United States Bankruptcy Court
Northern District of Illinois
Eastern Division

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Bankruptcy Caption: In re Sohail A. Shakir

Bankruptcy No. 20 B 01252

Adversary Caption: Philip V. Martino, not individually, but solely in his capacity as the duly appointed Trustee for the estate of Sohail A. Shakir, v. Sohail A. Shakir et al.

Adversary No. 21 A 00008

Date of Issuance: September 6, 2022

Judge: Donald R. Cassling

Appearance of Counsel:

Attorney for Plaintiff:
Kevin A. Sterling
The Sterling Law Office LLC
411 North LaSalle Street, Suite 200
Chicago, Illinois 60654

Attorney for Defendants:
Michael W. Ott
Ice Miller LLP
200 W. Madison Street, Suite 3500
Chicago, IL 60606

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Bankruptcy No. 20 B 01252
	)	
SOHAIL A. SHAKIR,	)	Chapter 7
	)	
Debtor.	)	Honorable Donald R. Cassling
	)	
	)	
	)	
PHILIP V. MARTINO, not individually, but solely in his capacity as the duly appointed Trustee for the estate of Sohail A. Shakir,	)	
	)	
Plaintiff,	)	Adversary No. 21 A 00008
	)	
v.	)	
	)	
SOHAIL A. SHAKIR; RUBINA SHAKIR; OSAMA SHAKIR; SURROSH SHAKIR; GREEN DOT BUILDERS, LLC; RSS HOMES, LLC; THE RUBINA SHAKIR 2002 LIVING TRUST; and 550 22ND LLC,	)	
	)	
Defendants.	)	

ORDER DENYING DEFENDANTS' MOTION TO DISMISS (Adv. Dkt. No. 64)

This matter is before the Court on Defendants' Motion to Dismiss Counts I through VI of Trustee's Amended Complaint. Counts I through III seek declaratory judgments that three limited liability companies are Debtor's alter egos. Counts IV and V seek declaratory judgments that the Debtor is the equitable owner of a trust's corpus and certain financial accounts nominally held in his wife's name. Count VI seeks turnover of these properties under Section 542(a) of the Bankruptcy Code. For the following reasons, the Court denies Defendants' motion.

A. BACKGROUND

In preparing its ruling, the Court has considered the Amended Complaint (Adv. Dkt. No. 61), Defendants' motion (Adv. Dkt. No. 64), and the parties' briefs (Adv. Dkt. Nos. 70-71). Solely for purposes of ruling on Defendants' motion, the Court takes all well-pleaded factual allegations in the Amended Complaint as true. *Silha v. ACT, Inc.*, 807 F.3d

169, 173-74 (7th Cir. 2015). The Court also takes judicial notice of the contents of Debtor's bankruptcy case and adversary proceeding dockets, including his Chapter 7 voluntary petition (Bankr. Dkt. No. 1); Schedules A/B, C, D, E/F, G, H, I, and J (Bankr. Dkt. No. 12); Statement of Financial Affairs (Bankr. Dkt. No. 13); and Statement of Current Monthly Income (Bankr. Dkt. No. 14). *See Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007) (explaining that courts ruling on Federal Rule 12(b)(6) motions "must consider the complaint in its entirety, as well as. . . documents incorporated into the complaint by reference, and matters of which a court may take judicial notice."). Pursuant to the *Tellabs* rule, the Court also considers the transcript of Debtor's testimony at his Bankruptcy Rule 2004 examination (Adv. No. 20 A 00352, Dkt. No. 1 at Ex. C (cited infra as "2004 Exam at __")), for the Amended Complaint refers to that testimony many times. (*E.g.*, Compl. ¶¶ 9, 13, and 85.)

1. Procedural History

The Trustee filed his original complaint on January 11, 2021. The Defendants answered the original complaint on March 9, 2021. The parties then commenced discovery, which has been lengthy and contentious, requiring the Trustee to move to compel discovery from various Defendants three times.

About a year after the pleadings had closed, a dispute arose between the parties regarding their differing interpretations of what claims the original complaint actually asserted. Defendants' newly retained counsel[1] argued that the Trustee was "really" seeking to unwind time-barred fraudulent transfers, notwithstanding the fact that the Trustee did not plead any fraudulent-transfer claims, and instead had brought alter ego claims. The Defendants also argued that if, in fact, the Trustee was "really" pursuing alter ego claims, he lacked standing to do so (a claim that Defendants repeat in the present motion and which is discussed below).

