Chapter 13
Office of the Chapter 13 Trustee—Akron Office
Keith L. Rucinski—Trustee

CHAPTER 13 QUARTERLY NEWSLETTER
MARCH 2024

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The current Chapter 13 Debt Limit of $2.75 million in total debt (regardless of classification) is set to expire in June 2024. Once expired, the debt limit will revert to the lower amounts subject to secured and unsecured classification.

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1. ANNUAL TAX RETURN REQUEST

The Akron Trusteeship has begun the process of collecting annual tax returns from all debtors in all cases.

The request to the debtors have been mailed to their respective address through the United States Postal Service.

To keep counsel informed, copies of all requests to the debtors have been sent to counsel of record via their respective email.

The Trustee appreciates the assistance of counsel to make sure that their clients submit their annual tax returns in a timely fashion.

2. AKRON COURT CONSIDERING HAVING THE TRUSTEE ESCROW FUNDS FOR ALL NON-FILED SECURED CREDITORS LISTED IN THE PLAN

As many counsel are aware, the Akron Court is considering having the Trustee escrow funds for all secured creditors listed in Section 3 of the Chapter 13 plan that have not filed claims.

If the secured creditor does not file a claim by the completion of the Chapter 13 plan, that the Trustee will then motion the Court to turn those funds over to the Court's unclaimed funds.

This process may help debtors motion the Court for car titles and/or the removal of liens when the underlying secured creditor has failed to file a claim.

To date, the Court has not issued an administrative order regarding the escrowing of funds.

The Trustee takes no position with respective to the following actions which some counsel have taken in response to the Court considering having the Trustee escrow funds for non-filing secured creditors.

A. Amending the plan prior to confirmation to remove the secured creditor who did not file a claim. Proper notice to all creditors is required.

B. Modifying the plan after confirmation to remove the secured creditor who did not file a claim. Proper notice to all creditors is required.

C. Filing a pleading with the Court directing the Trustee not to escrow funds for non-filed creditors even if said creditors are listed in the plan.

D. File a claim on behalf of the secured creditor (see below). If the claim to be filed is late, then counsel will need to file a motion with the Court to have the Trustee pay the claim.

3. WHEN CREDITORS DO NOT FILE CLAIMS

In the post COVID-19 era, it seems that some creditors are not filing claims in a timely manner or not filing claims at all. The failure to file a claim late or not file a claim at all can hinder the main purpose of the plan as often times these claims represent automobiles and homes that the debtor is seeking to retain by making payments on these assets through the Chapter 13 plan.

Bankruptcy Rule 3004 allows the debtor (and their counsel) to file claims on behalf of the creditor if the creditor has not filed a proof of claim by the claims bar date. Debtors (and their counsel) have 30 days to file a claim, from the claims bar date on behalf of the creditor pursuant to Rule 3004.

Given that the late filed and non-filed claims appear to be an ongoing issue, the Trustee recommends that counsel follow up on their cases to make sure that creditors properly file claims in the case, especially when the claim is for an automobile or home the debtor is seeking to maintain. Debtors (and their counsel) should file the claim within 30 days of the claims bar date if the creditor has not filed a claim. If the creditor has filed the claim late, counsel should file a motion with the Court to have the Trustee pay the claim.

Given recent Court decisions, the Trustee will pay on claims filed by debtors and their counsel.

4. INTENT TO PAY CLAIMS

As a reminder to counsel, the Akron Trusteeship files an Intent to Pay Claims in all confirmed cases prior to funds being distributed. These are reflected as a “Notice” on the Court docket and served on counsel and the debtor. This notice will help make counsel aware of who has, or who has not, filed a claim in the case.

5. CHECKLIST FOR PLAN

The Akron Trusteeship has received requests for a plan checklist to help plans proceed to confirmation.

Please find enclosed a copy of the checklist for items which will help plans proceed to confirmation more timely.

