

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Richard Sharif,

Debtor.

Bankr. No. 09-05868

Chapter 7

Judge Jacqueline P. Cox

Haifa Sharifeh,

Intervenor,

v.

Horace Fox, Jr.,
Trustee of the
Debtor's Bankruptcy Estate.

Amended Order Disposing of Remanded Issues

Facts

This bankruptcy case has a long and complicated history, approaching ten years since it was filed in early 2009. It concerns disputes about who in the Sharif family owned assets in a trust.

The Debtor's mother created the Soad Wattar Revocable Living Trust of 1992 ("Trust"). The Debtor was named as its Trustee. A central issue in dispute is when and if he ceased being its trustee and whether its assets were his individual property and for that reason property of the bankruptcy estate pursuant to 11 U.S.C. § 541(a) which states, in relevant part, that "the commencement of a bankruptcy case creates an estate comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a).

The Debtor's 2009 bankruptcy petition was preceded by litigation in federal court in the Northern District of Texas where the Debtor, on behalf of himself and others, sued Wellness International Network, Ltd. ("WIN"), and others, asserting fraud and RICO violations, claiming damages of \$1 million.¹

Summary judgment was granted by the Texas federal court in WIN's favor after the Debtor failed to respond to WIN's discovery requests. That ruling was affirmed by the Fifth Circuit Court of Appeals; the matter was remanded to the District Court to determine how much WIN should recover in attorneys' fees. On remand, the district court awarded WIN \$655,596.13 in attorneys' fees as a sanction against the Debtor. *Sharif v. Wellness Intern. Network, Ltd.*, 2008 WL 2885186 (July 22, 2008).

Six months later, on February 24, 2009, the Debtor filed for chapter 7 bankruptcy relief in the Northern District of Illinois. On August 24, 2009 WIN filed adversary proceeding No. 09-0770 in the bankruptcy case against him seeking to deny him a discharge and to have the Trust's assets declared to be the Debtor's property under an alter ego theory.

The Debtor's mother died in Syria on March 17, 2010.

According to their mother's April 26, 2007 will her personal property was left to the Trust.

The Debtor failed to comply with discovery requests; WIN sought sanctions. He was warned that noncompliance could result in the entry of a default judgment. He did not complete his discovery obligations. Default judgment was entered; he was denied a discharge and the

¹The claims were asserted first in 2002 in federal court in the Northern District of Illinois; due to a forum selection clause the Illinois case was dismissed.

Trust was declared to be his alter ego, as requested in the adversary complaint.

Those rulings were affirmed on appeal to the District Court. An appeal to the Seventh Circuit followed. That Court affirmed the portion of the District Court's judgment affirming the denial of his discharge and reversed the alter ego ruling on the ground that the bankruptcy court lacked constitutional authority to rule on that issue. That ruling was appealed to the U.S. Supreme Court which reversed, holding that bankruptcy courts may adjudicate *Stern* claims (claims where bankruptcy courts lack constitutional authority to issue final judgments) with the parties' consent. The matter was remanded to the Seventh Circuit to rule on the consent issue. *Wellness Intern. Network, Ltd. v. Sharif*, 135 S.Ct. 1932 (2015).

On remand the Seventh Circuit affirmed the District Court's order affirming the bankruptcy court, concluding that the *Stern* argument had been forfeited because it was first mentioned in a reply brief.

In September, 2015 the Debtor's sister filed a motion to vacate an August, 2010 turnover order purportedly in her capacity as Executrix of Soad Wattar's probate estate, claiming that the prior orders were not binding on her because the probate estate had not been served. That order had not been appealed; it stood as a final order requiring the turnover of Trusts assets to the bankruptcy trustee.

She produced in her reply brief an April 28, 2007 will that named her as Executrix of her deceased mother's estate. The problem is that an April 26, 2007 will (leaving assets to the Trust) had been given to the bankruptcy trustee, not this April 28, 2007 will. The bankruptcy court denied the motion to vacate. That order was appealed. The District Court affirmed. She filed a motion to reconsider; the District Court remanded this matter to the bankruptcy court for

consideration of certain issues.

The issues herein have been the subject of many court rulings. Many of the facts discussed herein are undisputed in that they concern what parties have alleged or filed in various lawsuits. This Court has referred to its dockets and the dockets of other Courts without formally taking judicial notice of the same. The information referred to concerns undisputed matters, such as court orders and the contents of various pleadings.

Rule 201(b) of the Federal Rules of Evidence allows courts to take judicial notice of an adjudicative fact that is “not subject to reasonable dispute if it can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Federal Rule of Evidence 201(b). *See In re Brent*, 458 B.R. 444, 455 n.5 (Bankr. N.D. Ill. 2011) (“The court can take judicial notice of matters in its own records.”); *In re Lisse*, 905 F.3d 495 (7th Cir. 2018) (Court ruled that orders entered by a Wisconsin court are public records, appropriate subjects of judicial notice and that motions filed in a case are not subject to judicial notice).

II. Issues Remanded

On September 28, 2017 a District Judge remanded this matter for further proceedings consistent with his Opinion on the following issues: Whether Haifa Sharifeh Kaj (“Haifa”), the Intervenor, waived her right to rely on the April 28, 2007 will by failing to refer to it in her Rule 60(b)(4) motion filed in the bankruptcy case (or to comply with applicable evidentiary rules or for any other reason) and if there was no waiver, which version of the will controls. This Court was free to invite additional briefing and hearing on any other relevant issues that it had previously identified but did not decide such as laches and issue preclusion and to resolve

Intervenor's motion on any of those grounds as this Court sees fit.

The District Judge also noted that the Intervenor argued that the Bankruptcy Court did not make a factual determination of whether she had notice of the bankruptcy case. The Intervenor argued that she never lived at the Barrington address to which she was mailed notice as a scheduled creditor of the Debtor; that she was estranged from her brother, the Debtor, Richard Sharif ("Richard" and "Debtor") and their sister Ragda Sharifeh ("Ragda"), each of whom participated in the bankruptcy case and adversary proceedings. She also argued that she might not have authorized the filing of the Cook County, Illinois lawsuit purportedly filed on her behalf in 2010. The District Court noted that the Intervenor did not provide competent evidence that she did not know about the bankruptcy case or the 2010 turnover order.

Since some issues were being remanded the District Judge said that this Court was free to explore whether the Intervenor had actual notice of Debtor's bankruptcy case and the turnover order and to make additional findings in that regard.

The District Court also noted that it would be helpful for this court to address the 2007 Revocation of Trustee document.

This Court held evidentiary hearings on the above issues from June 27, 2018 to August 15, 2018.

A. Waiver of Right to Rely on April 28, 2007 Will

Based on the testimony heard in the remand trial, this Court finds that Haifa waived her right to rely on the April 28, 2007 will because she referred to it for the first time in her reply.

B. If No Waiver Found, Which Version Controls?

This Court finds, based on the evidence heard at the remand trial, that waiver prevents

Haifa from relying on the April 28, 2007 will, but because extensive evidence was heard on it before waiver was found, this court finds that Haifa should have asserted her rights and interests under it in 2010 when the judgment and orders in issue were entered in the adversary proceeding or at least as soon as 2011 when she admits that she first learned that the Trust assets had been held to be the Debtor's alter ego. The April 26, 2007 will controls. It was produced in discovery, not the April 28, 2007 will.

C. Laches

The court finds that Haifa has committed laches in that she has unreasonably delayed pursuing her rights, interests and claims under the April 28, 2007 will, which she knew of when it was executed in 2007. Waiting to September 15, 2015 to claim not to know of various orders entered in this bankruptcy case was unreasonable. In any event, this Court finds that Haifa knew of the alter ego judgment in 2010 when she approved payments to Attorney William Stevens who represented both Richard and Soad Wattar's estate in trying to obtain reversals of this Court's orders by the District Court, the Court of Appeals and the United States Supreme Court.

D. Preclusion

Contrary to Attorney Maurice Salem's argument and Haifa's assertions, Haifa knew about the course of the bankruptcy case and the adversary proceeding, according to her testimony, as early as 2011, but waited to see what her agents, Richard, and her attorney, Mr. Stevens, could accomplish by appealing the matters in issue to the District Court, the Seventh Circuit Court of Appeals and the United States Supreme Court.

She is bound by the conduct of her agents, Richard and Attorney Stevens, who fully litigated these matters for several years. She is precluded from vacating those orders and starting

over. She knew about these matters and participated in their resolution through her agents.

E. Whether Haifa had Notice of the Bankruptcy Case and Turnover Order

Haifa had notice of the bankruptcy case and the turnover order. She testified that she knew about these matters in early 2011. The Court finds, however, based on the evidence heard at the remand trial, that she had notice of these matters earlier in 2010 when she hired Attorney Williams Stevens to represent her mother's probate estate, a fact she asserts in the legal malpractice case she filed against Mr. Stevens.

F. Notice to Haifa about the Chancery Case Where She is Purportedly a Plaintiff

Haifa claims that she had no knowledge of the 2010 CH 30432 case where she is listed as a plaintiff. It was filed in July of 2010 and alleges facts that occurred around that time in the bankruptcy case and the 09-0770 adversary proceeding. The Court does not believe her and notes that she did not allege in that case that she had rights or interests based on an April 28, 2007 will.

G. 2007 Revocation of Trustee

A paramount issue herein is when Debtor Richard Sharif ceased being the Trustee of the Soad Wattar Revocable Living Trust. If he was not its trustee when he filed for bankruptcy relief, the bankruptcy trustee would probably not have any control over it.

II. Summary of Trial Testimony

Paralegal Rosee Torres ("Torres") testified herein that she saw Exhibit D, a document in which Ragda Sharif stated that she was revoking Richard Sharif's designation as Trustee of the Soad Wattar Trust in November, 2007. Even though Ragda was not the Trust's settlor the document states: "I, Ragda Shariffah, . . . hereby revoke and cancel the appointment of

Richard Sharif as Trustee to the SOAD WATTAR REVOCABLE LIVING TRUST OF 1992 and the Amendment of October 8, 2007 per instructions from Soad Wattar and her attorney, Abel Sejgieh, of Aleppo, the Republic of Syria.” Richard signed the document: “I, Richard Sharif, accept this cancellation and revocation and waive any and all financial interest thereto. I agree to cooperate fully in the transfer of the Trust to the named Successor Trustee during the 24 month transition period.” According to the document, notarized by Maria Gaud on November 1, 2007, the revocation was not effective during a 24-month transition period, until November 1, 2009, several months after Richard filed for bankruptcy relief on February 24, 2009.