In order to sharpen the issues and clarify any ambiguities in the original complaint, the Court directed the Trustee to file an amendment to his complaint that would not add any new causes of action but would clarify and lay out the facts supporting his alter ego claims in a more fulsome manner. This course of action appeared to the Court to be a more expeditious and less expensive way to resolve the legal arguments between the parties than having the parties address the original complaint's alleged defects in a summary judgment

[1] The Defendants were first represented by Timothy C. Culbertson (Debtor's state-court counsel), until Mr. Culbertson unsuccessfully litigated a motion to dismiss an adversary proceeding Debtor's largest creditor had filed, *see generally Villa Oaks, LLC v. Shakir (In re Shakir)* ("*Shakir I*"), 623 B.R. 532 (Bankr. N.D. Ill. 2021); then by attorney Konstantine Sparagis, until Mr. Sparagis unsuccessfully litigated a motion to quash Trustee's lis pendens, *see generally Martino v. Shakir (In re Shakir)* ("*Shakir II*"), 633 B.R. 817 (Bankr. N.D. Ill. 2021), and the Defendants unsuccessfully brought an indirect attack on this proceeding's validity under a stay-violation theory, (*see generally* Bankr. Dkt. No. 76, Bankr. No. 20 B 21827); and now by attorney Michael W. Ott, for purposes of litigating Defendants' motion to dismiss.

motion,[2] particularly when the parties disputed what the original complaint actually asserted.

On April 5, 2022, the Trustee filed his Amended Complaint setting forth the factual allegations in his claims in greater detail than he had provided in the original complaint. As instructed by the Court, he did not assert any new legal theories in the Amended Complaint. Although Defendants' answer or other responsive pleading was due 14 days thereafter,[3] Defendants waited 27 days to file their motion to dismiss. Defendants' motion is, therefore, untimely and could be denied on that ground alone. However, the motion is also denied on the merits, for the reasons discussed below.

2. Summary of Key Allegations in the Amended Complaint

The Debtor filed his voluntary petition for relief under Chapter 7 of the Bankruptcy Code on January 16, 2020. The United States Trustee appointed Plaintiff Philip V. Martino to serve as trustee in Debtor's bankruptcy case shortly thereafter. Fulfilling his statutory duties, the Trustee began investigating Debtor's financial affairs and marshaling the estate's assets for liquidation. That investigation has led the Trustee to conclude that, in the run-up to his bankruptcy case, the Debtor began forming new companies—nominally owned by his immediate family but managed by Debtor—through which to conduct his business affairs.

In general terms, the Trustee alleges that the reason the Debtor did this was to escape a multimillion-dollar liability he faced under his personal guaranty of his company's obligations under a contract to construct a banquet hall. The Trustee alleges that Debtor set up his new companies after his company defaulted under the construction contract, and the other party to the contract sued both his company under the contract and the Debtor under his guaranty. Accordingly, the Trustee commenced this proceeding to seek a declaration that the Debtor is the true equitable owner of those assets, while the Debtor claims they rightfully belong to his immediate family members.

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[2] This Court has adopted the summary judgment practice used by District Court Judge Thomas M. Durkin, which was based upon his observation that many summary judgment motions are expensive and wasteful, because they overlook the presence of disputed issues of material fact that can only be resolved at trial. Under Judge Durkin's (and this Court's) practice, the parties must first attend an informal discussion with the Court to discuss whether there may be disputed issues of material fact which would preclude summary judgment. While no party is ever prevented from filing a summary judgment motion under this procedure, the parties must first attend this pre-filing meeting with the Court before filing the motion. In the Court's experience, these meetings frequently disclose disputed issues of material fact, permitting the parties and the Court to avoid wasting valuable time and resources on a summary judgment motion that would be doomed to failure.

[3] Federal Rule 15(a)(3) required the Defendants to file an answer or otherwise plead to Trustee's Amended Complaint within 14 days. FED. R. CIV. P. 15(a)(3), made applicable to this proceeding by FED. R. BANKR. P. 7015. Whether or not this proceeding's facts warrant strict enforcement of that deadline is entrusted to the Court's discretion. *E.g.*, *United States v. Cain's Barber Coll. & Styling Sch. Inc.*, Case No. 07 C 2695, 2011 WL 812088, at *1-2 (N.D. Ill. Mar. 1, 2011) (denying defendants' motion for relief from the court's order granting default judgment to the plaintiff after the defendants, citing their confusion as to what the court had required in a minute order, failed to answer or otherwise plead to the amended complaint within the Federal Rule 15(a)(3) deadline).

More specifically, the Amended Complaint alleges that the Debtor formed a construction company, Green Dot Builders, LLC ("Green Dot"), in 2013, and that he caused Green Dot to enter into a contract in 2014 to construct a banquet hall for the owner of a mall in suburban Chicago. (Compl. ¶¶ 19, and 23-26.) As additional security for Green Dot's obligations under the contract, the Debtor executed a personal guaranty in favor of the mall owner.

Relying on that agreement, the mall's owner evicted some of its commercial tenants and demolished a portion of its property in order to make room for the proposed banquet hall. But the Debtor and his company reneged on their obligation to build it. (*Id*. ¶ 25.) The mall's owner sued in state court, eventually obtaining a seven-figure judgment against the Debtor. (Debtor's Schedule E/F at p. 5.)