6. **EMAILS WITH ATTACHMENT IN RESPONSE TO 341 ISSUES MUST BE SENT THROUGH CHAPTER 13 PORTAL**

Many times, questions arise during the 341 meeting which the parties later supplement by emails and supporting documentation. Given the volume of emails it is more efficient to have said information contained in one place. Furthermore, some of the responses to questions raised at 341 contain personal identity information and should not be sent through unsecure email.

As of January 1, 2024, the Chapter 13 office stopped responding or readings emails with attachments in response to 341 questions. In essence, said emails will be deleted.

Information which is in response to 341 issues should be sent through the Chapter 13 portal which provides encryption and other security. Although no encryption is full proof this is an added protection for both counsel and their clients. In the portal system there is a new folder titled **"Debtor Email Response to 341 Meetings"**.

By placing all of the information in one place, it will allow Chapter 13 staff to respond more timely to questions. Furthermore, having information sent through the Chapter 13 portal will provide additional security for all parties.

7. **BANK STATEMENTS NEEDED PRIOR TO 341**

Many debtors today keep multiple bank accounts and the Akron Trusteeship will need the prior 3 months of bank statements (from filing date) in order to review the Chapter 13 plan.

Many debtors are self-employed and the only way to accurately verify and track their income listed on schedule I is to review the bank statements.

When bank statements are not provided prior to the 341 meeting, it often is necessary to hold a second 341 meeting so that the bank statements can be reviewed.

Uploading the bank statements to the portal system the day of the scheduled 341 meeting is not a guarantee that those can be reviewed and that said case most likely will require a second 341 meeting to allow the review.

The Trustee requests that all bank statements for all accounts for the prior 3 months be uploaded to the portal system 5 days prior to the 341 meeting.

A best practice would be to require the debtor to submit the bank statements to counsel when the plan is filed so that counsel may upload the bank statements immediately to the portal system upon the filing of the plan.

8. STRIKING PERSONAL IDENTIFIABLE INFORMATION

As reminder to all parties, when submitting documentation to the Chapter 13 office, care should be given to strike all personal identifiable information.

The following information should be redacted from documents prior to submitting to the Trusteeship:

- Bank routing numbers
- Social security numbers
- Name of dependents

9. PERSONAL FINANCIAL MANAGEMENT COURSE

The Chapter 13 office will continue to sponsor an on-line Personal Financial Management Course through the Trustee Education Network. Information regarding the online program is available on the Chapter 13 website at www.chapter13info.com. There is no charge to take the course online for Chapter 13 debtors who have filed in Akron, Ohio.

Please note in a joint case, each debtor must take the on-line course separately and use two different e-mails. The software program generates the required certificates of completion partly based on e-mails to keep track of who has taken the required course.

Please find attached to this newsletter, a flyer for the on-line course that counsel may share with their clients in Chapter 13 cases.

10. CASE LAW

Autumn Wind Lending, LLC v. Est. of Siegel, 2024 U.S. App. LEXIS 2960

In September 2018, Autumn Wind and Insight entered into a loan and security agreement (the Agreement). Autumn Wind initially agreed to lend Insight $6,800,000, and later amended the Agreement to lend an additional $300,000. Insight represented to Autumn Wind, as part of the Agreement, that it did not have any existing indebtedness, and it agreed not to incur any future debt while the loan was outstanding without Autumn Wind's consent.

Insight failed to repay the loan when it matured in June 2019. Shortly thereafter, Insight filed for bankruptcy in the United States Bankruptcy Court for the Western District of Kentucky.

John J. Siegel, now deceased, was the manager of Insight prior to its bankruptcy. He also served as the manager of three family enterprises, Cecelia Financial Management, LLC (Cecelia), Halas Energy, LLC (Halas), and Oasis Aviation, LLC (Oasis), each of which filed a proof of claim in the bankruptcy proceedings. Cecelia claimed $6,044,190.20 for money loaned, Halas claimed $37,828.57 as reimbursement charges, and Oasis claimed $6,737.73 for travel expenses. Each claim represented debts that Insight had incurred in violation of its Agreement with Autumn Wind.