The document was mailed to Soad Wattar in Syria. It was returned with her signature.

Torres opined that Attorney Michael Cohen did not immediately tell Debtor Richard Sharif that he was no longer the Trust’s Trustee upon his mother’s execution of the document. He would tell him when he was ready to do so. Transcript I, p. 36. Why would Richard Sharif rely on an attorney to tell him about a transaction he signed off on? Neither Ms. Torres nor Richard testified credibly on this issue.

She also testified about Exhibit V-1, an October 21, 2010 letter Mr. Cohen wrote to Ragda informing her that, as Successor Trustee, she was obligated to pay the mortgage on the 36 Revere Drive, South Barrington, Illinois property because a state court judge had ruled that it was not Debtor Richard Sharif’s property, who had acted only as an agent and trustee until 2007. Torres testified that she did not see Cohen sign it; no other witness saw Cohen sign it. By the date of this October 21, 2010 letter, Richard Sharif was no longer the

Trustee due to the entry of the July 6, 2010 Judgment Order declaring the Trust to be his alter ego.

To date no one has litigated whether any such state court ruling existed or whether it was binding in the bankruptcy case. It has no value in determining whether Debtor Richard Sharif was the Trustee of the Trust.

Apparently the effort to change the trustee was precipitated by the arrest of Richard on federal criminal charges. Mr. Salem argued that a revocation of trustee occurred in November, 2007. Transcript I, p. 43. Torres expressed confusion about whether this occurred in 2007 or 2010. Transcript I, pp. 40-45.

Torres testified that on April 26, 2007 a will was prepared for Soad Wattar by an attorney by the name of D'Angelo. Richard was named the executor therein. Transcript I, p. 48. Apparently Mr. Cohen objected to Richard being on the will because of his recent divorce and impending remarriage.

The next day Soad Wattar marked out Richard Sharif's name. They put it in the name of the Intervenor, Haifa Sharifeh/Kaj. Transcript I, pp. 52-53. Exhibit A is the April 28, 2007 will of Soad Wattar which names Haifa Sharifeh as Executrix. It leaves her real and personal property, as well as Soad Wattar's interest in the Trust, to the executrix to manage. Exhibit A, Article Three. Torres testified that the April 28, 2007 will was signed at Hermosa Medical Clinic. Transcript I, pp. 56-7. The Debtor claimed ownership of the Hermosa Medical Clinic in a Washington Mutual Bank loan application in 2002, as allowed and directed by Ragda. *In re Sharif*, 564 B.R. 328, 334 (Bankr. N.D. Ill. 2017). Ragda testified at a deposition that Richard did not own the Hermosa Medical Clinic. Transcript of

June 10, 2010 Deposition of Ragda Sharifeh, Bankruptcy Case 09-05868, Docket 78, Ex. A, pp. 95-96.

According to Notary Public Maria Gaud this document was signed on November 1, 2007.

The Debtor filed for relief under Chapter 7 of the Bankruptcy Code less than 24 months later on February 24, 2009.

Soad Wattar's purported signature appears below Notary Maria Gaud's signature. Was Soad Wattar's signature witnessed or notarized? The paralegal testified that an attorney in Syria sent back a copy of the revocation signed by Soad Wattar. Transcript I, p. 29. Apparently the document was signed in America on November 1, 2007 by Ragda, Richard and Notary Maria Gaud. Soad Wattar's signature, which appears after Ms. Gaud's on the document, is undated.

Oddly, the paralegal said that she told Ragda Sharifeh that she, Ragda, was the Trustee. Transcript I, p. 30. Ragda declares in the revocation document that she was revoking and cancelling Richard Sharif's appointment as Trustee. Wouldn't Ragda already know this?

The Court notes that Exhibit C, the Trust document as amended in 1996, Article II - Revocation or Amendment - states: "Settlor hereby reserves the right to revoke or amend this trust . . ." In addition, it states: "Settlor reserves the right to revoke any trustee's appointment without notice in the event said appointment may become or result in any personal litigation or controversy (sic) which may involve the trustee personally, such as criminal or divorce." Exhibit C.

Torres also testified that attorneys Cohen and William Stevens represented Debtor Richard Sharif in the bankruptcy case after Attorney Todhunter withdrew his appearance herein. Transcript I, pp. 61, 82, 83. The docket of the bankruptcy case does not include an appearance by Attorney Michael Cohen.

Notary Maria Gaud testified that she notarized the April 26, 2007 will; that document named Richard Sharif as executor. She got a call a few days later to notarize a second will. She notarized the second will on April 28, 2007; Haifa was appointed as executrix therein. Transcript I, pp. 92-97.

Gaud also testified that she notarized an October 8, 2007 Trust Amendment which Richard Sharif signed under an April 26, 2007 Power of Attorney. *See* Exhibit W-1. That document purports to change beneficiaries of an insurance policy issued by the Hartford Life and Annuity Company. It was witnessed by Stacy Franceschi and Edward Bontkowski.

The Declarations of Stacy Franceschi and Robert Bontkowski, who did not testify at the remand trial, state that the items, certified to have been signed on October 8, 2007 were actually signed in 2009. Exhibits 52 and 53. Those items are purported to be: (1) a Trust amendment executed by Richard Sharif changing the named beneficiaries of an insurance policy pursuant to the Settlor's advice that her four daughters be named as beneficiaries and (2) an Amendment to the Soad Wattar Living Trust that provided that upon the Settlor's death the Trust's income and principal were to be distributed to Ragda Sharifeh. The October 8, 2007 amendments are attached to Exhibit 52, Ms. Franceschi's Declaration.

Ms. Gaud disagrees with the accounts of Franceschi and Bontkowski that the

documents were signed in mid-2009.

Ms. Gaud also testified that she recalled certifying a November 1, 2007 Revocation of Trustee to the Soad Wattar Revocable Living Trust of 1992, sometimes referred to as the Soad Wattar Living Trust of 1992 as Amended in 1996. She also said that she notarized both the April 26, 2007 and April 28, 2007 wills. Transcript I, p. 118.

Abeer Zaghmoury testified to seeing the April 26, 2007 will at the Hermosa Pharmacy. Arguments ensued because Richard was named the executive (sic). Transcript I, p. 123. They did not want Richard to have the family money. *Id.* Attorney Cohen came to that office later. Transcript I, p. 131.

The second will was signed; however, Ragda got upset because Richard was taken out as executor. Haifa was then named executrix. Richard, Ragda and Haifa became estranged; they communicated through Abeer, Haifa's employee. Transcript I, pp. 132-133. Their relationship changed when their mother died. Transcript I, p. 134. Haifa lived in Virginia; she resided at a condominium on Clarendon Street in Chicago when she came to Illinois. Haifa visited Chicago five or six times a year. *Id.*, p. 138.

Abeer also testified that she prepared checks, with Haifa's approval that were used to pay Attorney Richard Stevens, Richard Sharif's bankruptcy lawyer. Transcript I, pp. 143, 157, 158. She also testified that Richard, Ragda and Haifa discussed loss of the trust and money in the bankruptcy case. Transcript I, p. 159. She testified that Haifa, Richard and their mother went to Mr. Cohen's office on April 28, 2007; Richard drove. Transcript I, p. 153.

Ragda testified that after Richard was arrested on federal criminal charges she

replaced him as Trustee in 2007 pursuant to Exhibit D, the Revocation of Trustee to Soad Wattar Revocable Living Trust of 1992. Transcript I, p. 173. Soad Wattar was not present when that document was executed. Mr. Cohen sent it to Soad Wattar.

Ragda testified about Mr. Cohen's October 21, 2010 letter advising her to pay the mortgage on the residence at 36 Revere Drive in South Barrington, Illinois. Exhibit V-1. Transcript I, pp. 175-6.

According to Ragda, Haifa was named in the Cook County Chancery case as a plaintiff although Mr. Reidy did not represent or speak to Haifa. *Id.*, pp. 176-178. Ragda said that Haifa did not authorize the filing of that case, 10 CH 30432. Transcript I, p. 180.

In the state court lawsuit filed on July 15, 2010 both Ragda and Haifa are listed as plaintiffs and as plaintiffs in the 2005 lawsuit filed in the Northern District of Texas, 05-CV-1367, against WIN and others seeking \$1 Million lost in a transaction alleged to have been a Ponzi scheme. *In re Sharif*, 549 B.R. 485, 490 (Bankr. N.D. Ill. 2016).

The plaintiffs in the Illinois lawsuit, Ragda and Haifa, complained that Richard stated in a loan application that he owned assets that were really Ragda's including:

1. Two condominiums units at 4343 N. Clarendon Street, Unit Nos. 1601 and 1602, Chicago, Illinois;
2. Real property containing a medical center at 2004 N. Pulaski Road, Chicago, Illinois;
3. Hermosa Medical Management, Inc., formerly known as Hermosa Medical & Diagnostic Center, Inc. and
4. Funds held at Banco Popular in the name of Hermosa Medical

Management, Inc. because she was the president and sole shareholder of Hermosa Medical Management, Inc.

The complaint in the Illinois lawsuit also states that when Richard listed himself as the owner of Sharif Pharmacy and Logan Square MRI on the loan application submitted to Washington Mutual Bank, those entities were owned by Haifa Kaj. Two documents from the Illinois Secretary of State were attached stating that Haifa Kaj was the 100% owner of those two entities. Exhibits F and G, attached to Trustee's Exhibit 18. The court does not believe Ragda's testimony that Haifa did not authorize the Illinois lawsuit where Haifa's interests were asserted.

Richard Sharif stated in his 2002 tax return that he owned 100% of Sharif Pharmacy; he also admitted owning 10% of Sharif Pharmacy. *See* Richard Sharif's Rule 2004 Examination, pp. 61-72. No documents were produced evidencing his interests therein or the transfer of such. *In re Sharif*, 541 B.R. 681, 690 (Bankr. N.D. Ill. 2015).

If Haifa was the executrix of their mother's probate estate, she would have asserted such in that state court action. Raising that issue for the first time on September 15, 2015 is highly questionable. Haifa ran two businesses in Illinois from Virginia. She knew that their mother passed on March 17, 2010. Waiting over five years to assert her rights and interests as executrix shows that she knew of, supported and joined in the litigation that Richard pursued.

Ragda's testimony that Haifa was not a plaintiff in the Illinois lawsuit against Richard Sharif is difficult to believe. At one point Ragda claimed to be the Successor Trustee of the Trust. However, she failed to produce any evidence of that. She claimed to

have been the Successor Trustee after July 21, 2010 when the Debtor “resigned” as Trustee. As of two weeks before that date on July 6, 2010 when the Trust was held to be the Debtor’s alter ego, it ceased to exist. *In re Sharif*, 549 B.R. 485, 504 (Bankr. N.D. Ill. 2016).

