the repairs to be completed by Myer's before June 23, 2017. Ex. 16. Hornstein never sent the list. Hornstein Depo., Oct. 6, 2021, Ex. 5 at 134. Myer's disputed that it caused the alleged damage and did not conduct any repairs.

Fragala testified that Landscape sent employees to Maryland to repair the alleged damage in late July and August 2017. Tr. 112, May 2, 2022; Tr. 40–41, May 3, 2022. Fragala produced twenty (20) “Landscaping Job Sheets” stamped and signed by each store reflecting the damage repaired at each Work Site. Ex. 21. Each Landscaping Job Sheet is dated between August 1, 2017 and August 5, 2017, with the exception of one which is dated August 31, 2017. Landscape also prepared corresponding invoices to Myer’s reflecting the repairs completed and the cost of repairs for each Work Site. *Id.* Every invoice is dated August 29, 2017. A spreadsheet apparently created by Landscape summarized the invoices and the travel, lodging, and meal expenses associated with the repairs.² Ex. 26. However, Fragala could not produce receipts or invoices for materials purchased to repair the damages, receipts for fuel to travel from Long Island to Maryland, or food or lodging receipts. Tr. 88–90, 93–95, May 3, 2022. According to Fragala, these documents were destroyed by a disgruntled employee. Tr. 125–26, May 2, 2022. Fragala testified that it was not until 2018, once the repairs were completed, that BrightView paid Landscape in full for the contracted-for snow removal services.³ Tr. 110–12, May 2, 2022; see Ex. 8.

On August 11, 2017, Landscape’s attorney, Rompel Alam, sent a letter to Plaintiff’s counsel advising that Myer’s was in substantial breach of the subcontract with Landscape because Myer’s had not repaired the damage caused to the Work Sites. Ex. 17. As a result of

² There are some discrepancies between the invoices and the spreadsheet. Four entries on the spreadsheet do not match the cost of the repairs on the invoices: 2248 Cantonsville, 2290 Owings Mills, 6239 Timonium, and 6651 Cantonsville. Ex. 26. Three Work Sites are attributed to Walmart stores on the spreadsheet (Ex. 26) but to Sam’s Club stores on the Landscaping Job Sheets (Ex. 21). One entry on the spreadsheet, 2577 Cockeysville, does not have a corresponding invoice and/or Landscaping Job Sheet. Ex. 26.

³ In the amended complaint, Myer’s alleges that Landscape was paid by BrightView on May 10, 2017. Fragala testified at trial that Landscape was paid by BrightView in 2018. Neither party provides evidence to support their contention.

Plaintiff's refusal to take responsibility for the damage, the letter explains that Landscape began making repairs to the Work Sites in July 2017. *Id.* Plaintiff's attorney responded by letter on August 17, 2017, denying the allegations that Myer's caused the damage and reasserting that Landscape owed Myer's \$58,460.00 plus late fees of \$11,119.01 and accruing by \$38.97 per day pursuant to the "Addendum to 2016-2017 Snow Removal Contract." Ex. 18.

On September 17, 2017, Myer's sued both Fragala individually and Fragala doing business as Russ Fragala Landscape Corporation, in Maryland state court alleging that defendants breached the subcontracts and demanding judgment against both defendants in the amount of \$70,592.23. Ex. 22. According to Plaintiff's counsel, he sued Fragala individually and sued Landscape as a "dba" because under Maryland law he believed that a New York corporation that was not registered to do business in Maryland could not be sued in Maryland state courts. *See* Ex. 18. Fragala answered the state court complaint in his individual capacity on January 10, 2018 (Ex. 24) and filed a counterclaim, also in his individual capacity, against Myer's for \$83,755.00 in damages related to the alleged costs to repair the damaged Work Sites. Ex. 25.⁴

Fragala filed this chapter 7 bankruptcy petition on August 15, 2019 which ultimately stayed the Maryland litigation.⁵ Myer's filed Proof of Claim 1-1 in the amount of \$92,366.80. This amount includes the unpaid balance of \$58,460.00 and late charges of \$33,906.80 as of

⁴ Fragala did not schedule this counterclaim as an asset in this bankruptcy case.