In April 2020, Autumn Wind submitted a Chapter 11 reorganization plan to the bankruptcy court, which the court confirmed. The confirmed plan transferred all equity interest in Insight to Autumn Wind, thus making Insight a wholly owned subsidiary of Autumn Wind. Insight then filed an adversary complaint in the bankruptcy court in April 2021. The adversary complaint primarily sought recharacterization, disallowance, and/or reduction of the proofs of claims filed. But Insight also sought damages based on allegations of fraudulent misrepresentation by Siegel and tortious interference by Siegel, Cecelia, Halas, and Oasis. All parties later stipulated, in September 2021, to dismiss the fraudulent-misrepresentation and tortious-interference claims with prejudice. Although Autumn Wind was never a party to the bankruptcy adversary proceeding, it was the parent company of Insight for the entirety of the proceeding. Autumn Wind nevertheless brought a separate suit in the United States District Court for the Southern District of New York in February 2022, asserting fraud against Siegel and tortious interference against Siegel, Cecelia, Halas, and Oasis (collectively, the Defendants). The lawsuit was transferred to the United States District Court for the Western District of Kentucky, and Autumn Wind later filed an amended complaint naming the executor of Siegel's estate after Siegel died.

In June 2022, the Defendants jointly moved to dismiss the complaint, arguing that Autumn Wind's claims were barred by the res judicata effect of the bankruptcy court's adoption of Autumn Wind's reorganization plan. The district court denied the motion. Meanwhile, the bankruptcy court partially granted Insight's motion for summary judgment by disallowing the proofs of claim filed by Halas and Oasis, but it held a bench trial on Cecelia's proof of claim. On the same day that the district court denied the Defendants' motion to dismiss, the bankruptcy court entered a final judgment against Insight that allowed the Cecelia claim. The bankruptcy court's final judgment incorporated the September 2021 stipulation between the parties to dismiss with prejudice Insight's fraudulent-misrepresentation and tortious-interference claims against the Defendants.

Soon thereafter, the Defendants filed a motion in the district court for reconsideration of their denied motion to dismiss, arguing that Autumn Wind's claims were now barred by the res judicata effect of the bankruptcy court's final judgment.

The district court agreed. It then dismissed the complaint, concluding that the Defendants had met their burden of proving that all the elements of res judicata, often referred to as claim preclusion, had been satisfied. This timely appeal followed.

The Sixth Circuit reversed in an opinion by Circuit Judge Ronald Lee Gilman.
On the merits, Judge Gilman began by listing the constituent parts of claim preclusion. They are: (1) a final decision on the merits; (2) the second action involves the same parties or their privies; (3) the second action involves issues actually litigated or that should have been litigated; and (4) an identity of the causes of action.

The parties agreed that the stipulation of dismissal was a final decision on the merits. Judge Gilman decided that the pivotal claims had not been "actually litigated" in bankruptcy court, so he was not required to address the other two elements of claim preclusion.

On the issue of "actually litigated," Judge Gilman cited Sixth Circuit precedent to say that a "stipulated dismissal goes only to the first element of res judicata; it does not mean that the claims were 'actually litigated' or 'should have been litigated.'" Again quoting his own circuit, he said, "An issue is actually litigated when it 'is properly raised, by the pleadings or otherwise, and is submitted for determination, and is determined.'" Having decided that the third element of claim preclusion was not shown, Judge Gilman reversed the judgment dismissing the lender's claims and remanded back to the district court.

SAVE THE DATE:

ANNUAL WHITE WILLIAMS SEMINAR
HARTVILLE KITCHEN
APRIL 12, 2024

Personal Financial Management Course

THIS COURSE IS REQUIRED TO EARN YOUR DISCHARGE !

Online Chapter 13 Bankruptcy Course
Finally Financial Freedom!