The Court recalls Ragda’s deposition testimony that the Debtor acted as her agent in the Texas federal court litigation from which WIN’s judgment originated. *In re Sharif*, 549 B.R. 485, 510 (Bankr. N.D. Ill. 2016). She told him to file the lawsuit, instructed him on how to proceed therein and to represent to third parties that he owned the Loan Application assets. *Id.* She admitted making misrepresentations, explaining that this was done so that Richard Sharif’s ex-wife could not clean him out. *Id.*, p. 511. Ragda has no credibility.

Ragda now claims to have been the Trustee of the Trust when it was amended on November 1, 2007. However, when she appeared in this court in 2010 she claimed to have become the Trustee when Richard Sharif “resigned” on July 21, 2010 after she sued him in state court. In the Petition to Intervene, Docket 68, filed on December 3, 2010, she said in ¶ 11 “[a]s a result of Soad Wattar passing away on March 17, 2010, pursuant to an amendment made to the Soad Wattar Revocable Living Trust on October 8, 2007, Ragda Sharif became the Successor Beneficiary of the Soad Wattar Revocable Living Trust.” Petition to Intervene, Bankruptcy Case 09-05868, Docket 68, p. 5, ¶ 11. She did not allege therein that she became Trustee of the Trust in 2007. She alleged therein that “[s]hortly after said restraining order was entered (in 2010), Richard Sharif resigned as the Trustee of the Soad Wattar Revocable Living Trust and pursuant to the terms of said trust, Ragda Sharifeh became the Successor Trustee of the Soad Watter Revocable Trust.” *Id.*, ¶ 14.

Reliance on the 2007 document where Ragda purports to revoke Richard Sharif’s

service as Trustee is misplaced. Was Ragda authorized to revoke a trustee appointment? In any event, that document, notarized on November 1, 2007, gave Richard a 24-month transition period; the language above his signature states “I agree to cooperate fully in the transfer of the Trust to the named Successor Trustee during the 24 month transition period.”

Was the Trust transferred within 24 months? No. According to Ragda, the transfer occurred on July 21, 2010 when Richard resigned as Trustee. Pursuant to Exhibit D he could have been the Trust’s Trustee until November 1, 2009, 9 months past the date on which he filed for bankruptcy relief.

On April 26, 2007 the Trust was amended to provide that “[a]fter Settlor’s death, the Trustee shall distribute the net income and principal of the Trust to Richard Sharif, outright and free of any Trust.” Exhibit 16.

One October 8, 2007 Trust amendment document changes the beneficiaries of an insurance policy. It does not mention a trustee change. Exhibit 52. A second October 8, 2007 trust amendment document provides that at Soad Wattar’s death, all trust assets, after paying trust management costs, were to be distributed to Ragda. No trustee change is noted therein. *Id.*

The Court notes that the First Amended Complaint in the state court Chancery action at ¶ 13, states that the Trust’s Wells Fargo account was held in the name of the Trust and Richard Sharif as Trustee. Trustee’s Exhibit 6. When asked at the June 27, 2018 hearing whether this paragraph was true in 2010, she said that she did not remember. Transcript I, p. 205.

When asked at the June 27, 2018 hearing about her affidavit attached to the First

Amended Complaint, Ragda did not answer a question about ¶ 14 which states that Richard Sharif in his capacity as Trustee of the Trust breached fiduciary duties owed to the Trust by exposing it to being seized by his creditors. She did not remember. Transcript I, p. 207. As of the date of that pleading, July 30, 2010, she did not deny that Richard Sharif was not then the Trustee. In any event, we know from her deposition testimony that she authorized him to state in an application for a loan that he owned several assets even though they belonged to other family members. *See* Deposition of Ragda Sharifeh, Docket 78, Exhibit A, Deposition, pp. 92-116; *In re Sharif*, 549 B.R. 485, 510 (Bankr. N.D. Ill. 2016).

Ragda testified that she did not tell Haifa that funds in a Wells Fargo Financial Advisors, LLC account were frozen in 2010. Haifa was told in 2011. Transcript I, p. 214; Transcript II, p. 268. However, Ragda filed adversary proceeding 10-2239 herein; in ¶ 18 she alleged that she and Haifa filed the 2010 state court lawsuit 2010 -CH-30432. (This statement was repeated in a Motion to Intervene, Dkt. 68, ¶ 13). At the June 28, 2018 hearing she said that ¶ 18 was false. Transcript II, p. 263. She alleged in adversary proceeding 10-2239 that she became Trustee when Richard Sharif resigned as Trustee shortly after a July 21, 2010 state court order was entered. *Id.*, ¶ 19. According to Exhibit D, the Revocation of Trustee, Richard Sharif was switched out as Trustee in 2007 because he was arrested by the FBI on October 3, 2007. Transcript II, pp. 230-31. When asked why follow up regarding this change took 3 years, she said the document was with the lawyers. *Id.*, p. 231.

Ragda testified that she did not tell Haifa that the Trust assets had been lost even though Haifa was named as executrix under the second will which provided that Trust assets

were to be administered by the executrix. Transcript II, pp. 235-36. The court does not believe Ragda. She has no credibility.

She went to Wells Fargo with Attorney Garrett Reidy to inquire about the freezing of the account. Transcript II, pp. 242-43.

Ragda testified that she learned that she was the Trustee in 2010 and started hiring lawyers to recover the money. Transcript II, p. 252. She stated in an affidavit, Exhibit 5, that she became the Trustee in 2007. Funds from Hermosa Medical Management were used to pay Mr. Stevens. *Id.*, p. 254 and Exhibit 44.

While Haifa argues lack of due process because she had no notice of these matters for several years before her 2015 effort to vacate orders, Ragda said that Haifa had notice of these matters starting in 2011. Transcript II, p. 266.

The purported November 1, 2007 Revocation of Trustee which supposedly replaced Richard Sharif as Trustee was not mentioned in the December, 2010 Motion to Intervene filed by Ragda. The complaint in adversary proceeding 10-2239 refers to the two October 8, 2007 trust amendment documents, ¶ 28: Ragda alleges that one amendment made her the successor beneficiary, not a successor trustee. Trustees are entitled to notice, and act on behalf of trusts, not beneficiaries. *In re Schneider*, 417 B.R. 907, 913 (Bankr. N.D. Ill. 2009); Illinois Law on Power of Trustee, 760 ILCS 5/4-4.11.

Ragda said that Haifa knew about these matters earlier. Ragda told Haifa that she and Richard hired a lawyer “to deal with this, and she was waiting for the solution.” Transcript II, p. 268. Haifa, as the Executor of the Estate of Soad Wattar, alleges that she knew nothing about these matters, although she was a named plaintiff in the 2010 Chancery

case. She knew about and acquiesced in the course of litigation pursued by Richard, Ragda and Attorney Stevens.

Ragda was asked about a 2012 lawsuit filed on her behalf, 12 CH 5518, Exhibit 47, where she sued Bankruptcy Trustee Horace Fox, Richard Sharif, Wells Fargo and Green Bank. She acknowledged that the complaint therein does not reference the November 1, 2007 Revocation of Trustee document that is alleged to have revoked Richard Sharif's trusteeship in 2007 even though she refers to herself as the Successor Trustee therein. Transcript II, p. 269. At ¶¶19 and 23 of the complaint in 12 CH 5518 Ragda asserted that she and Haifa filed the 2010 Chancery case, 2010 CH 30432.

A rift in the family ensued when their mother named Haifa as executrix of her estate, changing course from the will that had been executed two days earlier naming Richard as executor. Transcript II, p. 275. The family got back together when their mother died in March, 2010. *Id.*, 275-76.

Ragda testified that in March, 2012 her attorney, Garrett Reidy, submitted a March 3, 2012 letter, Exhibit 48, to financial institution Raymond James which included a Statement/Trustee Certification, Exhibit 69, that she was the Trustee of the Soad Wattar Revocable Living Trust of 1996. She testified that she signed the certification. Transcript II, p. 278. The letter referenced an affidavit from Richard Sharif that he had resigned as Trustee and a letter from Ragda directing Raymond James to liquidate assets in an account owned by the Trust. It directed that the funds be wired to an account at Banco Popular. Exhibit 48 includes the March 3, 2012 letters from Ragda and Attorney Garrett Reidy to Raymond James. She received \$122,000 from that account when she knew that no court had

ruled that she was a successor trustee and that all Trust assets had been declared to be property of the bankruptcy estate. The Court notes that the District Court affirmed the bankruptcy court judgment a few weeks earlier on February 10, 2012. Transcript II, p. 279.

This may be a crime, bank fraud, under 18 U.S.C. § 1344 which states:

Whoever knowingly executes, or attempts to execute, a scheme or artifice . . . to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations or promises . . . shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

The unauthorized withdrawal was made one month after the District Court affirmed this Court's ruling that the Trust was Richard Sharif's alter ego, bringing the Trust's assets into the bankruptcy estate. *See Sharifeh v. Fox*, 2012 WL 469980 (N.D. Ill. February 10, 2012) (four matters were appealed).

The Sharif family members and their Attorney, Mr. Salem, posit that because a trust holds assets, it is impervious to bankruptcy administration. This is not true. Creditors and bankruptcy trustees can examine the formation and administration of trusts connected to debtors to discern whether the assets alleged to be held in trust can be brought into a bankruptcy estate. *See Lunkes v. Gecker*, 427 B.R. 425 (N.D. Ill. 2010) where a District Court affirmed this Court's ruling that trust assets came into a bankruptcy estate when the beneficiary filed for bankruptcy relief. In affirming a District Court's denial of a motion to intervene, the Seventh Circuit recently discussed discovery of a trust's structure and legal effect in the context of a bankruptcy trustee's efforts to enforce a \$220 million judgment. *In re Emerald Casino, Inc.*, 746 Fed.Appx. 586, 588 (7th Cir. January 2, 2019).

Ragda testified that Haifa first knew of the matters involving the Trust in February, 2011. Transcript II, p. 288. The issue is why Haifa waited until 2015 to approach the courts about the estate for which she served as executrix under her mother's April 28, 2007 will. Either that will did not exist or she totally waived her rights by not invoking them in a timely manner.