⁵ Landscape filed a chapter 7 bankruptcy case the following year on November 4, 2020. *In re Russ Fragala Landscape Corp.*, Case No. 20-73335. Myer's also filed a Proof of Claim in that case claiming \$109,904.80 for services performed which included the unpaid balance of \$58,460.00 plus late charges of \$51,444.80 as of November 4, 2020. Case No. 20-73335, Proof of Claim 2-1. The Court notes that both Fragala's and Landscape's bankruptcy cases are "asset" cases and there may be distributions to creditors in both cases. To be clear, the Court anticipates that, to the extent there are distributions made either in Fragala's bankruptcy case or Landscape's, Myer's should not be paid more than it is owed.

August 3, 2019. Proof of Claim 1-1. Myer's commenced this adversary proceeding seeking a determination that Fragala's obligation to Myer's, assuming such an obligation exists, is non-dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) and (a)(6). ECF No. 1.⁶ Myer's filed an amended complaint adding a claim to pierce the corporate veil in addition to the § 523(a) claims. ECF No. 15. Fragala filed a motion to dismiss the amended complaint. ECF No. 18. The motion to dismiss was denied. ECF No. 25. Fragala filed an answer to the amended complaint. ECF No. 26. Myer's filed motions for summary judgment (ECF Nos. 27, 28, 70) which were denied.

A trial in this matter was held on May 2 and 3, 2022, at which time the Debtor testified. The Court admitted all exhibits into evidence with the exception of Plaintiff's exhibit 19. Plaintiff's exhibits 27, 28, 29, and 30 were later withdrawn by letter. ECF No. 121.

On August 30, 2022, the Debtor's counsel filed an emergency motion to be relieved as counsel due to the Debtor's failure to pay agreed-upon fees ("Motion to Withdraw"). ECF No. 142. A hearing on the Motion to Withdraw was scheduled for September 12, 2022.

The parties filed post-trial briefs on September 2, 2022. ECF Nos. 147, 148.

On September 6, 2022, Plaintiff's counsel docketed a letter (ECF No. 151) requesting that the Court admit two additional documents into evidence as exhibits 37 and 38, respectively: (1) a post-trial affidavit of Plaintiff's principal, Robbie Myer, who was not permitted to testify at trial;⁷ and (2) a stipulation of settlement entered into among the chapter 7 trustee in Landscape's bankruptcy case (the "Landscape Trustee"), Case No. 20-73335, Russ Fragala Construction Corp. ("RFCC") and Russell M. Fragala, the Debtor's son, pursuant to which RFCC and Russell

⁶ Unless otherwise noted, all ECF references in this Decision are to the Adv. Proc. No. 19-8150.

⁷ The Court excluded Myer from the courtroom due to his failure to comply with the Court's COVID vaccination requirements, which requirements were made clear to the parties well in advance of the trial date. Tr. 3-8, May 2, 2022.

M. Fragala agreed to pay the Landscape Trustee \$110,000.00 in full settlement of the Landscape Trustee's assertion that Landscape's assets were transferred to RFCC and Russell M. Fragala for less than fair consideration ("Landscape Settlement Agreement"). Case No. 20-73335, ECF Nos. 30, 34. Plaintiff's counsel seeks to introduce the Landscape Settlement Agreement into evidence to address a concern raised by the Court that it might have released Plaintiff's claims against the Debtor, Russell Fragala. No objection to the introduction of these two additional exhibits was filed. The Court takes judicial notice of the Landscape Settlement Agreement and, upon review, agrees with Plaintiff's counsel that Plaintiff's claims here were not released by the Landscape Settlement. As for the Plaintiff's proposed exhibit 37, Robbie Myer's affidavit, the Court will admit it in evidence as there was no opposition to its admission, and there is nothing in the affidavit which is prejudicial to the Debtor's case.