The Amended Complaint alleges that, while that state-court case was pending, the Debtor engaged in a five-step scheme to shield his own and Green Dot's assets from exposure to the mall owner's lawsuit by:

- causing new companies to be formed in his family members' names, while leaving Debtor in complete control by naming him as those companies' sole manager. (*E.g.*, Compl. ¶¶ 3, 20-21, 33, and 107.)

- financing these new companies' operations and land acquisitions with the seven-figure proceeds of Debtor's sale of three gas stations, which he personally owned. (*E.g.*, *id*. ¶¶ 26, 40-41, 54-57, and 60.)

- providing Green Dot's services exclusively to these new companies without charging them fair-market fees or expenses. (*E.g.*, *id*. ¶¶ 47-48.)

- ladening these new companies with debt obligations to himself and Green Dot. (*E.g.*, *id*. ¶¶ 2, and 60.)

- pocketing part of the revenue generated by these new companies to fund his family's lifestyle and depositing the rest in bank accounts owned by various family members. (*E.g.*, *id*. ¶¶ 64-67, and 86.)

The Amended Complaint alleges that, while Debtor's family members were nominally granted ownership of these new companies and the revenues they generated, they were really only figureheads. For example, Debtor's wife, Rubina Shakir, suffered a traumatic brain injury in an accident in 2017 and is disabled. (*Id*. ¶ 12.) Debtor's daughter, Surrosh Shakir, is also disabled. (*Id*. ¶ 18.) In fact, neither Rubina nor Surrosh are able to manage their own affairs, much less run a business.[4] Debtor's remaining two children, Osama and Hamza, are both college educated but have never been employed until recently.

[4] The Amended Complaint does not specify the nature of Surrosh's disability. However, Defendants' counsel made the same sort of general allegations about Surrosh's capacity in open court when he opposed Trustee's motion to compel discovery from Surrosh. For that reason, the Court accepts as true Trustee's conclusory allegation that Surrosh is disabled.

(*Id*. ¶¶ 16-17.) Three of the remaining Defendants—Green Dot Builders, LLC; RSS Homes, LLC; and 550 22nd LLC—are limited liability companies formed under Illinois law. The fourth remaining Defendant—The Rubina Shakir 2002 Living Trust—is the inter vivos trust into which Rubina and the Debtor conveyed the Residence's title. (*Id*. ¶ 14.)

The Trustee argues that the Debtor is the true owner and controller of all of these entities and their activities. In spite of the disabilities of his wife and daughter, and the lack of business experience of his remaining two children, the Defendants assert in their motion to dismiss that each of Debtor's family members started up and ran these new businesses on their own.

B. ANALYSIS

In ruling on a Federal Rule 12(b)(6) motion, the primary question to be decided is whether or not "the claimant is entitled to offer evidence to support the claims." *AnchorBank, FSB v. Hofer*, 649 F.3d 610, 614 (7th Cir. 2011) (citation omitted). The claimant should be allowed to conduct discovery if his complaint states enough factual detail to provide the defendant "fair notice" of the claims so that the defendant can prepare his defense. *EEOC v. Concentra Health Servs., Inc.,* 496 F.3d 773, 776 (7th Cir. 2007). When the claimant pleads facts rather than labels or conclusions, the Court assumes all well-pleaded facts are true. *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 249 (2009). If any reasonable inferences that support the claimant's claims follow from a complaint's deemed-true facts, the Court also must deem truthful such inferences. *Id*.

When a court determines that a complaint has failed to measure up under Federal Rule 12(b)(6), it does so frequently because the court concludes that the complaint's allegations are conclusory and fail to allege facts—as opposed to labels or conclusions—that support every element of each cause of action. *Cf. Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). But a motion to dismiss should also be granted if a settled point of law makes the offending event unactionable. *See Saiger v. City of Chi.*, 37 F. Supp. 3d 979, 985 (N.D. Ill. 2014). That is the main ground on which the Defendants challenge Trustee's Amended Complaint.

The Defendants argue that the Amended Complaint should be dismissed because the Trustee has pleaded himself out of court[5] in two respects: First, most of Trustee's claims depend on a legal theory (reverse veil piercing) that they contend is unavailable under Illinois law. Second, even if Illinois law recognized that theory as a viable avoidance tool, the Trustee has no standing to prosecute those claims because veil piercing is available as a remedy only to specific creditors, not to the entire body of creditors whom the Trustee represents. For the reasons set forth below, the Court disagrees with both arguments.[6]

[5] *Cf. Tamayo v. Blagojevich*, 526 F.3d 1074, 1086 (7th Cir. 2008) ("A plaintiff pleads himself out of court when it would be necessary to contradict the complaint in order to prevail on the merits.") (quotation omitted).