Attorney Brian Denenberg testified at the remand hearing. He identified Exhibit 15 as the will he worked on, the April 26, 2007 will. Exhibit 16 is a Trust Amendment dated April 26, 2007 which states that Richard Sharif was then the Trustee. Transcript II, p. 303. Exhibit 17 gave Richard Sharif a power of attorney. *Id.*

Mr. Denenberg testified that in July, 2008 he sent Richard Sharif a document, a trust amendment, for his signature. Exhibit 20. That document at Article 11, ¶ 11.01 names Richard Sharif as Trustee. Transcript II, p. 305. No one told him that Richard Sharif was no longer the Trustee of the Trust. *Id.*, pp. 307-08. He did not recognize the April 28, 2007 will; his firm did not prepare it. Transcript II, pp. 310-11; Exhibit A.

Jamal Sharif testified at the remand hearing. He recognized the April 26, 2007 will. He stated that Haifa was present when the will was changed. Transcript II, p. 317.

Haifa testified at the remand hearing. She has lived in Virginia since 2009. Transcript II, p. 333. She was present when the will, Exhibit 15, was executed. *Id.*, p. 339. They talked to their mother and decided to change it. The attorney who helped with it was not available so they consulted Attorney Michael Cohen. A second will was executed.

Haifa testified that she first learned of the July 6, 2010 alter ego order in February, 2011. Transcript II, p. 345. This was long before the District Court affirmed the July 6,

2010 judgment order in 2012. She said that she did not know or hire Attorney Garrett Reidy who filed the 2010 CH 30432 state court lawsuit where she is listed as a plaintiff. *Id.*, pp. 346-47. She admits signing a May 6, 2010 check issued to Attorney Garrett Reidy for legal services extended on behalf of her brother. *Id.*, p. 347; Exhibit 9.

Abeer testified that she consulted with Haifa before stamping her signature on checks. Transcript I, pp.140-41.

Haifa testified that she discussed the July 6, 2010 order with her family, i.e., Ragda and Richard, in July, 2010. Transcript II, p. 354. She complains that the July 6, 2010 order was not binding on her as the executrix of her mother's estate, as appointed in the subsequent April 28, 2007 will. However, she did not raise the issue of the later will until her reply brief submitted in regards to her motion to vacate. She knew about the matters in contention soon after the operative July 6, 2010 order was entered; she discussed these matters with Ragda and Richard in July, 2010. She chose to do nothing until September 15, 2015 when she filed the motion to vacate the August 5, 2010 turnover order; she knew about the litigation pursued since 2010 and paid the attorney who pursued it.

When Haifa plead her malpractice claim against Attorney William Stevens she said that Stevens "took on the responsibility and duty of presenting Soad Wattar's documents to the bankruptcy court to show that her Soad Wattar Revocable Living Trust was not the alter ego of Richard Sharif." *Stevens v. Sharif*, No. 1:15-cv-01405 (Bench Trial completed 11/16/18) ("1:15-cv-01405 Case"), Amended Counterclaim for Damages, Docket 88-1, p. 6, ¶ 11; Subsequent Amended Counterclaim For Damages, Docket 101, p. 3, ¶ 7 ("Thereafter, Stevens spoke with Soad Wattar's attorney in Illinois, Michael Cohen and her attorney in

Aleppo Syria, Adel Serjeh, and he spoke with her family members in Illinois, and as a result of these discussions Stevens took the responsibility of protecting the two assets of the Estate of Soad Wattar on appeal: 1) The Soad Wattar Revocable Living Trust, 1992, as amended in 1996, and 2) the Hartford Life Insurance.”). According to Haifa Mr. Stevens was the mother’s attorney. As the mother’s executrix, Haifa is asserting the mother’s malpractice claim as their mother’s representative.

Haifa admitted that Richard acted as the agent for the probate estate, when he hired Attorney Michael Cohen for the probate estate. Transcript II, p. 364. *See* Exhibit U-1, an August 14, 2010 letter to Richard Sharif in which Mr. Cohen said that he represented the probate estate. As executrix of the probate estate with an attorney, again, Haifa knew about these proceedings and participated in them through the 2010 CH 30432 lawsuit and through her brother Richard. She claims that she did not authorize the lawsuit in which she is named as a plaintiff, but she did discuss filing a lawsuit regarding the bankruptcy court order with Ragda. *Id.*, pp. 366-67. Haifa communicated with Mr. Cohen through Richard regarding preparation of the April 28, 2007 will. *Id.*, pp. 364-65. Haifa’s check paid Attorney Garrett Reidy. Exhibit 9, a \$1500 May 6, 2010 check bearing Haifa’s signature as maker, made payable to Attorney Garrett Reidy

Exhibit 10 includes several checks made payable to Attorney William Stevens, 3 of which were signed as maker by Haifa in 2010 and 2011 on Sharif Pharmacy’s bank account: a February 4, 2009 check for \$1000; an August 10, 2010 check for \$455 and a March 28, 2011 check for \$1500.

Exhibit 11 includes several checks signed by Haifa made payable to Edward

Bontkowski, who worked for Attorney Willaim Stevens. Transcript I, p.144.

Haifa testified that Richard was her agent in hiring Attorney Stevens for the probate estate. Transcript II, p. 366. Haifa's claim that she knew nothing about the bankruptcy case, the adversary proceeding and the July 5, 2010 alter ego judgment rings hollow. She knew about these matters and joined Richard's litigation efforts.

Haifa's credibility is suspect. Her mother died in 2010. Why would she do nothing about the July 6, 2010 order that declared the assets she wants for the probate estate to instead be in the bankruptcy estate? She did not wait. She acted on the matters in issue starting in 2010 through Richard and through the attorneys.

Richard Sharif is suing Attorney Stevens on a professional malpractice counter-claim in the District Court of Northern Illinois, in lawsuit 1:15-cv-01405. Haifa is a counter-plaintiff therein suing Attorney William Stevens for legal malpractice. In an amended counterclaim for damages filed on February 22, 2017, Docket 101, she alleges that "the Estate of Soad Wattar intervenes as a Plaintiff-Intervenor against Stevens on the basis of a claim against Stevens for malpractice while representing the Estate on appeal." ¶ 1. That pleading's caption notes that Haifa Sharifeh is the Executrix of the Estate of Soad Wattar. Haifa alleges that Stevens' "failure to submit the documents to the bankruptcy court resulted in a default judgment based on his failure to submit said documents." ¶ 5. She also alleges that:

Stevens spoke with Soad Wattar's attorney in Illinois, Michael Cohen and her attorney in Aleppo Syria, Adel Serjeh, and he spoke with her family members in Illinois, and as a result of these discussions Stevens took the responsibility of protecting the two assets of the Estate of Soad Wattar on appeal: 1) The Soad Wattar Revocable Living Trust, 1992, as amended in 1996, and 2) the Hartford Life Insurance. ¶ 7.

At ¶ 11 of her Second Cause of Action -Malpractice on appeal for the Estate of Soad Wattar, p. 6, Haifa alleges that “[i]n August, 2010, Counter-Defendant Stevens took on the responsibility and duty of representing Soad Wattar’s (sic) on appeal from a bankruptcy court order that found her Soad Wattar Revocable Living Trust and Life Insurance policy were the alter ego of the Debtor, Richard Sharif, by default.” She made a similar statement in an affidavit submitted in opposition to Mr. Stevens’ motion for summary judgment. Exhibit 3, ¶ 3. She was asked about the lawsuit at the remand hearing. Initially, she claimed to not know about it. She eventually admitted that she had signed an affidavit submitted in that action. Transcript II, pp. 349-51. When it suits her purposes to say she has a right to assets or a claim against an attorney she does so; when challenged about the basis and specifics of her claims she claims not to know what’s going on because she would have to admit that she was actively engaged in litigating these matters through her agent Richard and by retaining an attorney in 2010 to do so.

Haifa also alleges that “[o]n appeal in the U.S. District Court Stevens prepared an appellant brief that clearly showed he had an attorney-client relationship with the Estate by speaking on its behalf and defending the two assets belonging to the Estate of Soad Wattar.” ¶ 8 of Amended Counterclaim for Damages. 1:15-cv-01405 Case, Docket 101.

In the Amended Counterclaim in the legal malpractice case she alleges, as Executrix of the Estate of Soad Wattar, that Stevens represented the Estate in 2010 in the appeal. She testified, however, that she knew nothing about the matters in issue until February, 2011 and that the Estate of Soad Wattar was not served with notice of the adversary proceeding, depriving the Estate of its due process rights. Her testimony, pleadings and conduct herein

show that the Estate of Soad Wattar was represented by Attorney William Stevens who actively litigated the central issues herein as early as 2010 on her behalf as executrix of their mother's probate estate.

Haifa, as Executrix of the Estate of Soad Wattar, had knowledge of the matters herein and participated in this bankruptcy case for several years beginning in July, 2010, through her agent Richard Sharif and the attorney she alleges was responsible (as alleged in her malpractice claim against him) for the appeal initiated in 2010. This is several years before she alleged in the September 12, 2015 Motion to Vacate, Docket 194, that the Estate of Soad Wattar had not been served, depriving it of due process. She waived the lack of personal jurisdiction claim when she participated in these efforts starting in 2010. Haifa testified that she did not recognize the affidavit she signed in the malpractice case. Transcript II, pp. 373-74. She did not remember her Motion to Vacate the August 5, 2010 order. *Id.*, p. 378.

According to Haifa, however, the family experienced a rift in communication from 2007 to 2010, but that during that period Richard Sharif hired Attorney Michael Cohen to represent the Estate of Soad Wattar. Transcript II, pp. 386-87. She also testified that it was Richard's idea to hire Attorney William Stevens as the lawyer for the estate. *Id.*, p. 387.

Haifa admitted that during the rift she asked Richard (and Abeer) to manage the stock accounts that were in the Trust. She admitted that from time to time family members would change roles, changing who would act as Trustee and who would act as Executor. Transcript II, p. 393. She also admitted that Abeer checked with Haifa before stamping Haifa's name on checks. *Id.*

She was reminded that she knew about the assets being put into the bankruptcy estate in 2011. When asked why she waited until 2015 to file the motion to vacate the August 5, 2010 order, she said: “I was waiting for the result, outcome of these lawyers to have, to see what –.” Transcript II, p. 394. The court said: “You were waiting for your brothers and sisters with whom you exchanged activity and contributions toward these estates, you were waiting to see what they were doing; is that correct?” *Id.*

She answered: “That is correct, I was – after they hired the lawyers, they paid all this money, we will have the hope that we will get back our properties.” *Id.* pp. 394-95.