At a hearing on September 12, 2022, Debtor's counsel's Motion to Withdraw was granted.⁸

DISCUSSION

A. Fragala's Debt to Myer's

The Plaintiff seeks to pierce the corporate veil under Maryland law in order to establish Fragala's personal liability for Landscape's allegedly unjustified failure to pay under the subcontracts. The Court will analyze this allegation. However, as will become clear later in this section, the outcome of this veil piercing analysis is not determinative of whether Myer's has a claim against the Debtor in this case, which claim provides the basis for the §§ 523(a)(2)(A) and (a)(6) causes of action. *See* 11 U.S.C. §§ 523(a), 101(5), (12).

⁸ Debtor's prior counsel, Richard Kanter, also withdrew from this case as a result of Debtor's failure to pay legal fees. ECF No. 41, 48.

Bankruptcy courts adjudicating state law claims such as corporate veil piercing claims “apply the choice of law rules of the forum state.” *Pereira v. Grecogas Ltd. (In re Saba Enters., Inc.)*, 421 B.R. 626, 650 (Bankr. S.D.N.Y. 2009); accord *Bianco v. Erkins (In re Gaston & Snow)*, 243 F.3d 599, 601–02 (2d Cir. 2001). Under New York choice of law rules, the law of the state of incorporation of the corporation subject to potential veil piercing governs the claim. *Pereira v. Grecogas*, 421 B.R. at 650. Landscape is incorporated in New York, so New York veil piercing laws apply.⁹ In New York, the corporate veil may be pierced “either in the event of a fraud, or ‘where the corporation has been so dominated by an individual or corporate parent that the subsidiary is relegated to the status of a mere shell, instrumentality, or alter ego.’” *Id.* (quoting *Wausau Bus. Ins. Co. v. Turner Const. Co.*, 141 F. Supp. 2d 412, 417 (S.D.N.Y. 2001)).

Plaintiff’s allegations do not satisfy the necessary elements of corporate veil piercing under New York law. Plaintiff fails to allege that Landscape was used as a mere shield for the perpetration of a fraud, that Landscape was used to evade legal obligations, or that Fragala failed to observe the corporate form in connection with the transaction of Landscape’s business. Instead, Myer’s alleges that Fragala has conceded personal liability because: (1) he answered the state court complaint in his personal capacity instead of denying liability for the corporation’s debts, (2) he counter-claimed against Myer’s in his individual capacity, and (3) he failed to register Landscape, a New York corporation, in Maryland according to Maryland law.

Myer’s named Fragala personally as a defendant in the state court complaint.¹⁰ That Fragala answered the complaint in his individual capacity does not concede personal liability or

⁹ Even if Maryland veil piercing laws applied, the factors and elements are substantially similar to those of New York and the outcome would be the same. *Hildreth v. Tidewater Equip. Co., Inc.*, 838 A.2d 1204, 1210 (Md. 2003).

¹⁰ Plaintiff’s belief that it could not sue Landscape because it had not registered as a foreign corporation in Maryland is erroneous. Maryland law only restrains a corporation not registered in

waive the protections of the corporate form. Nor does the failure to file a motion to dismiss concede liability when an answer has been filed denying all allegations in the complaint. Further, Fragala asserted the negating defenses of “the capacity to sue or be sued” and “the authority of a party to sue or be sued in a representative capacity” in accordance with Maryland Civil Procedure Rule 2-323(f). Thus, Fragala did not concede personal liability by answering the complaint in his individual capacity.

Finally, Myer’s alleges Fragala is personally liable because he failed to cause Landscape to be registered in Maryland. According to Maryland law, neither a corporation nor any person claiming under the corporation may maintain a suit in any court in Maryland if it is doing or has done any intrastate, interstate, or foreign business in the Maryland without registering in Maryland unless the corporation can show that it is has paid the penalty under § 7-302 of the Maryland Corporations and Associations law and either complied with the registration requirements or is no longer doing intrastate, interstate, or foreign business in the state. Md. Code Ann., Corps. & Ass’ns § 7-301. There is no language in this statute which indicates that failure to register a foreign corporation in Maryland establishes that the corporation was used as shield in perpetration of a fraud, to evade legal obligations, or that stockholders failed to observe the corporate form. In fact, according to Maryland courts, “there is nothing in the registration statutes that permits a court to invade the corporate entity simply because of a failure to register.” *Hildreth v. Tidewater Equip. Co., Inc.*, 838 A.2d 1204, 1212 (Md. 2003).