[6] Two additional procedural points merit mention before the Court conducts its substantive analysis. First, the Court accepts as true the Amended Complaint's well-pleaded allegations for purposes of Defendants' Federal Rule 12(b)(1) motion, because Defendants' standing challenge is facial, not factual. *See Apex Digital, Inc. v. Sears, Roebuck & Co.*, 572 F.3d 440, 443-44 (7th Cir. 2009). Second, the Defendants cited several

1. Bankruptcy Trustees May Assert Alter Ego Claims Against Illinois Companies

The Defendants primarily seek dismissal of Trustee's alter ego counts on the ground that the claims themselves seek an impermissible form of veil piercing. They cite *Gierum v. Glick* (*In re Glick)*, 568 B.R. 634 (Bankr. N.D. Ill. 2017), for the proposition that the laws of Illinois do not permit so-called reverse piercing of corporate veils. Although *Glick* does stand for that conclusion, this Court respectfully rejects *Glick's* reasoning and holding, in part because its holding is inconsistent with the rulings of the Seventh Circuit, rulings which this Court is obligated to follow.

The *Glick* court principally relied on *In re Rehab. of Centaur Ins. Co.*, 632 N.E.2d 1015 (Ill. 1994), to conclude that Illinois law does not allow reverse veil piercing. But the *Centaur* decision was not a blanket prohibition against reverse veil piercing. Instead, it held that a corporation may not pierce its *own* veil by asserting an alter ego action against its shareholders. *Id*. at 1017-18; *see also Forsythe v. Clark USA, Inc.*, 864 N.E.2d 227, 241-42 (Ill. 2007) (applying the *Centaur* rule to parent-subsidiary corporate relationships but concluding that a parent company nonetheless can be liable under a direct-participant theory for its subsidiary's acts without veil piercing). In that respect, *Centaur* merely reaffirmed the long-standing rule in Illinois that the erector of a corporate-liability veil cannot maintain that veil for certain purposes and then discard it when the company's separate existence disadvantages him. *E.g.*, *Main Bank of Chi. v. Baker*, 427 N.E.2d 94, 102 (Ill. 1981) (citing cases and determining that a party "cannot assert the equitable doctrine of piercing the corporate veil to disregard the separate corporate existence of a corporation he himself created to gain an advantage which would be lost under his present contention.").

The policy considerations relied upon by the *Centaur* court do not apply to bankruptcy trustees, because bankruptcy trustees do not become involved until after the alleged alter ego companies have been formed and therefore have no role in forming them. In addition, bankruptcy trustees bring veil-piercing claims for the estate's benefit, not for the benefit of the debtor corporation or its officers and directors. The Illinois Supreme Court emphasized this distinction in *Centaur* when discussing the Seventh Circuit's *Koch Ref. v. Farmers Union Cent. Exch., Inc.*, 831 F.2d 1339 (7th Cir. 1987), decision:

> The *Koch Refining* court's second reason for allowing the [bankruptcy] trustee to bring an alter ego claim on behalf of the creditors is that the bankruptcy trustee has "creditor status. . . to bring suits for the benefit of the estate and ultimately of the creditors" under section 544 of the Bankruptcy Code (11 U.S.C. § 544 (1988)). (*Koch Refining,* 831 F.2d at

cases interpreting Federal Rule 9(b) in their motion without actually making an argument under that rule. To the extent that such argument might have existed, the Defendants have forfeited it. *See White v. United States*, 8 F.4th 547, 552 (7th Cir. 2021) ("[I]t is not enough to mention a possible argument in the most skeletal way, leaving the court to do counsel's work, create the ossature for the argument, and put flesh on its bones.") (quotation omitted). Furthermore, Defendants' argument might have failed on the merits even if they had preserved the point, for some caselaw concludes that Federal Rule 9(b) generally does not apply to alter ego claims. *Flentye v. Kathrein*, 485 F. Supp. 2d 903, 912-13 (N.D. Ill. 2007) (citing cases).

> 1348.) This creditor status, the court found, applies to general creditor claims rather than personal claims of the creditors. A general claim, according to the court, is a claim common to all the creditors which could be asserted by any one of them, while a personal claim is one which is had only by specific creditors. (*Koch Refining,* 831 F.2d at 1349.) The *Koch Refining* court found the alter ego claim there to be a general claim and thus properly brought by the trustee pursuant to his creditor status. However, in Illinois, as just noted, the [Illinois Insurance] Code and Illinois law do not provide the [plaintiff-fiduciary appointed under that law] with creditor status to assert creditors' claims, whether they be personal or general.

Centaur, 632 N.E.2d at 1019.

Based upon the *Centaur* court's distinctions between self-serving veil-piercing by a company and the principals who formed it, versus bankruptcy trustees who do not enter the picture until a bankruptcy case has been filed, this Court concludes that Illinois law does not bar the Trustee from reverse piercing the veil of an Illinois company. That is to say, the asset-recovery powers that the Bankruptcy Code confers upon the Trustee empower him to prosecute such claims on behalf of all of the creditors of the bankruptcy estate.