The court asked: “You knew from 2010, when your mother died, that the probate estate needed to be put together and taken and distributed. Why did you wait so long till 2015 to vacate the August 2010 order?” *Id.*

She responded: “I was hoping that because my brother and my sister who are in Chicago, hiring good lawyers and pay a lot of money to get our properties back, assets back, that they will achieve something positive, some results, but nothing happened.” *Id.*, p. 395.

The court said: “So you all basically acted together, but when it didn’t work out, then you decided to do something different; is that what you’re saying?”

She responded: “Yes. In 2015, when I realized that my brother lost the case and that there’s no hope, I hired attorney Maurice to take care of this suit.” *Id.*

Richard Sharif’s wife, Luma Hamvarouh, testified that in 2010 when he met with her in Egypt, Ragda accompanied him and that he and Ragda were friendly. She also testified that Richard Sharif spoke with Haifa frequently in 2010 in a friendly manner. Transcript III, pp. 420-21.

Haifa testified that she owns Sharif Pharmacy, Inc. and Logan Square MRI and Diagnostics Center. Transcript III, p. 451.

She authorized a payment to Attorney Garrett Reidy in 2010 even though she claims that he did not represent her. She paid him on behalf of Richard; however, she testified that he could have represented Ragda. Transcript III, pp. 453-54; Exhibit 9.

She also authorized payments to Attorney William Stevens. Transcript III, p. 455. The checks were authorized payments to Richard's attorney when there was tension between her and Richard. *Id.*, p. 460.

Haifa was present when the April 26, 2007 will was signed at Sharif Pharmacy. *Id.*, 461.

Their mother decided to prepare an additional will, naming Haifa as executrix. The will was signed downtown in the lawyer's office; Haifa received a copy of it. Transcript III, p. 470.

After her mother died, Haifa knew that Ragda was managing assets that were part of the probate estate. *Id.*, pp. 475-76.

"Yes, I remember this. My sister runs these matters without asking my permission because she is the trustee. So she runs these things without asking my permission." *Id.*, 475.

She was asked if it was her testimony that she had not asked her sister to manage those accounts after their mother passed. She responded, "I talked to her, but she was doing this already automatically." *Id.*, p. 475.

Haifa allowed Ragda to manage assets that became her responsibility as the

executrix under the April 28, 2007 will. She admitted doing nothing to manage the \$1-2 Million of stock that was part of that estate until she filed the motion to vacate in September of 2015. Transcript III, pp. 476-78. She said that she did nothing because her siblings did not speak to her until 2011. She admitted having control of the assets from the summer of 2010. Transcript III, p. 482. She knew upon her mother's death that she could collect and distribute the assets in the probate estate. She chose not to.

Haifa testified that from 2011 to 2015 they were winning the trust assets back so she did not need to hire an attorney. Transcript III, pp. 487-88.

Question: "And what did she understand was the status of the trust during that time?"²

Answer: "Our situation, we were winning the trust." *Id.*

She depended on Richard and Ragda with full knowledge of what was going on. When things did not work out as they wanted, she claimed to have been in the dark even though she had knowledge of the situation. Her assertion that she did not know what was going on until 2011 lacks credibility.

Richard Sharif has been divorced four times. His siblings helped to support his family after he married Luma. Transcript III, pp. 513-14.

In April, 2007 he was not married. *Id.*, p. 517.

According to a July 17, 2008 letter sent by Attorney Brian Denenberg to Richard Sharif asking him to sign it, the Trust was Restated in 2008. Attachment to Exhibit 20. At Article 11.01 it named Debtor Richard Sharif as Trustee. This may contradict the assertions

²Attorney Maurice Salem often addressed witnesses in the third person.

that Richard was replaced as Trustee pursuant to the 2007 Revocation of Trustee document.

Richard Sharif testified about and identified the second will, the one signed on April 28, 2007. He said that he, Haifa and his mother visited the office of Attorney Michael Cohen to get it and take it back to their business office to be signed. Transcript III, pp. 526-27; Exhibit A.

Richard also testified that when he was deposed on May 13, 2010 in connection with the adversary proceeding he identified this second April 28, 2007 will. August 15, 2018 Transcript, p. 31. The court reporter who recorded the May 13, 2010 deposition testified herein that Richard Sharif identified and testified about the April 26, 2007 will, the first will. August 15, 2018 Transcript, p. 9. He denied identifying himself as the executor on May 13, 2010. *Id.*, p. 529.

In the 2010 deposition transcript, Exhibit 67C, p. 216, Richard testified that the document he mentioned, exhibit 16 therein, referred to him as the trustee who would receive the probate estate assets at his mother's death.

Richard Sharif was asked:

Is it your understanding that at least this version of the will is the last will and testament, her estate was effectively going to go to whoever who was the trustee of her trust?
Do you recall being asked that question?

Richard Sharif answered:

Yeah.

Richard Sharif was asked:

And do you recall your answer being –

Richard Sharif answered:

Yeah, I said no.

Richard Sharif was asked:

Stop. Just –

Do you recall your answer being:

(As read)

No, the trustee's job is to govern the conduct as fiduciary of the trust.

But we have a trustee, successor trustee, and a third one. Okay.

Do you recall giving that answer?

Richard Sharif answered:

Yes. I do.

Richard Sharif then testified in the remand trial about his May 13, 2010 testimony about Article 5 of the second will, dated April 28, 2007:

Question: Okay. Now, is this the article that you read in the May 13, 2010 deposition?

Answer:

Yes.

Transcript III, pp. 531-33.

The transcript does not show that Richard Sharif read Article Five at the 2010 deposition. It was read to him by WIN's attorney.

At the 2010 deposition Richard Sharif was asked:

Article Five, it looks like in the Will, she's bequeathing her estate to the trustee of the trust. Is that right? What number is this document again?

Mr. Stevens answered:

16.

The court reporter who recorded that 2010 deposition identified deposition exhibit number 16 as remand trial exhibit 72, the April 26, 2007 will. *See* Docket 507; August 15, 2018 Transcript, pp. 9-10.

His remand trial testimony that Article Five bequeathed his mother's estate to the trustee of the trust, is what Article 5 of the April 26, 2007 will states. He testified on June 29, 2018 at the remand trial that if he had read the Article that gave the estate to the trustee at the deposition his answer would not have been the same as he looked at the April 26, 2007 will. He testified that Article 5 of the April 26, 2007 will gives the money to the executor. Transcript III, pp. 533-34. This is misleading as Article 5 of the April 26, 2007 will leaves the mother's estate to the Trust. Exhibit 15. He claimed at the remand trial that he understood the attorney at the deposition to have two versions of the will, the 26th and the 28th. According to Richard he was focusing on and reading off the 28th. Transcript III, p. 534. Richard did not testify that the 2010 transcript referenced two wills. We know from the court reporter, that he was questioned about the April 26, 2007 will when he testified on May 13, 2010.

After being asked about the version of the will he testified about in 2010 he finally admitted regarding the April 28, 2007 will he testified about that " It does not say it goes to the trustee." Transcript III, p. 570. His 2010 testimony matched what the April 26, 2007 will says.

Question:

“So, however, when we looked at the first will, the April 26th will, and we looked the article 5, it does reference the trust and the trustee, doesn’t it?”

Answer:

“Okay.”

Id.

After Frances Lucente, the court reporter who recorded the May 13, 2010 deposition testified herein, identifying the April 26, 2007 will as the exhibit he referred to, Richard Sharif testified that at one point he was not allowed to read the document at the May 13, 2010 deposition. August 15, 2018 Transcript, p. 29. He also testified on August 15, 2018 that he read Article 5 of the will. *Id.*, p. 30. He said that there were two wills in front of him. *Id.*, p. 31. That deposition transcript does not show that Richard then mentioned that there were two wills before him or in existence. He stated that the exhibit could have been the April 26th will. *Id.*

Richard testified at the remand trial that his attorney William Stevens was given 5 boxes of documents pursuant to this court’s order and that the wills were in those boxes. Transcript, III, p. 540. He also testified that the Revocation of Trust document, Exhibit D, was in those boxes. Transcript III, p. 551-52. Exhibit D is the Revocation of Trustee to Soad Wattar Revocable Living Trust of 1992 document, dated November 1, 2007. In it Ragda revoked Richard’s appointment as Trustee and accepted appointment as Trustee. As noted above, however, Richard accepted this cancellation and agreed to cooperate in the transfer of the Trust during a 24-month transition period. It was done because he faced jail time following his arrest. It was sent to Soad Wattar who is alleged to have signed it in

Syria. He admits signing the Revocation document in 2007. However, he testified that he first saw it in 2010. He admitted that he acted as Trustee of the Trust between 2007 and 2010, apparently in spite of the revocation. Transcript III, p. 545.

Richard testified that he became aware that he had been replaced as Trustee when he saw an October 21, 2010 letter in which Attorney Cohen referred to Ragda as the Successor Trustee. Exhibit V-1. Transcript III, p. 548. This limits the weight and credibility of Richard's testimony because he signed the Revocation of Trustee document in 2007 following his March, 2007 arrest.

He testified that Haifa was given a copy of the April 28, 2007 will where she had been designated as executrix. Transcript III, p. 538.

He testified that he did not tell Haifa about the August 2010 court orders because he was in shock. Transcript III, p. 540. Recall from Haifa's testimony at Transcript II, p. 366, Richard was her agent. She found out about the disposition of the Trust assets in the first quarter of 2011; he told her to "let's see what happens." Transcript III, p. 541.

Question:

Now, when did you eventually let Haifa know about this?

Answer:

[a]nd Well, the death of my mother in March 17, 2010, brought some healing to the family. Anyone who had differences, to put them aside. And, you know, then in 2010, I would say, a year later, sometimes in maybe first quarter of 2011, Haifa became aware of the mess. And she realized Ragda has her lawyer fighting for her, appealing, and Mr. Stevens. And I told her, look, you know, let's see what happens. And when she heard that the case later on was appealed to the Seventh Circuit of Appeals, she had a relief that, okay, the decision was reversed. And she had hope everything is going to be worked out everybody is going to get his money and we be out of it.

And Wellness hired Jenner & Block to vacate the order of the Seventh Circuit Court of Appeal. And they did huge motion to vacate the order of the Seventh Circuit Court, and to our surprise it was denied. So, Haifa was relieved. She was happy that, okay, we won. Now, let's go get the money.