Maryland from suing in Maryland courts. See Md. Code Ann., Corps. & Ass’ns § 7-301. It does not restrain any other party from suing unregistered corporations in Maryland courts or unregistered corporations from defending those suits. *Yangming Marine Transp. Corp. v. Revon Prods. U.S.A., Inc.*, 536 A.2d 633, 636–37 (Md. 1988). Maryland law actually contemplates suits against foreign corporations in its long arm statute. See Md. Code Ann., Cts. & Jud. Proc. § 6-103.

Myer's refers to Fragala in each allegation of the amended complaint as if Fragala entered into the subcontracts with Myer's in his individual capacity. However, there is no evidence in the record to support these allegations. The Court declines to find Fragala liable under Plaintiff's veil piercing theory.

Nonetheless, the Court finds that Myer's has an allowed claim in this bankruptcy case. On November 19, 2019, Myer's filed a proof of claim in Fragala's bankruptcy case in the amount of \$58,460.00 plus late charges at two percent (2%) per month through August 3, 2019 totaling \$92,366.80 for "services performed." Proof of Claim 1-1. The proof of claim seeks to recover from Fragala the amounts sought by Myer's in the Maryland state court action. The claim has not been objected to. Under 11 U.S.C. § 502(a), in the absence of an objection, the proof of claim is "deemed allowed." This conclusion is supported by the Federal Rules of Bankruptcy Procedure which state: "A proof of claim executed and filed in accordance with [the Bankruptcy Rules constitutes] prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f).

Based on § 502(a) and Rule 3001(f), the Court finds that the uncontested claim filed by Myer's against Fragala is deemed allowed and is sufficient to establish Plaintiff's claim in this bankruptcy case. *See Siegel v. Fed. Home Loan Mortg. Corp.*, 143 F.3d 525, 530 (9th Cir. 1998) (finding that the allowance of a claim without objection under § 502(a), even in the absence of a separate order, is a final judgment giving rise to res judicata); *see also Tr. of Operating Eng'rs Local 325 Pension Fund v. Bourdow Contracting, Inc.*, 919 F.3d 368, 382-83 (6th Cir. 2019) (same).

Having established that Myer's has an allowed claim in Fragala's individual bankruptcy case, and therefore a debt upon which the § 523 causes of action can be based, *see* 11 U.S.C. §§ 101(5), (12), the Court must now decide whether that claim is non-dischargeable.

B. 11 U.S.C. § 523(a)(2)(A)

Under § 523(a)(2)(A), an individual debtor is not entitled to discharge a debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by . . . false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition" Non-dischargeability claims must be proven by a preponderance of the evidence. *Grogan v. Garner*, 498 U.S. 279, 286–87 (1991).

To establish false representation, Myer's must prove: "(1) the defendant made a false or misleading statement; (2) with intent to deceive; (3) in order for the plaintiff to turn over money or property to the defendant." *Miner v. Mines (In re Mines)*, 630 B.R. 107, 116 (Bankr. E.D.N.Y. 2021). False pretenses, on the other hand, requires Myer's to prove that there was "(1) an implied misrepresentation or conduct by the [defendant]; (2) promoted knowingly and willingly by the [defendant]; (3) creating a contrived and misleading understanding of the transaction on the part of the [plaintiff]; (4) which wrongfully induced the [plaintiff] to advance money, property or credit to the defendant." *Indo-Med Commodities, Inc. v. Wisell (In re Wisell)*, 494 B.R. 23, 36 (Bankr. E.D.N.Y. 2011) (quoting *Voyatzoglou v. Hambley (In re Hambley)*, 329 B.R. 382, 396 (Bankr. E.D.N.Y. 2005)) (internal quotation marks omitted). Actual fraud requires showing that "(1) the debtor made a false representation; (2) that at the time made, the debtor knew the statement was false; (3) the misrepresentation was made with an intent to deceive; (4) that the creditor reasonably relied on that misrepresentation; and (5) that the creditor was damaged as a result of the misrepresentation." *Miner*, 630 B.R. at 117.