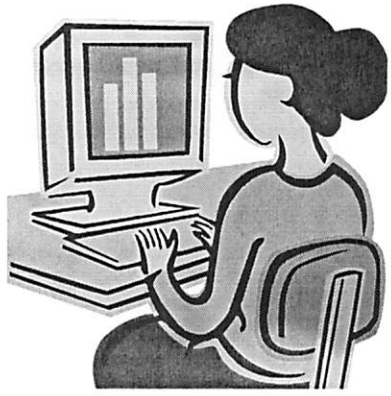
** The Trustees' Education Network (TEN) – an affiliate of the National Association of Chapter 13 Trustees – has created an online financial management course for the benefit and financial education of Chapter 13 debtors. This course is approved by the United States Trustee Program. **

THIS COURSE IS FREE!

THIS COURSE IS ABLE TO BE COMPLETED PRIOR TO YOUR 341 HEARING WITH THE TRUSTEE*

SIGN UP ONLINE AT WWW.13CLASS.COM

WHAT YOU WILL NEED TO SIGN UP



- Unique Trustee Identifier Number
  - **TEN13010**
- Bankruptcy Case Number
- Your full Name "exactly" as shown on bankruptcy petition
- A valid email address (each debtor will need a separate email address)
- Your bankruptcy Schedules A/B, D, and E/F for Lesson 1 and Schedules I and J for Lesson 3.

You must complete the entire course (all lessons and quizzes) to receive a Certificate of Completion from the Trustees' Education Network. Once you complete all coursework, the Trustees' Education Network will send a Certificate of Completion to you and to your Bankruptcy Court.

***Course satisfies legal requirements for debtors' Certificate of Completion and to gain a discharge of their bankruptcy case.*

**Other course providers may charge you a fee for this course.*

Checklist for Plan

CHECKLIST FOR FORM PLAN

Section 1

A. HAVE ALL APPROPRIATE BOXES BEEN CHECKED IN SECTION 1.1 TO DISCLOSE WHETHER OR NOT THE PLAN INCLUDES VALUATIONS, LIEN STRIPPING, OR NON-STANDARD PROVISIONS?

Section 2

B. DO THE PLAN PAYMENTS LISTED IN SECTION 2.1 OF THE PLAN MATCH PETITION SCHEDULE J?

C. DOES THE NUMBER OF MONTHS IN 2.1 EQUAL THE APPLICABLE COMMITMENT PERIOD (36 or 60)? IF YES, THEN THE 3RD BOX IN 5.1 SHOULD BE CHECKED. IF NO THEN THE 2ND BOX IN 5.1 SHOULD BE CHECKED AND A PERCENTAGE ENTERED FOR THE UNSECURED CREDITORS TO RECEIVE.

Section 3

D. HAVE BOXES IN SECTION 3.1, 3.2 AND 3.3 BEEN CHECKED TO STATE IF THE TRUSTEE IS PAYING THE CREDITOR OR IF THE DEBTOR IS PAYING CREDITOR OUTSIDE THE PLAN?

E. ARE THE INTEREST RATES USED IN THE PLAN IN SECTIONS 3.1, 3.2 AND 3.3 IN COMPLIANCE WITH ADMINISTRATIVE ORDERS 17-2 AND 18-5?

F. DOES THE PLAN PROVIDE FOR PAYMENT OF ALL SECURED CREDITORS LISTED ON SCHEDULE D IN PLAN PROVISIONS 3.1, 3.2 OR 3.3?

G. IF VALUATIONS OR LIEN STRIPPING ARE BEING DONE ON A CLAIM HELD BY AN FDIC LENDER IN SECTION 3.2 OR 3.4, HAS THE PLAN BEEN SERVED ON AN OFFICER OR DIRECTOR OF THE FDIC LENDER BY CERTIFIED MAIL AS REQUIRED UNDER BANKRUPTCY PROCEDURE RULE 7004?