But the other party, Wellness, hire Jenner & Block and went straight to the U.S. Supreme Court in Washington. And we thought this is an attempt by the other party. But the chances, Mr. Stevens told me that for them to accept it, is very slim to none. Don't worry. That's what I told Haifa later on and some other members of the family. And, you know, how long it take to appeal when you go, especially to U.S. Supreme Court. It took from 2012 to 2015 until they ruled that because -

Transcript III, pp. 541-42.

Richard acknowledged that his lawyer, Michael Cohen, copied him on a March 6, 2009 letter to Lincoln Life and Annuity Operations which states that Richard was then the Trustee. Exhibit 50 (J-1). This letter may have been written after Richard filed for bankruptcy relief on February 24 , 2009. Richard now testifies that he was no longer the Trustee after the 2007 Revocation of Trustee document was signed. This does not make sense in light of his testimony that he resigned when he signed a July 21, 2010 letter of resignation, following orders entered in the 2010 CH 30432 state court case. Transcript III, pp. 619-20.

In a Motion for Protective Order in the bankruptcy case, Docket 23, ¶ 11, p. 3, Richard alleged that he was the Agent for the Soad Wattar Living Trust. In his Motion to Dismiss Adversary 09-00770, Docket 5, p. 2, Richard asserts that the “[P]roperty held in trust by the debtor is not property of the estate. As a trustee the debtor is permitted to control the Soad Wattar Living Trust property for the beneficiaries of the trust as provided by the trust documents and by Illinois law.” “Debtor acknowledged his status as a trustee of

the trust at the 341 meetings.” Docket 37, pp. 2-3. “The complaint fails to allege facts to show that debtor had any fraudulent intent in omitting a discussion of the trust from his schedules or statement of affairs.” *Id.*

Richard’s attorney refers to him as the Trustee in March, 2009. Exhibit 50. A Certificate of Trust is included in that exhibit; it was notarized by Maria Gaud who notarized other items involved in this matter.

Richard stated that he was no longer Trustee after his mother signed something. Transcript III, p. 581. That something is the Revocation of Trustee document that he signed on November 1, 2007 stating that he had 24 months to step down.

Richard signed a document as Trustee on February 25, 2008, the Third Amendment to Soad Wattar Living Trust (five months after he signed the Revocation of Trust document in November of 2007). Transcript III, pp. 587-91.

That 2008 document mentioned a number of Trust amendments; it did not mention the November 2007 document, the Revocation of Trustee document. *Id.*, p. 589. Nor does it mention the two October 8, 2007 amendments. *Id.*

Richard explained that he signed documents as Trustee after he was no longer Trustee in order to refinance his mother’s home at the request of a bank. He claims that he did not know he was no longer the Trustee until 2010 when Attorney Michael Cohen informed him. However, he did not give that answer one month before the remand trial at his May 30, 2018 deposition. *Id.*, pp. 590-96

Richard testified that he signed a trustee’s certification for a Raymond James account on June 17, 2009, long after he signed the November 2007 Revocation of Trustee

document. Transcript III, pp. 596-98.

Richard testified that he resigned as Trustee on July 20, 2010, which the court notes is after entry of the July 6, 2010 default judgment. Transcript III, p. 599 (July 21, 2010); p. 619 (July 20, 2010).

Another post-2007 incident where Richard acted as the Trustee is a 2008 quitclaim deed which he signed as Trustee/Grantee. “This is signed per request of the closing attorneys. . . .” Transcript III, pp. 600-01; Exhibit 26. Other documents signed by Richard as Trustee after he signed the 2007 Revocation of Trustee: Exhibit 32 - a Wachovia Securities account transfer document which he signed as Trustee on November 14, 2008; Exhibit 34 - a Securities Away from Firm document, dated April 28, 2010; Exhibit 36 - an A.G. Wells document he signed, dated November 12, 2008. Transcript III, pp. 601-08. *See* also Exhibits 38, 39 and 40.

When asked whether he admitted breaching his fiduciary responsibilities to cooperate with his sisters who were plaintiffs in the 2010 Cook County Circuit Court lawsuit, Richard testified “I had an interest for them to succeed to get their trust back, yes.” Transcript III, p. 625. This tells the Court that both Ragda and Haifa were plaintiffs in that case. Haifa’s assertion that she was not a plaintiff in the 2010 CH 30432 case is unworthy of belief. The Court finds that Haifa was a plaintiff in that case.

Bontkowski worked for Mr. Reidy, Mr. Stevens and Mr. Cohen. Transcript III, pp. 632-33.

Richard was named as executor in a April 26, 2007 will. Transcript III, p. 644.

Checks issued to pay Mr. Stevens’ legal fees were authorized by Haifa, through

Abeer. Transcript III, pp. 652-53.

Rosie Torres told Ragda about a letter from Mr. Cohen. She said that she gave Ragda notice about the Trustee change in 2010, although she also said that Ragda knew about the 2007 Revocation of Trustee in 2007. Her memory was refreshed by an October 21, 2010 letter from Mr. Cohen. Transcript III, pp. 673-74.

III. Analysis

Mr. Salem argued that Richard read from the second will when he testified at the May, 2010 deposition. The court reporter testified otherwise. Richard was evasive, and uncooperative when he testified; he has little credibility. Sometimes he was the Trustee from 2007 through 2010, sometimes he was not. In any event, his actions speak louder than his words. The evidence of his actions shows that he conducted himself as the Trustee of the Trust on many occasions. The main import of the April 28, 2007 will is when it was finally brought to the attention of the bankruptcy officials.

Without alleging that she was relying on any particular will or other document, Haifa's September 12, 2015 motion alleges that the turnover order had to be vacated due to lack of personal jurisdiction over the Estate of Soad Wattar because the estate was not served with process, depriving this court of jurisdiction to order the seizure of the estate's property.

The court has authority to relieve a party from the operation of a final judgment at any time if the judgment is void. Federal Rule of Civil Procedure 60(b)(4). Federal Rule of Bankruptcy Procedure 9024 states that Fed. R. Civ. P. 60 applies in cases under the Bankruptcy Code. Fed. R. Bankr. P. 9024. The issue is whether the court had personal

jurisdiction over Haifa, the probate estate's representative. Examination of the record herein does not indicate that she was served with a summons. However, she was mailed notice of this bankruptcy case as a scheduled creditor at an address given to the bankruptcy system by the Debtor, her brother. She and her siblings have testified that she did not reside at the 36 Revere, South Barrington, Illinois address as noted in the Debtor's Schedule F - Creditors Holding Unsecured Nonpriority Claims.

However, Haifa participated in this bankruptcy adversary proceeding when immediately after the July 6, 2010 default judgment was entered she and Ragda filed the 2010 CH 30432 case and obtained a temporary restraining order. In addition, she alleges in the legal malpractice case, now pending in the District Court, that Attorney William Stevens represented the Estate of Soad Wattar in 2010. As the executrix of that estate, she claimed that he breached duties owed her when he represented her/the probate estate in these matters in 2010. Mr. Stevens appeared on Richard's behalf in the adversary proceeding and is alleged to have also represented the estate Haifa is executrix of. *See Amended Counterclaim, Exhibit 2, 15-cv-01405, Docket 101, p. 6, ¶ 11.*

Haifa's Motion to Vacate included a copy of the Trust document dated in May of 1996; a 2007 letter indicating that Soad Wattar approved the 2007 Revocation of Richard Sharif as Trustee; the 2007 Revocation of Trustee to Soad Wattar Revocable Living Trust of 1996; Hartford Life Insurance Policy documents; a Second Order Directing Debtor to Turn Over Property; and a Proposed Order that would have vacated the August 5 (sic), 2010 Order.

The Motion to Vacate did not explain the source of Haifa's authority to serve as

executrix of her mother's estate. It did not refer to the April 26, 2007 will which named Richard as executor or the April 28, 2007 will which named her as the executrix of their mother's estate.

Ragda and Haifa sued Richard and Wells Fargo (who turned over Trust assets to the bankruptcy estate) on July 30, 2010 in the Circuit Court of Cook County, Illinois in lawsuit 2010 Chancery 30432. The amended complaint therein mentions the WIN Adversary, No. 09-0770 and the July 6, 2010 default judgment. Nowhere in that pleading do they (plaintiffs Ragda and Haifa) allege that Haifa became the executrix of her mother's probate estate via a will dated April 28, 2007. Her mother died on March 17, 2010. She filed the Motion to Vacate on September 12, 2015, more than 5 years after she alleges she became the executrix of the probate estate, which was not served herein, making the August 5, 2010 order void as to the probate estate. Recall that Haifa testified that she was present when the second will naming her as executrix was executed. Transcript II, p. 343.

Haifa alleges that she did not authorize or know anything about the 2010 CH 30432 lawsuit. Recall, however, that Ragda alleged that Richard represented both Ragda and Haifa in the Texas litigation. Also recall that Haifa and Richard testified at the remand hearing that Richard told her about the disposition of the trust assets in the first quarter of 2011 when he urged her to wait to see what happened with what he was doing in court. Also recall that Haifa authorized the checks that paid Richard's attorney Mr. William Stevens and Ragda's attorney Garrett Reidy. Also recall that Richard testified, Transcript III, p. 625, when asked about cooperating with his sisters who were suing him after the July 6, 2010 order was entered, that he said he had an interest in them succeeding to get their

trust back.

The Bankruptcy Trustee's response to the Motion to Vacate, Docket 209, argued that all information and pleadings to date stated that Richard was the Trustee, not Ragda, who sometimes claims that she became the Trustee when Richard resigned on July 21, 2010, after the assets had been declared to be Richard's alter ego. At other times Ragda claims that she became the Trustee of the Trust in October of 2007 when the Revocation of Trustee document was executed. Only the first will had been disclosed. It left Soad Wattar's assets to the Trust of which Richard was the Trustee.

Due to the assertions that Richard was the Trustee and the first will giving Wattar's assets to the Trust, serving him in the various adversary proceedings and motions herein gave the court personal jurisdiction to rule regarding the assets distributed to the Trust via the first will in which Richard was named as executor.

Haifa's amended counterclaim in the legal malpractice case in the District Court supports this court's conclusion that she knew about the bankruptcy case and the disposition of the Trust assets in 2010. She is suing the attorney who represented Richard in both the bankruptcy case and the WIN adversary proceeding. She alleges that the attorney also represented the probate estate for which she was the executrix. That means that her attorney appeared in both the bankruptcy case and the adversary proceeding on her behalf. That attorney litigated these matters, representing Haifa as he did so.

He appeared in the adversary proceeding both before and after the July 6, 2010 default judgment and August 5, 2010 turnover orders were entered. By representing Haifa at those times, she appeared herein through her attorney and can not claim to not have

notice or that the court did not have personal jurisdiction over her or the probate estate of Soad Wattar.