Myer's must prove that Fragala included the Repair of Damage provision to deceive Myer's into entering into the contract with Landscape and knew at the time the subcontracts were executed that he would hold Myer's liable for damages whether or not Myer's caused them. Plaintiff has not satisfied this burden. Plaintiff did not present any evidence at trial, other than Myer's own self-serving affidavit (Ex. 38) to prove that Fragala knew when Landscape and Myer's entered into the subcontracts in November 2016 that he was going to hold Myer's liable, six months later in June 2017, for damages it did not cause. In fact, Fragala testified at trial that Myer's was only liable for the damages it caused. *See* Tr. 77-78, May 2, 2022.

While Fragala may have made false statements about the post-season damage as Myer's alleges,¹¹ and Fragala was unable to prove Landscape's costs to repair the alleged damage, all this would amount to is a false representation as to why Landscape failed to pay Myer's. Fragala's assertion, true or not, in June 2017 that there were post-season damages caused by Myer's does not establish that Fragala intended in November 2016 (when the contracts were entered into) or in March 2017 (when Myer's performed services) not to pay Myer's for services provided under the subcontracts. Moreover, Fragala testified that Landscape paid Myer's in full for services performed through February 2017 and only payment for services performed after the March 2017 snow event went unpaid. The Court believes, without deciding, it more than likely that after the significant snowfall event in March of 2017, the subcontracts simply became unprofitable for Landscape and Fragala decided not to, or could not, pay Myer's.¹² This was

¹¹ Fragala's statements are inconsistent with the documentary evidence introduced at trial. *Compare* Ex. 8, *with* Tr. 34-35, 72, 84, May 2, 2022.

¹² The contracts between Landscape and Brightview were "fixed-fee" contracts (Ex. 1), whereas the subcontracts between Landscape and Myer's were "per occurrence" (Ex. 2). Myer testified in a deposition that "fixed-fee" contracts for snow removal were "a gamble." Myer Depo., Aug. 31, 2021, Ex. B, 83-84.

clearly a breach of the subcontracts, but that does not mean that Myer's relied on a false representation by Fragala when it provided services to Landscape. The alleged false representation came after the services were provided and the debt incurred. Thus, the services provided by Myer's to Landscape were not "obtained by" false pretenses, a false representation or actual fraud by Fragala. 11 U.S.C. § 523(a)(2). Plaintiff's theory of Fragala's direct liability and non-dischargeability under § 523(a)(2)(A) fails.

The result would be the same even if the Court had found Fragala liable under a veil piercing theory because this case implicates at most a breach of the contract between Landscape and Myer's. A breach of contract, without more, does not give rise to a claim for non-dischargeability. *See, e.g., Murphy v. Snyder (In re Snyder)*, Case No. 15-50553 (JAM), Adv. No. 15-05042 (JAM), 2017 WL 1839122, at *12 (Bankr. D. Conn. May 5, 2017) ("[T]he failure to honor one's promise is a breach of contract, but making a promise that one intends not to keep is fraud.") (citations omitted); *Wilcoxon Constr., Inc. v. Woodall (In re Woodall)*, 177 B.R. 517, 524 (Bankr. D. Md. 1995) (denying § 523 claim where debtor breached contract with the plaintiff, but the contract itself and services performed by the plaintiff pursuant to the contract were not obtained by any fraud of the debtor); *Miner*, 630 B.R. at 121. *Cf. Marcella v. ARP Films, Inc.*, 778 F.2d 112, 119 (2d Cir. 1985) (finding no evidence that defendant had no intention of performing under the contract which did not give rise to a separate claim in tort).

Congress drafted § 523 to except certain debts from discharge only in exceptional cases; exceptions to discharge should be narrowly construed in favor of the debtor. *See Denton v. Hyman (In re Hyman)*, 502 F.3d 61, 66 (2d Cir. 2007). Section 523(a)(2)(A), broadly speaking, covers frauds which "involve moral turpitude or intentional wrong." *Cochran v. Reath (In re Reath)*, 368 B.R. 415, 422 (Bankr. D.N.J. 2006) (quoting 4 Lawrence P. King, *Collier on*

Bankruptcy ¶ 523.08[1][d] at 523-44.9 (15th ed. 2006)). A breach of contract claim, on the other hand, requires merely a showing of an unfulfilled promise. If proving that a debt arose from an unfulfilled promise were sufficient to establish a claim under § 523(a)(2)(A), then every breach of contract claim would be non-dischargeable. *Farina v. Balzamo (In re Balzamo)*, 127 B.R. 524 (Bankr. E.D.N.Y. 1991).