The Court also respectfully rejects *Glick's* assertion that the federal caselaw in this area, which permits reverse veil piercing, is no more than "a house of cards[,]" 568 B.R. at 663 & n.26, that *Centaur* toppled. For example, nearly a year after the *Centaur* decision, the Seventh Circuit reiterated its view that "a trustee in bankruptcy [may] maintain a 'veil piercing' suit on behalf of the bankrupt corporation[.]" *Steinberg v. Buczynski*, 40 F.3d 890, 891-92 (7th Cir. 1994). *See also Freeland v. Enodis Corp.*, 540 F.3d 721, 739 (7th Cir. 2008) (applying the substantially similar alter ego law of Indiana); *Greater Hammond Cmty. Servs., Inc. v. Mutka*, 735 N.E.2d 780, 785 (Ind. 2000) ("While we have expressed willingness to use our equitable power to disregard the corporate form to prevent fraud or unfairness to *third parties*, we perceive little likelihood that equity will ever require us to pierce the corporate veil to protect the same party that erected it. It was, after all, defendant that chose to structure itself in its present multi-corporate form.") (quotation omitted).

The Seventh Circuit's decisions bind this Court; those of other bankruptcy judges do not. *Beezley v. Fenix Parts, Inc.*, 328 F.R.D. 198, 204 n.2 (N.D. Ill. 2018). This Court has no discretion to ignore the Seventh Circuit's clear mandates in order to conclude that a bankruptcy trustee cannot assert an alter ego claim against an Illinois company.

2. Trustee's Allegations Amply Show the Propriety of Alter Ego Relief

There are only two requirements for the issuance of veil-piercing relief. First, there must be "such a unity of interest and ownership that the separate personalities of the corporation and the parties who compose it no longer exist[.]" *Tower Inv'rs., LLC v. 111 E. Chestnut Consultants, Inc.*, 864 N.E.2d 927, 941 (Ill. App. Ct. 2007). Second, the case's specific facts must be "such that an adherence to the fiction of separate existence of the

corporation would sanction a fraud or promote injustice[.]" *People ex rel. Scott v. Pintozzi*, 277 N.E.2d 844, 851 (Ill. 1971).

As to the first requirement, Illinois courts consider the following factors when determining whether there is sufficient "unity of interest" to justify disregarding the corporate form: (1) inadequate capitalization; (2) failure to observe corporate formalities; (3) insolvency of the debtor corporation; (4) nonfunctioning of the other officers or directors; (5) absence of corporate records; (6) commingling of funds; (7) diversion of assets from the corporation by or to a shareholder; (8) failure to maintain arm's length relationships among related entities; and (9) whether the corporation is a mere facade for the operation of the dominant shareholders. *Jacobson v. Buffalo Rock Shooters Supply Inc.*, 664 N.E.2d 328, 331 (Ill. App. Ct. 1996).[7] The Trustee has alleged facts that would satisfy each of these factors, as the following examples demonstrate:

- **Inadequate capitalization**: The Debtor has minimized Green Dot's assets to the point that he affirms under penalty of perjury his belief that the company is worthless. (Schedule A/B at p. 5.)

- **Failure to observe corporate formalities**: The Debtor testified at his Bankruptcy Rule 2004 examination that the Defendants routinely shift funds and business expenses between their personal and company accounts because the family's "accountant advised [them] to do it that way." (2004 Exam at 56:8-57:5.)

- **Insolvency of the Debtor**: The Debtor states his assets are worth $27,550 (Schedule A/B at p. 10), and he lists $26,000 in secured claims (Schedule D at p. 1) and $5,446,277.70 in unsecured claims (Schedule E/F at p. 7).

- **Nonfunctioning of other officers**: It is undisputed that Debtor's wife and daughter are disabled, and that his sons have only recently become employed for the first time and therefore have little, if any, business experience. (Compl. ¶¶ 12, and 16-18.)

- **Commingling of funds**: The Debtor testified that his family used Green Dot's checking account like a clearing house, channeling all personal and business payments through it. (2004 Exam at 150:22-151:16.)

- **Absence of corporate records**: The Defendants keep no ledgers or other financial records of these commingled expenses and cashflows. (*Id*. at 102:10-12, 103:16-19, and 112:4-113:4.)

[7] *Jacobson* identifies two additional factors, which are not relevant in the context of LLCs: (1) failure to issue stock, *cf*. *In re Weiss*, 376 B.R. 867, 878-79 (Bankr. N.D. Ill. 2007) (discussing both the statutory limits and the customary restrictions placed into operating agreements on the creation and conveyance of LLC membership interests); and (2) nonpayment of dividends, *cf*. *note* 8 *infra*.

- **Failure to maintain arm's length relationships among related entities**: Debtor's company exclusively provides services to the alleged alter egos and does not charge them fair-market fees or expenses. (*E.g.*, Compl. ¶¶ 47-48, and 105.)