H. IS ALL PROPERTY THAT IS BEING SURRENDERED LISTED IN SECTION 3.5?

Section 5

I. IF THERE IS EQUITY, IS THE DOLLAR AMOUNT ENTERED IN SECTION 5.1?

Section 6

J. DOES THE PLAN PROVIDE IN SECTION 6.1 IF A LEASE HAS BEEN ACCEPTED AND IS THE LEASE DISCLOSED ON PETITION SCHEDULE G?

Section 8

K. ANY SPECIAL PROVISIONS SHOULD BE NOTATED

Misc

L. DOES THE EXHIBIT ATTACHED TO THE PLAN REFLECT ADEQUATE FUNDING SO THAT THE PLAN IS FEASIBLE?

Autumn Wind Lending, LLC v. Est. of Siegel, 2024 U.S. App. LEXIS 2960

Neutral
As of: March 19, 2024 9:30 PM Z

Autumn Wind Lending, LLC v. Est. of Siegel

United States Court of Appeals for the Sixth Circuit

February 8, 2024, Decided; February 8, 2024, Filed

File Name: 24a0025p.06

No. 23-5476

Reporter
2024 U.S. App. LEXIS 2960 *; 2024 FED App. 0025P (6th Cir.) **; 92 F.4th 630

AUTUMN WIND LENDING, LLC, Plaintiff-Appellant, v. ESTATE OF JOHN J. SIEGEL, deceased, by and through the Executor or Personal Representative; CECELIA FINANCIAL MANAGEMENT, LLC; HALAS ENERGY, LLC; OASIS AVIATION LLC, Defendants-Appellees.

Prior History: [*1] Appeal from the United States District Court for the Western District of Kentucky at Louisville. No. 3:22-cv-00255—Rebecca Grady Jennings, District Judge.

Autumn Wind Lending, LLC v. Siegel, 2023 U.S. Dist. LEXIS 87260, 2023 WL 3553128 (W.D. Ky., May 18, 2023)

Core Terms

bankruptcy court, district court, ***res judicata***, adversary proceedings, litigated, damages, merits, tortious interference, ***final judgment***, related-to, parties, dismissal with prejudice, tortious-interference

Case Summary

Overview
HOLDINGS: [1]-Where the LLC was not a party to prior adversary proceeding in bankruptcy court, the doctrine of ***res judicata*** did not bar the LLC from bringing the same claims in the district court against the same defendants who were absolved of liability as part of the bankruptcy court proceedings; [2]-One element of ***res judicata*** was not met, because the LLC could not have brought its claims in the bankruptcy court action.

Outcome
Reversed and remanded.

LexisNexis® Headnotes

Civil Procedure > Appeals > Appellate Jurisdiction > ***Final Judgment*** Rule

Civil Procedure > Judgments > Preclusion of Judgments > ***Res Judicata***

Civil Procedure > Parties

HN1[] **Appellate Jurisdiction, *Final Judgment* Rule**

Pursuant to the doctrine of ***res judicata***, a ***final judgment*** on the merits bars further claims by parties or their privies based on the same cause of action.

Civil Procedure > Appeals > Standards of Review > De Novo Review

Evidence > Burdens of Proof > Allocation

Civil Procedure > Judgments > Preclusion of Judgments > ***Res Judicata***

Civil Procedure > ... > Defenses, Demurrers & Objections > Affirmative Defenses > ***Res Judicata***

HN2[] **Standards of Review, De Novo Review**

The Sixth Circuit reviews de novo the district court's application of ***res judicata***. The party asserting the defense of ***res judicata*** bears the burden of proof. To succeed on a ***res judicata*** defense, the proponent must prove each of the following elements: (1) A final decision on the merits in the first action by a court of competent jurisdiction; (2) The second action involves the same parties, or their privies, as the first; (3) The second action raises an issue actually litigated or

which should have been litigated in the first action; (4) An identity of the causes of action.

Civil Procedure > Judgments > Preclusion of Judgments > ***Res Judicata***

HN3[] **Preclusion of Judgments, *Res Judicata***

The failure to prove any element renders the application of ***res judicata*** inappropriate. The third element requires a showing that the second action raises an issue actually litigated or which should have been litigated in the first action.

Civil Procedure > Pleading & Practice > Pleadings > Rule Application & Interpretation

HN4[] **Pleadings, Rule Application & Interpretation**

An issue is actually litigated when it is properly raised, by the pleadings or otherwise, and is submitted for determination, and is determined.