So, even if the Court pierced the veil and found that Landscape had no basis to withhold funds from Myer's under the subcontract that would not be sufficient basis to except the debt from discharge under § 523(a)(2)(A). For all these reasons, Plaintiff's claim of non-dischargeability under 11 U.S.C. § 523(a)(2)(A) fails.

C. 11 U.S.C. § 523(a)(6)

Similar to the § 523(a)(2)(A) claim, Myer's argues that Fragala willfully and maliciously injured Myer's when Fragala induced Myer's to enter into the subcontracts with Landscape by including the Repair of Damage provision in the subcontracts knowing Landscape would not pay Myer's for services performed under the subcontract. Under § 523(a)(6), an individual debtor is not entitled to discharge a debt "for willful and malicious injury by the debtor to another entity or to the property of another entity" "Willful" requires that the injury be deliberate or intentional. The injury itself must have been deliberate or intentional, not just the act that leads to injury. *Kawaauhau v. Geiger*, 523 U.S. 57, 62 (1998). Willfulness is found where the debtor "knows that the consequences are certain, or substantially certain, to result from his act." *Salim v. VW Credit, Inc.*, 577 B.R. 615, 625 (E.D.N.Y. 2017) (quoting *Geiger*, 523 U.S. at 61-62)). "Malicious" is "wrongful or without just cause or excuse, even in the absence of personal hatred, spite, or ill-will." *Navistar Fin. Corp. v. Stelluti (In re Stelluti)*, 94 F.3d 84, 87 (2d Cir. 1996). Malice can be implied or constructive. *Id.* at 88.

Myer's has not proven by a preponderance of the evidence that Fragala's actions were willful and malicious. In support of the proposition that Fragala intended the consequences of his actions Myer's points to a letter from Brightview which states that no post-season damage was reported and Brightview had paid Landscape in full. Ex. 9. Fragala's deposition testimony did not dispute that BrightView's records showed that the last payment to Landscape was in April 2017. Fragala Depo., Sept. 2, 2021, Ex. 3 at 156-58. Myer's argues that this conflicts with Fragala's testimony that Brightview did not pay Landscape the balance due until a year after Landscape purportedly repaired the damage allegedly caused by Myer's. See Tr. 155, May 2, 2022. This evidence, however, only alleges a false assertion by Fragala about why Landscape failed to pay Myer's. It does not establish that Fragala intended, upon execution of the subcontracts, that Landscape would not pay Myer's in full for the services performed. Nor does the evidence show that Fragala's actions were wrongful or without justification.

"[W]here a debtor seeks profit or some other benefit, 'the underlying conduct, however deplorable, would not give rise to liability under § 523(a)(6) in the absence of some additional, aggravating conduct on the part of the debtor of sufficient gravity to warrant an inference of actual malice under [] Second Circuit'" caselaw. *Rescuecom Corp. v. Khafaga (In re Khafaga)*, 419 B.R. 539, 550 (Bankr. E.D.N.Y. 2009) (Craig, J.) (citation omitted) (finding aggravating circumstances where defendant secretly created a competing business in contravention of a franchise agreement, actively diverted business from the plaintiff, and submitted false reports with the intention of withholding payments due under a contract); see also *Bundy Am. Corp. v. Blankfort (In re Blankfort)*, 217 B.R. 138 (Bankr. S.D.N.Y. 1998) (finding aggravating circumstances where defendant persistently, blatantly, and willfully violated court orders enjoining the underlying conduct); *Am. Honda Fin. Corp. v. Ippolito (In re Ippolito)*, Case No.