- **Facade for the operation of the dominant shareholders & diversion of corporate assets**: Exploiting his managerial powers over the alter egos (*e.g.*, *id*. ¶¶ 3, 20-21, 33, and 107) and his exclusive control of the family's commingled account (*id*. ¶ 65), the Debtor expends significant amounts of company money on personal needs. (*E.g.*, *id*. ¶¶ 64, and 66-67.)

As to the second requirement—prevention of fraud and avoidance of injustice—the alleged diversion of the estate's assets has been so extreme that the Debtor has gone from a multimillionaire property developer with international holdings to a bankrupt who owns assets worth only about $27,550. *Compare* Compl. ¶ 22 *with* Schedule A/B at p. 10; *see also Shakir I*, 623 B.R. at 542-43 (concluding that the Debtor had inadequately explained this dissipation of his assets). The alter ego doctrine came about in order to resolve systemic looting of the type alleged by Trustee in his Amended Complaint. *See Steinberg*, 40 F.3d at 892; *Koch Ref.*, 831 F.2d at 1344. Defendants' argument that alter ego claims can only be "cognizable on a claim-by-claim, creditor-by-creditor basis" does not withstand scrutiny under the Seventh Circuit's decisions affirming both the remedy's validity and a bankruptcy trustee's right to assert it. (Mot. at p. 8.)

Nor does the fact that the Debtor is not a named member of two of the Defendant LLCs alter these conclusions. *See Judson Atkinson Candies, Inc. v. Latini-Hohberger Dhimantec*, 529 F.3d 371, 381 (7th Cir. 2008) ("Under Illinois law, it is possible for a non-shareholder to be found personally liable under a veil-piercing theory."); *see also Main Bank*, 427 N.E.2d at 101-02 (noting that the alter ego rule can apply between affiliate entities).[8]

3. The Trustee has Standing to Prosecute the Alter Ego Claims

Defendants' standing argument points to nothing about this case's specific facts that suggest the remedy would fall afoul of the limitation that a bankruptcy trustee can prosecute only alter ego claims which apply to all creditors. Nor could they. The intentional diversion of property of Debtor's estate that is alleged in the Amended Complaint is alleged

[8] Decisions such as *Reid v. Wolf (In re Wolf)*, 595 B.R. 735 (Bankr. N.D. Ill. 2018), that distinguish between the propriety of a trustee's efforts to pierce partially owned corporations (impermissible) and wholly owned corporations (permissible) cannot withstand scrutiny under the *Atkinson Candies* and *Main Bank* decisions. Furthermore, even if the *Wolf* distinction were valid, the facts of this case would not implicate that rule. The Debtor and his family organized the Defendant businesses as limited liability companies rather than corporations. As a result, unlike the situation in *Wolf*, the Shakir family—or, if the Trustee prevails in this litigation, the Debtor—directly owns those companies' profits and net worth. *See* 805 ILCS 180/1-5 & 180/30-1(b); *Pres. Holdings, LLC v. Norberg*, 139 N.E.3d 62, 69 (Ill. App. Ct. 2019). The same is not true for a corporation's shareholders, who hold no direct claim to the corporation's profits (unless it is a closely held S corporation). *E.g.*, *Alleman v. Kitson (In re Kitson)*, 341 Fed. Appx. 234, 237 (7th Cir. 2009).

to have harmed every creditor of the estate, not just one or two uniquely positioned creditors. *See Lumpkin v. Envirodyne Indus., Inc.*, 933 F.2d 449, 463 (7th Cir. 1991).

The Defendants also make the curious argument that, because the individual creditors have not been actively pursuing remedies against the Defendants, their inactivity demonstrates that they suffered no harm by Debtor's actions and that the Court should conclude from their inactivity that the Debtor did not act fraudulently. (*E.g.*, Reply Br. at pp. 3-4.) But that is typical creditor behavior in many Chapter 7 liquidations. Why should creditors spend their own time and money on avoidance actions when a trustee is available to act on their behalf? Indeed, the Bankruptcy Code, including especially the automatic stay, is set up in such a way as to ensure that the Trustee bears the burden of such litigation against the Debtor. Even if a creditor were disposed to sue the Debtor in the Chapter 7 case itself, the creditor would normally be required to seek the Court's approval to pursue the litigation, based on the argument that the Trustee has not done so. That is obviously not the case in these proceedings.

Finally, the Defendants also argue that the Trustee lacks standing to pursue alter ego claims because the Debtor has already waived his right to a discharge in order to settle a claim brought by his largest creditor. That argument is a non sequitur: The success of the estate's largest creditor in having Debtor's discharge denied and the automatic stay vacated as to all creditors, *see* 11 U.S.C. § 362(c)(2)(C), makes it even more important that the Trustee be permitted to exercise the Trustee's statutory powers to seek to recover assets that he believes belong in the bankruptcy estate so that they are not dissipated in state-court litigation. In addition, Defendants' standing argument does not explain why the Court should ignore the bankruptcy statutes which expressly permit a bankruptcy trustee to file such lawsuits. *E.g.*, 11 U.S.C. §§ 550, and 544.