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Preservation for Review

HN5[] **Reviewability of Lower Court Decisions, Preservation for Review**

As long as a claim or issue was raised before the district court, a party may formulate any argument it likes in support of that claim here.

Civil Procedure > Appeals > Appellate Briefs

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Preservation for Review

Civil Procedure > Appeals > Record on Appeal

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Timing of Appeals

Civil Procedure > Appeals > Notice of Appeal

HN6[] **Appeals, Appellate Briefs**

Fed. R. App. P. 4(a)(3)'s cross-notice of appeal requirement is a claim-processing rule and is not jurisdictional. An appellee who does not take a cross-appeal may urge in support of a decree any matter appearing in the record, although his argument may involve an attack upon the reasoning of the lower court.

Counsel: ON BRIEF: Robert M. Hirsh, Michael A. Kaplan, Rasmeet K. Chahil, LOWENSTEIN SANDLER LLP, New York, New York, for Appellant.

David M. Cantor, William P. Harbison, Joseph H. Haddad, SEILLER WATERMAN, LLC, Louisville, Kentucky, for Appellees.

Judges: Before: COLE, GILMAN, and LARSEN, Circuit Judges.

Opinion by: RONALD LEE GILMAN

Opinion

[1]** RONALD LEE GILMAN, Circuit Judge. Insight Terminal Solutions, LLC (Insight) brought an adversary proceeding in bankruptcy court against all the defendants named in this lawsuit, alleging claims that were dismissed with prejudice by the bankruptcy court based upon the parties' stipulation to do so. Autumn Wind Lending, LLC (Autumn Wind) was not itself a **[**2]** party to the adversary proceeding, but it became the parent company of Insight prior to Insight initiating its lawsuit in the bankruptcy court.

The question before us is whether the doctrine of ***res judicata*** bars Autumn Wind from now bringing these same claims against the same defendants who were absolved of liability to Insight as part of the bankruptcy court proceedings. For **[*2]** the reasons set forth below, we **REVERSE** the judgment of the district court dismissing Autumn Wind's claims on the basis of ***res judicata*** and **REMAND** the case for further proceedings consistent with this opinion.

I. BACKGROUND

In September 2018, Autumn Wind and Insight entered into a loan and security agreement (the Agreement). Autumn Wind initially agreed to lend Insight $6,800,000, and later amended the Agreement to lend an additional $300,000. Insight represented to Autumn Wind, as part of the Agreement, that it did not have any existing indebtedness, and it agreed not to incur any future debt while the loan was outstanding without Autumn Wind's consent.

Insight failed to repay the loan when it matured in June 2019. Shortly thereafter, Insight filed for bankruptcy in the United

States Bankruptcy Court for the Western District of Kentucky.

John J. Siegel, now deceased, was the manager of Insight prior to its bankruptcy. He also served as the manager of three family enterprises, Cecelia Financial Management, LLC (Cecelia), Halas Energy, LLC (Halas), and Oasis Aviation, LLC (Oasis), each of which filed a proof of claim in the bankruptcy proceedings. Cecelia claimed $6,044,190.20 for money **[*3]** loaned, Halas claimed $37,828.57 as reimbursement charges, and Oasis claimed $6,737.73 for travel expenses. Each claim represented debts that Insight had incurred in violation of its Agreement with Autumn Wind.

In April 2020, Autumn Wind submitted a ***Chapter 11*** reorganization plan to the bankruptcy court, which the court confirmed. The confirmed plan transferred all equity interest in Insight to Autumn Wind, thus making Insight a wholly owned subsidiary of Autumn Wind. Insight then filed an adversary complaint in the bankruptcy court in April 2021. The adversary complaint primarily sought recharacterization, disallowance, and/or reduction of the proofs of **[**3]** claims filed. But Insight also sought damages based on allegations of fraudulent misrepresentation by Siegel and tortious interference by Siegel, Cecelia, Halas, and Oasis. All parties later stipulated, in September 2021, to dismiss the fraudulent-misrepresentation and tortious-interference claims with prejudice.