12-70632-ast, Adv. No. 12-8403-ast, 2013 WL 828316 (Bankr. E.D.N.Y. Mar. 6, 2013) (finding no aggravating circumstances where defendant failed to pay owed advances pursuant to a Wholesale Finance Agreement); *Salim*, 577 B.R. at 626.

As stated previously, the Court declined to pierce the veil to hold Fragala personally liable for claims against Landscape, but even if it did the facts here do not bear out aggravating circumstances which would give rise to a finding of willful and malicious injury. The Court finds Plaintiff has failed to prove willful and malicious injury under 11 U.S.C. § 523(a)(6).

CONCLUSION

For the foregoing reasons, the Court finds that Myer's has an allowed claim in this bankruptcy case subject to offset by any distribution in Landscape's bankruptcy case. The Court also finds that Plaintiff's claim is not non-dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) or (a)(6). A judgment consistent with this Decision will enter forthwith.

**Dated: Central Islip, New York
September 22, 2022**



A handwritten signature in black ink, appearing to read "Robert E. Grossman".

**Robert E. Grossman
United States Bankruptcy Judge**

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:-----X

Russell Fragala
aka Russell L. Fragala,

Debtor.

Case No. 8-19-75714-reg

Chapter 7

-----X
Myer's Lawn Care Services, Inc.,

Plaintiff,

Adv Proc. No. 8-19-08150-reg

v.

Russell Fragala,

Defendant.

-----X
JUDGMENT

For the reasons set forth in this Court's Decision, dated September 22, 2022, it is hereby adjudged as follows:

1. Plaintiff has an allowed claim in this bankruptcy case subject to offset by any distribution in *In re Russ Fragala Landscape Corp.*, Case No. 20-73335;
2. Plaintiff's claim is not non-dischargeable under 11 U.S.C. § 523(a)(2)(A); and
3. Plaintiff's claim is not non-dischargeable under 11 U.S.C. § 523(a)(6).

Dated: Central Islip, New York
September 22, 2022



A handwritten signature in black ink, appearing to read "Robert E. Grossman".

Robert E. Grossman
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

In re:

**RUSSELL FRAGALA
aka RUSSELL L. FRAGALA**

Debtor.

Case No. 8-19-75714-reg

Chapter 7

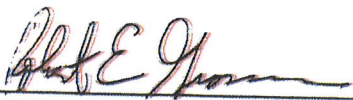
ORDER

UPON the Notice of Motion and Motion for an Order pursuant to 11 U.S.C. § 502(a) and § 502(b)(1), and Rule 3007 of the Federal Rules of Bankruptcy Procedure expunging Claim No. 1 filed by Myer’s Lawn Service, Inc. in the amount of \$92,366.80 or to the extent necessary pursuant to 11 U.S.C. § 502(j) and Bankruptcy Rule 3008 to reconsider the Court’s decision dated September 24, 2022, together with such other and further relief as may be just and proper dated February 2, 2023; and upon the due and proper service thereof, and upon “Myer’s Lawn Care Service, Inc.’s Opposition to Trustee’s Objection to Claim No. 1 of Myer’s Lawn Care Service, Inc.,” dated March 2, 2023; and upon the “Supplement to Myer’s Lawn Care Service Inc.’s Opposition to Trustee’s Objection to Claim No. 1 of Myer’s Lawn Care Service, Inc.,” dated March 27, 2023, and upon the “Reply to Myer’s Lawn Service, Inc.’s Supplemental Response to Trustee’s Motion Seeking to Expunge Claim No.1 Filed by Myer’s Lawn Service, Inc.,” dated April 5, 2023, and hearings having been conducted on March 13, 2023 and April 24, 2023, and upon the appearances thereat by Robert L. Pryor, Pryor & Mandelup, L.L.P., attorneys for the Trustee, and by William M. Burke, Esq., attorney for Myer’s Lawn Care Service, Inc., and after due deliberation and for good cause shown it is hereby,

ORDERED that Claim No.1 filed by Myer's Lawn Care Service, Inc. in the amount of \$92,366.80 is hereby expunged in its entirety.

Dated: Central Islip, New York
April 26, 2023




Robert E. Grossman
United States Bankruptcy Judge