Haifa's September 12, 2015 Motion to Vacate this Court's August 5, 2010 Order alleges that the turnover order should be vacated because this court lacked personal jurisdiction over Soad Wattar's Estate due to lack of personal service. Haifa's defense does not hold water even if service was lacking. The defense of lack of personal jurisdiction in Fed. R. Civ. P. 12(b)(2) may be waived by "formal submission in a cause, or by submission through conduct." *Cont'l Bank, N.A. v. Meyer*, 10 F.3d 1293, 1297 (7th Cir. 1993) (internal citations omitted). Fed. R. Civ. P. 12(h)(1) explains how a party may waive the defenses in Fed. R. Civ. P. Rule 12(b)(2)-(5). The Seventh Circuit ruled in *Cont'l Bank, N.A.* that the defendants waived their personal jurisdiction objection by litigating the merits of a case for over two-and-a-half-years before contesting personal jurisdiction.

Haifa, as Executrix of Soad Wattar's Estate, waived the estate's personal jurisdiction defense through her formal submissions and conduct through her attorney and her brother, her agents. For Haifa to now claim improper service when she previously litigated the same matters shows that "[she] did not comply with the spirit of the rule [Fed. R. Civ. P. 12(h)], which is 'to expedite and simplify proceedings in the Federal Courts.'" *Cont'l Bank, N.A. v. Meyer*, 10 F.3d at 1297; *Yeldell v. Tutt*, 913 F.2d 533, 539 (8th Cir. 1990) (quoting C. Wright & A. Miller, 5A *Federal Practice and Procedure* § 1342, at 162 (2d ed.1990)). This court finds that Haifa waived her personal jurisdiction defense by litigating both the July 6, 2010 default judgment order and the August 5, 2010 turnover order through her brother and

her attorney for five years before raising the personal jurisdiction issue in her September 12, 2015 Motion to Vacate.

Speaking of legal malpractice actions, this court is not aware of Haifa suing attorney Garrett Reidy for filing an unauthorized lawsuit on her behalf, which she could have done if she did not authorize him to include her as a plaintiff in the 2010 CH 30432 lawsuit.

As noted above, Ragda and Haifa did not allege in the 2010 CH 30432 case that Haifa was the executrix under an April 28, 2007 will or that the 2007 Revocation of Trustee document existed. *See* Amended Compliant in 2010 CH 30432, Exhibit 6.

One October 8, 2007 Amendment to the Soad Wattar Living Trust of 1992 states that “[a]fter the Settlor’s death the Trustee shall distribute the net income and principle (sic) of the Trust to Ragda Sharifeh, outright and free of any Trust.” *See* Motion to Withdraw as Attorney, Bankruptcy Case 09-05868, Docket 202, p. 2, ¶¶ 5-6 and Exhibit 6 of that motion. This is the document which Attorney Garrett Reidy said may have been fraudulently created in 2009, not in 2007.

Mr. Salem argued that the record in the remand trial shows that the second will is valid, not a forgery or fraud because the bankruptcy trustee has not proven to the contrary. That, however, is not enough to convince this Court that it is valid. If it was valid why did Haifa wait for 5 years to assert her rights under it as the executrix of their mother’s probate estate? She did not mention it in her Motion to Vacate; she mentioned it in her reply (as Exhibit U) to the Motion to Vacate. Bankruptcy Case 09-05868, Docket 228, p. 37.

Actions speak louder than words. Haifa testified that she was present when the second will was executed. She knew about it, yet she did nothing before 2015 to administer

the probate estate she was executrix of. Either the second will was not executed in 2007 or she did nothing as executrix pursuant to it, to allow her agents, Richard and her attorney William Stevens, to complete the litigation that they thought was promising even though the matters were taken up by the United States Supreme Court.

Haifa and Richard are suing Attorney Stevens for malpractice, alleging that he did not raise a jurisdictional argument until his reply brief during the appeal. The Seventh Circuit ruled that the failure to raise it before the reply pleading amounted to waiver.

Wellness v. Sharif, 617 Fed.Appx. 589 (Mem) (August 4, 2015) *590. According to the Seventh Circuit, in the appeal to the District Court:

Sharif passed up any opportunity to argue that *Stern* required an Article III judge to enter judgment on the alter ego claim. More than five months later Sharif sought permission to file a supplemental brief raising the *Stern* issue. The district court denied his request as untimely and affirmed the bankruptcy court's judgment.

Sharif appealed to this court but repeated his previous mistake and did not address *Stern* in his opening brief. Rather, he waited until filing his reply brief to assert that the bankruptcy court lacked constitutional authority under *Stern* to decide whether the trust was his alter ego.

Id., p. 590.

Haifa did not mention the April 28, 2007 will in her Motion to Vacate. The bankruptcy trustee filed his response/objection relying in part on the April 26, 2007 will that had been tendered in discovery. The April 28, 2007 will was first mentioned in her reply brief, the same situation analyzed by the Seventh Circuit in 2015. Haifa's Motion to Vacate was filed by Attorney Maurice James Salem the month after the Seventh Circuit entered its waiver ruling in the related appeal. Mr. Salem represents Haifa in her malpractice counterclaim against Attorney William Stevens. *See* the 1:15-cv-01405 Case,

which includes legal malpractice counterclaims by Richard Sharif as a Counter-Plaintiff and Haifa Sharifeh, Executrix, as a Plaintiff-Intervenor against Attorney William Stevens. Mr. Salem did what he is suing Attorney William Stevens for doing.

When Haifa sued Attorney William Stevens for malpractice because he represented her mother and the mother's estate, she made a judicial admission that he was her attorney when he participated in these matters in 2010. Her allegation discusses February 2010; the conduct complained of occurred in July and August 2010 when she alleges that Mr. Stevens did not turn over various items of discovery to WIN and the bankruptcy trustee, leading to or causing the entry of the default judgment against Richard and the declaration that certain property was his alter ego and part of the bankruptcy estate.

Haifa argues that the Revocation of Trust document was sent to their mother in Syria; it was returned to Attorney Michael Cohen with the mother's signature. Apparently she wants the court to believe that Attorney Cohen did not tell the siblings that the document had been signed by their mother until 2010. That is not grounds for them not knowing that the document existed. Ragda and Richard signed it before it was sent to Syria for their mother's signature. Had they believed that Ragda succeeded Richard as Trustee before the bankruptcy case was filed in 2009, they would have said so sooner.

Bankruptcy Trustee Fox argued convincingly that Haifa, as a plaintiff in the 2010 CH 30432 case did not assert rights under the document alleged to be the April 28, 2007 will. She argued in an amended complaint filed on July 30, 2010 in that case only that Richard was asserting ownership of Sharif Pharmacy and Logan Square MRI, entities/businesses that were hers, not his. Exhibit 6. Had the second April 28, 2007 will

been in existence, Haifa could have asserted her rights as an executrix at that time. Either the April 28, 2007 will did not exist or Haifa waived her rights under it by waiting over five years to assert them. She did not assert in that state court case that she had any rights or interests in the Trust assets based on an April 28, 2007 will.

The existence of the Revocation of Trustee document is a seminal issue. Had it been in existence, Ragda and Haifa would have asserted it in 2010 to get the Trust assets from Richard's bankruptcy estate, since it may have meant that he had not been Trustee since 2007. As noted above, however, Richard said in that document that he had a 24- month transition period. That 24-month period would have expired in October of 2009, long after he filed for bankruptcy in February 2009, meaning that Richard's role as Trustee was still in effect in February 2009 when he sought bankruptcy relief.

The 2010 CH 30432 amended complaint does not say that Richard resigned as Trustee in 2007.

Haifa filed the Motion to Vacate in September of 2015, claiming to own the trust assets under the April 28, 2007 will (in her reply). This delay makes no sense for a business person who owned and operated both Sharif Pharmacy (where Richard was employed as a pharmacist) and Logan Square MRI in Illinois from Virginia where she resided with her family.

Haifa maintained throughout the remand trial the invalidated idea that she holds an interest in the assets that were transferred to the Bankruptcy Trustee pursuant to this court's August 5, 2010 order. Judge Shah may have settled this matter when he ruled in favor of Hartford Insurance and Wells Fargo that the plaintiffs (Estate of Soad Wattar, Haifa

Sharifeh as Executrix, and Ragda Sharifeh) did not have an interest in the assets transferred to the Bankruptcy Trustee by those entities. *Sharifeh et. al. v. Hartford Life and Annuity Insurance, et. al.*, No 1:16-cv-4397 (N.D. Ill 2/10/17), Dkt. No. 46, p. 7. (“1:16-cv-4397 Case”)

Haifa was not a beneficiary of the insurance proceeds transferred by Hartford. According to Judge Shah the insurance documents submitted by Hartford show that Richard Sharif was the owner of the policy and that the Richard Sharif Revocable Living Trust was the beneficiary. 1:16-cv-4397 Case, Docket 46, p. 5.

Judge Shah also found that Haifa did not have an interest in the trust assets once held by Wells Fargo. Haifa claimed (without legal or factual support) that the assets held by Wells Fargo were transferred from the trust to the probate estate upon the death of Soad Wattar. 1:16-cv-4397 Case, Docket 46, p. 7. Trust assets do not automatically become part of a settlor’s estate upon the settlor’s death. *Id.* (citations omitted). Indeed, removing assets from the settlor’s estate to avoid probate proceedings is usually the purpose of creating a trust. *Id.*

Judge Shah dismissed the complaint pursuant to Fed. R. Civ. P. 12(b)(1) because they did not have an interest in the assets transferred by Hartford or Wells Fargo. *Id.* Moreover, Judge Shah denied the plaintiffs’ motion for relief from final judgment ruling that “while the plaintiffs’ claims were based on defendants’ compliance with the August 5 order, they were essentially using this forum to object to the order itself.” 1:16-cv-4397 Case, Docket 61, p. 2.

Haifa generally complains that because neither she nor Soad Wattar were served

with notice of the adversary proceeding and the motions therein, the orders entered in July and August of 2010 do not bind them. However, notice to Haifa in 2011 and her participation these in proceedings defeat the due process claims. Haifa's pleadings in the 2010 CH 30432 case show that she knew about the bankruptcy case and the adversary proceeding. Exhibit 6, First Amended Complaint in 2010 CH 30432, ¶¶ 6-7. pp. 2-3. In ¶ 6, Haifa discussed the initiation of adversary proceeding 09-0770. In ¶ 7 Haifa discussed the July 6, 2010 default judgment and the ruling that the Trust was Richard's alter ego.