4. Defendants' Count-Specific Arguments are Meritless

In addition to their core arguments about standing and reverse piercing, the Defendants have made a number of subsidiary arguments. Many of those are specious and are disposed of in this footnote.[9] But they do make a few count-specific arguments (along

[9] A lower-court judge should set forth enough to satisfy the appellate court that he has considered the parties' arguments and has a reasoned basis for exercising his authority. *See In re Steenes*, 918 F.3d 554, 557 (7th Cir. 2019). In setting forth its reasoning, the Court only needs to "address the defendant's principal arguments that are not so weak as to not merit discussion." *Cf. United States v. Marin-Castano*, 688 F.3d 899, 902 (7th Cir. 2012) (quotation omitted); *United States v. Cunningham*, 429 F.3d 673, 679 (7th Cir. 2005) (only "[a] judge who fails to mention a ground of *recognized legal merit* (provided it has a factual basis) is likely to have committed an error or oversight.") (emphasis added). Examples of Defendants' frivolous arguments include: (1) their contention that the documentation of a free-services contract between Green Dot and the new companies proves Green Dot is not a "sham" entity, (Mot. at p. 12); (2) their contention that Trustee's identification of Debtor's family members as the holders of record of the 550 22nd LLC membership interests is an admission that the Debtor has no interest in that entity, (*id*. at pp. 12-13); (3) their contention that Trustee's failure to allege that the Shakir family's trust has not adhered to corporate formalities, which is not a *Szaflarski* factor, warrants dismissal of the claim against the trust (*id*. at p. 13); (4) their repeated insistence that the Trustee should have, if anything, brought fraudulent transfer-claims against the Defendants (*e.g.*, *id.* at p. 3), which does not explain how Trustee's allegations fail to measure up under the legal theories he has actually brought; (5) their contention that Trustee's allegations fail to demonstrate Debtor's insolvency sufficiently (Reply Br. at p. 11 n.5), when Debtor's own schedules show that his liabilities dwarf his current

with two miscellaneous ones applicable to each of Trustee's first four counts) that merit a more extensive discussion.

(a) Counts I through IV – *In re Teknek*

The Defendants cite *In re Teknek, LLC*, 563 F.3d 639 (7th Cir. 2009), for the proposition that the presence of one creditor that is significantly larger than the other creditors—Villa Oaks, LLC, the plaintiff in *Shakir I*—somehow precludes a finding of general harm to the creditor body. (Mot. at pp. 7 and 11.) But that case actually addresses questions altogether different from those arising in this proceeding. In *Teknek*, the alter-ego determination had already occurred in pre-bankruptcy litigation. 563 F.3d at 645. The judgment debtor in bankruptcy had already been held jointly and severally liable for that judgment. *Id*. Even so, the creditors only sought to enforce their judgment against the other judgment-debtor's assets (who was insolvent but not in bankruptcy). *Id*. And so, the questions requiring resolution were (1) whether or not the creditors' collection activities implicated the bankruptcy court's related-to jurisdiction and (2) whether or not those efforts impermissibly interfered with the bankruptcy trustee's exclusive statutory powers. Concluding that the collection efforts involved neither, the Seventh Circuit affirmed the district court's vacation of the bankruptcy court's order staying those efforts. *Id*. at 650-52. The large creditor's presence in *Teknek* would only have been relevant to a motion to dismiss this bankruptcy case if this had been merely a two-party dispute, which it was not. *Id*.

(b) Counts I through IV – Purported Absence of Caselaw

The Defendants contend that the Court should dismiss Trustee's first four counts because they could not locate caselaw specifically authorizing Trustee's remedy against limited liability companies or trusts. (Mot. at p. 10; Reply Br. at p. 2.) However, authority supporting Trustee's position on these two points is readily available.

For example, a number of decisions have concluded that Illinois's alter ego doctrine applies as equally to limited liability companies as it does to corporations. *See*, *e.g.*, *Flentye*, 485 F. Supp. at 912; *Fisher v. Hamilton (In re Teknek, LLC)*, 343 B.R. 850, 863 n.6 (Bankr. N.D. Ill. 2006).

For an illustrative decision authorizing the setting aside of an Illinois land trust, *see United States v. Szaflarski*, 614 F. App'x 836 (7th Cir. 2015). The facts in *Szaflarski* are strikingly like Trustee's allegations. There, the defendant purchased a home using his own funds but placed two family members on the mortgage documents. (*Cf.* Compl. ¶¶ 118-19.) Knowing that various legal liabilities were in the offing, he subsequently conveyed his interest in the home to an Illinois land trust for no consideration. (*Cf*. *id*. ¶ 120.) One of defendant's family members was the trust's sole beneficiary.[10] Notwithstanding that

assets by a factor of 199 to 1 [($5,446,277.70 + $26,000) ÷ $27,550 = 198.6]; and (6) their speculation that a creditor *may* have structured its transaction with the Debtor in such a way that adherence to the corporate form would not be unfair to that creditor (Mot. at p. 8.).