Haifa is suing Attorney Stevens for not properly representing the probate estate of which she served as executrix. The representation complained of included his efforts on appeal of the default judgment and turnover order, specifically, his failure to assert the *Stern v. Marshall* jurisdictional issues in his opening brief. The Seventh Circuit ruled that the *Stern* argument had been waived because it should have been asserted earlier.

This Court agrees with a February 15, 2017 ruling in *In re Pawel Hardej*,
Bankruptcy Case 13-00627:

A creditor's actual notice of a bankruptcy case may constitute reasonable notice that satisfies due process requirements. *See Marino*, 195 B.R. 893-94. Due process may also be satisfied with respect to notice where a creditor gains actual knowledge of a debtor's bankruptcy case through informal means. *See In re Dartmoor Homes, Inc.*, 175 B.R. 659, 670 (Bankr. N.D. Ill 1994); *see also Yukon Self Storage Fund v. Green (In re Green)*, 876 F.2d 854, 855-57 (10th Cir. 1989) (finding that, although it did not receive formal notice of the bankruptcy case, a creditor with actual knowledge was bound by the bar date for filing complaints to determine dischargeability). Among the factors to consider in deciding if notice is reasonable are whether any alleged inadequacies in the notice prejudiced the creditor and whether the creditor had time to take "meaningful action in response to the impending deprivation of its rights." *Marino*, 195 B.R. at 895.

In re Pawel Hardej, Northern District of Illinois Bankruptcy Case 13-00627, Feb. 15, 2017

Memorandum Opinion, p. 12.

Haifa knew about these matters as early as 2010 through Richard, her agent. (She testified that Richard was her agent in Transcript II, p. 366). She was a plaintiff in the 2010 CH 30432 case which was filed to retrieve assets Richard claimed to be his without mentioning an April 28, 2007 will. Both Haifa and Richard testified that he told her to wait to see what happened with what his lawyer was doing in regard to the bankruptcy court orders. She had notice of the adversary proceeding and participated in it through her brother and agent, Richard, and through Attorney Stevens. Haifa had ample opportunity to assert her concerns and claims regarding the April 28, 2007 will. She chose not to do so until the course of action she took through Richard and Mr. Stevens was concluded.

The 2010 CH 30432 lawsuit was filed on July 15, 2010, a few weeks before turnover was ordered on August 6, 2010. She should have asserted her claims under the April 28, 2007 will before August, 2010. Haifa had notice of the bankruptcy case and the adversary proceeding before the turnover motion was heard. She should have acted diligently to assert her rights and interests under the April 28, 2007 will. Her failure to assert that will until 2015 undoubtedly means that it was not executed in 2007.

The November 1, 2007 Revocation of Trustee document is not valid. Had it existed in 2007 it could have been asserted herein in 2010 to prove that Richard was no longer the Trustee when he sought bankruptcy relief in 2009.

Haifa testified that Attorney Garrett Reidy never represented her. This assertion can not be believed. The 2010 CH 30432 case includes allegations that she owned certain businesses. Attorney Garrett Reidy was not called to explain whether he filed that case

without her consent.

Ragda noted in a Motion to Intervene that Haifa was a plaintiff in the 2010 CH 30432 case. *See* Bankruptcy Case 09-05868, Docket No. 68, ¶ 13, p. 5 (Exhibit 45). The same allegation was made by Ragda in case 12 CH 5519, Exhibit 47, ¶ 19, p.5. In that matter Ragda sued the bankruptcy trustee, Richard and Wells Fargo.

Haifa knew about the adversary proceeding. In addition, her attorney, Garrett Reidy, prepared the pleadings in issue.

Note that Haifa's affidavit filed in opposition to a motion for summary judgment states that she authorized payments to Attorney William Stevens from her Pharmacy in Illinois. Exhibit 3, p.2, ¶ 4. Those payments are checks that witness Abeer Zaghmoury testified Haifa authorized as payment to Attorney Stevens. One check issued to him bearing Haifa's signature as maker was dated as early as August 10, 2010 for \$455. Exhibits 10, Check 42382. Haifa authorized a payment to the attorney handling these matters in 2010 right after the turnover order was entered. She knew about the bankruptcy case and the adversary proceeding long before she filed the Motion to Vacate in September, 2015. Haifa also authorized checks payable to Richard Bontkowski, who worked for Mr. Stevens. Abeer discussed these payments with Haifa before issuing the checks. Haifa was living in Virginia at the relevant times.

Haifa was in privity with Richard, her agent. She and Richard acted together in securing Attorney Stevens to represent Richard's interests as well as the interests of Soad Wattar's probate estate. She is bound by her agent's conduct of the litigation in issue.

Haifa's claims against the chapter 7 trustee, Horace Fox are barred by laches. To establish the defense of laches, a party must show: "(a) an unreasonable lack of diligence by the party; and (2) prejudice arising therefrom." *Dyson, Inc. v. Sharkninja Operating LLC*, 259 F. Supp. 3d 816, 835 (N.D. Ill. 2017) citing *Hot Wax, Inc. v. Turtle Wax, Inc.*, 191 F.3d 813, 819 (7th Cir. 1999). Haifa waited until September 12, 2015 to seek vacation of this Court's August 5, 2010 order when she knew she was the executrix of her mother's estate from the time of her mother's 2010 death. It would be prejudicial to the bankruptcy estate's creditors and the chapter 7 trustee to respond to claims that could have been raised 5 years earlier.

Haifa's claims against the chapter 7 trustee, Horace Fox, are also barred under res judicata. Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from re-litigating issues that were or could have been raised in that action. *Allen v. McCurry*, 449 U.S. 90, 94 (1980). Three requirements must be satisfied for res judicata to apply: (1) a final judgment on the merits has been rendered by a court of competent jurisdiction; (2) an identity of cause of action exists; and (3) the parties or their privies are identical in both actions. *Hudson v. City of Chicago*, 228 Ill. 2d 462, 467, 889 N.E.2d 210, 321 Ill.Dec. 306 (2008) citing *Downing v. Chicago Transit Authority*, 162 Ill.2d 70, 73-74, 204 Ill.Dec. 755, 642 N.E.2d 456 (1994).

The doctrine of res judicata applies in this case; Haifa is barred from re-litigating the August 5, 2010 turnover order. The August 5, 2010 turnover order was litigated on the merits by a court of competent jurisdiction. The ruling turned on the issue of who owned

the Trust assets as does Haifa's effort to assert ownership rights. Haifa stands in privity with her brother Richard because she conceded that Richard was her agent.

The three requirements for res judicata have been met: Haifa through her legal malpractice claim admits that Attorney Stevens also represented the estate (same parties); the issues involve ownership of Trust assets (same issue), that were litigated to a final judgment (final judgment on the merits). The appeal was dismissed with prejudice. That District Court dismissed a motion to vacate the turnover order with prejudice. *See Sharifeh v. Sharif*, No. 1:11-cv-7374 (N.D. Ill 11/16/2015), Docket 75. Haifa is bound by the August 5, 2010 turnover order based on her conduct and the conduct of her agents, Richard Sharif and Attorney Stevens.

Haifa testified that she waited until the end of Richard's litigation efforts to file her motion to vacate. She lost (through her agents) but decided to start over again. That is exactly what res judicata prohibits.

Haifa's inattention to the probate estate assets for over five years suggests that she did not have an interest in them, as the April 26, 2007 will gave them to the Trust under Richard.

The November 1, 2007 Revocation of Trustee document is forged. In any event they waited too long to rely on it. They all acted as if Richard was the Trustee until he "resigned" on July 21, 2010, which would not be necessary if he had been replaced on November 1, 2007. In addition, once the alter ego declaration was made, the Trust no longer existed as a separate entity.

Richard signed numerous documents as the Trustee after November 1, 2007. Many

documents involved withdrawing Trust funds. If he was not the Trustee, he may have committed theft on those occasions.

On April 20, 2010 Attorney Brian Denenberg testified about a sworn certificate of trust he signed stating that Richard was the Trustee. Exhibit 22. Transcript II, pp. 306-07.

Torres testified that Attorney Michael Cohen received the Revocation of Trustee document from Syria with Soad Wattar's signature in mid-November. Transcript I, p. 29.

Yet, Mr. Cohen later swore under oath that Richard was still the Trustee. Exhibit 50, March 6, 2009 letter, with Mr. Cohen's affidavit. If the Revocation of Trustee document actually existed, all concerned ignored it, waiving its provisions.

Haifa testified that she did not know about the judgment in the adversary proceeding until early 2011. However, the Court finds that she overtly assented to, acquiesced in and adopted what Richard and Attorney Stevens were doing with respect to the litigation.

Haifa waited five and a half years from 2010 to file the motion to vacate. Or, she waited four and a half years to file the motion to vacate from 2011 when she admits that Richard told her about the default judgment and turnover orders.

She knew about and did not object to what was going on. She went along with what her agents, Richard and Attorney Stevens, were doing. She is bound by what her agents did. She could have asserted her rights as an executrix before the District Court affirmed the judgment and orders in 2012.

IV. Conclusion

Two of the issues on remand were whether (1) Haifa Sharifeh waived her right to rely on the April 28, 2007 will by failing to attach it to the Rule 60(b)(4) motion (or to

comply with applicable evidentiary rules, or for any other reason) and (2) if there is no waiver, which version of the will controls. The Court finds that Haifa waived her right to rely on the April 28, 2007 will with regard to her 2015 motion to vacate because she waited to first mention it in her reply. In any event, Haifa committed laches, waiving her right to rely on the April 28, 2007 will by waiting at least five years to bring it up.

This court was also free to invite additional briefing and hearing on issues that it previously identified but did not decide—such as laches and issue preclusion—and to resolve Intervenor’s motion on any grounds as the Court saw fit.

Haifa’s claims against the chapter 7 trustee, Horace Fox are barred by laches as explained above.

Haifa’s claims against the chapter 7 trustee, Horace Fox are barred under res judicata as explained above.

The Sharif parties seem to think that something in a trust removes it from examination. Recall that it was the failure to cooperate with discovery, including information about the Trust, that led to the July 6, 2010 default judgment and the August 5, 2010 turnover. The validity, formation, operation and scope of trusts can be examined to discern whether trust assets can be included in a bankruptcy estate. *Lunkes*, 427 B.R. 425 and *Emerald Casino*, 746 Fed.Appx. 586 which were discussed above.

The above is hereby submitted to the District Court following the Remand.

Judge:

Date: January 29, 2019