[10] The Court will assume for purposes of Defendants' motion that the Debtor is the trust's settlor, trustee, and third-party beneficiary, *cf*. *United Labs., Inc. v. Savaiano*, No. 06 C 1442, 2007 WL 4162808, at *4-7 (N.D.

conveyance, the defendant continued living in the home with his family and paying the mortgage and household expenses. (*Cf. id*. ¶¶ 8, 11, 66(a), and 121-22.) The record further demonstrated that that family member did not act in a manner consistent with true ownership. (*Cf. id*. ¶ 123.) Disbelieving the family's testimony that defendant's payment of the household's expenses evidenced a landlord-tenant relationship rather than an ownership interest, the Seventh Circuit affirmed the district court's determination that defendant's family member held the home's legal title as nominee for defendant's benefit.

(c) Count II – RSS Homes, LLC

The Defendants argue that Trustee's claim against RSS Homes should be dismissed because "Trustee's own allegations admit that most of RSS's funding came from Rubina Shakir directly or from non-debtor third parties—not the Debtor." (Mot. at p. 12.) But this reading of the Amended Complaint ignores Trustee's allegations that clearly trace that funding to the sales of Debtor's gas stations before it passed through those intermediate accounts. (*E.g.*, Compl. ¶¶ 40-41, 54-57, and 60.)

(d) Count IV – The Shakir Trust

The Defendants further appear to argue that it is per se impermissible to set aside the Residence's trust because Rubina and the Debtor formed and funded that trust about ten years ago. (*E.g.*, Mot. at p. 10 n.2.) This argument is premature and not persuasive at this point in the litigation because the Seventh Circuit instructed its lower courts in *Szaflaski* to apply a factor-based test in ruling on motions to dismiss, not a bright line test. *See Szaflarski*, 614 F. App'x at 838-39. If the Defendants are able to prove at trial that the temporal distinctions between *Szaflarski* and this proceeding are material, then the Court can address that argument at that time.[11]

(e) Count V – Rubina's Financial Accounts

The Defendants argue that Count V should be dismissed because "[i]t is simply not reasonable to infer that during [Rubina's] 37 years of marriage to the Debtor, and despite her separate employment, Rubina did not accumulate any assets separate and apart from her husband." (Mot. at p. 13.) Again, this is an argument that must await trial for resolution. It is premature to address it in ruling on a motion to dismiss. For the last twenty years, Rubina has been a homemaker and, for the last five of those years, severely disabled. Perhaps the evidence introduced at trial will establish that her employment as an airline ticketing agent some twenty years ago is the primary source of the money in her financial

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Ill. Nov. 19, 2007), and that Rubina is the trust's sole named beneficiary. If that inference is correct, all principal benefits and powers divvied up in that inter vivos trust already and directly belong to the estate, which is an independently adequate reason for denying Defendants' motion with respect to this count. *See Glick*, 568 B.R. at 669-70 (concluding that a Chapter 7 debtor's "equitable interest as a beneficiary" of a living trust and his "his powers as trustee" including his rights "to distribute income and principal, to amend the trust, even to revoke the trust altogether," became estate property under Section 541(a) without a "pierce" of that inter vivos trust).

[11] In that regard, the Defendants face an uphill battle, for none of *Szaflarski's* five factors concern the timing of the underlying transactions. *Id*.

accounts, perhaps not, but the Court will not know the answer to that question until the parties have introduced the appropriate evidence at trial.

(f) Count VI – Turnover

The Defendants seek dismissal of Trustee's turnover count solely because it depends upon Trustee's success on his first five counts, which they argue the Court must dismiss for various defects. Having rejected all grounds the Defendants advanced for dismissal of those counts, the Court also denies Defendants' motion to the extent it seeks dismissal of Count VI.

C. CONCLUSION

The Amended Complaint both gives the Defendants fair notice of the nature of Trustee's claims and presents "a story that holds together." *Reed v. Palmer*, 906 F.3d 540, 548 (7th Cir. 2018) (quotations omitted). Taken as true, the Amended Complaint's allegations show that the companies and trust are the cat's paws of the Debtor. For all the foregoing reasons, the Court hereby:

1. denies Defendants' motion;
2. orders the Defendants to answer the Amended Complaint by September 27, 2022; and
3. sets a status hearing on this adversary proceeding for October 4, 2022, at 10:00 a.m.

ENTERED:

DATE: _____

_____
Donald R. Cassling
United States Bankruptcy Judge