Although Autumn Wind was never a party to the bankruptcy adversary proceeding, it was the parent company of Insight for the entirety of the proceeding. Autumn Wind nevertheless brought a separate suit in the United States District **[*4]** Court for the Southern District of New York in February 2022, asserting fraud against Siegel and tortious interference against Siegel, Cecelia, Halas, and Oasis (collectively, the Defendants). The lawsuit was transferred to the United States District Court for the Western District of Kentucky, and Autumn Wind later filed an amended complaint naming the executor of Siegel's estate after Siegel died.

In June 2022, the Defendants jointly moved to dismiss the complaint, arguing that Autumn Wind's claims were barred by the ***res judicata*** effect of the bankruptcy court's adoption of Autumn Wind's reorganization plan. The district court denied the motion. Meanwhile, the bankruptcy court partially granted Insight's motion for summary judgment by disallowing the proofs of claim filed by Halas and Oasis, but it held a bench trial on Cecelia's proof of claim. On the same day that the district court denied the Defendants' motion to dismiss, the bankruptcy court entered a ***final judgment*** against Insight that allowed the Cecelia claim. The bankruptcy court's ***final judgment*** incorporated the September 2021 stipulation between the parties to dismiss with prejudice Insight's fraudulent-misrepresentation **[*5]** and tortious-interference claims against the Defendants.

Soon thereafter, the Defendants filed a motion in the district court for reconsideration of their denied motion to dismiss, arguing that Autumn Wind's claims were now barred by the ***res judicata*** effect of the bankruptcy court's ***final judgment***. The district court agreed. It then dismissed the complaint, concluding that the Defendants had met their burden of proving that all the elements of ***res judicata*** had been satisfied. This timely appeal followed.

[**4] II. ANALYSIS

A. The entry of *final judgment* in the bankruptcy court does not preclude Autumn Wind's *claims*

HN1[↑] "Pursuant to the doctrine of ***res judicata***, 'a ***final judgment*** on the merits bars further claims by parties or their privies based on the same cause of action.'" *Bragg v. Flint Bd. of Educ., 570 F.3d 775, 776 (6th Cir. 2009)* (quoting *Montana v. United States, 440 U.S. 147, 153, 99 S. Ct. 970, 59 L. Ed. 2d 210 (1979)*). Autumn Wind argues that the district court erred in concluding that the doctrine applies to Autumn Wind's present lawsuit. Specifically, Autumn Wind contends that its claims are not barred because only one of the elements of ***res judicata*** is met.

HN2[↑] We review de novo the district court's application of ***res judicata***. *Browning v. Levy, 283 F.3d 761, 772 (6th Cir. 2002)*. "The party asserting the defense of ***res judicata*** bears the burden of proof." *Winget v. JP Morgan Chase Bank, N.A., 537 F.3d 565, 572 (6th Cir. 2008)*. To succeed on a ***res*** **[*6]** ***judicata*** defense, the proponent must prove each of the following elements:

> 1. A final decision on the merits in the first action by a court of competent jurisdiction; 2. The second action involves the same parties, or their privies, as the first; 3. The second action raises an issue actually litigated or which should have been litigated in the first action; 4. An identity of the causes of action.

Sanders Confectionery Prods., Inc. v. Heller Fin., Inc., 973 F.2d 474, 480 (6th Cir. 1992) (internal citations omitted).

Autumn Wind and the Defendants agree that the first element is satisfied because the parties stipulated to the dismissal of Insight's tortious-interference and fraud claims with prejudice, but they dispute the remaining elements. ***HN3***[↑] The failure to prove any element renders the application of ***res judicata***

inappropriate. *Browning, 283 F.3d at 771*. Because we conclude that the Defendants cannot establish the third element, Autumn Wind's claims are not barred by ***res judicata***. We will therefore address only the third element.

That element requires a showing that "[t]he second action raises an issue actually litigated or which should have been litigated in the first action." *Sanders, 973 F.2d at 480*. Autumn Wind argues that it could not have brought its claims in the adversary proceeding because the bankruptcy court lacked **[*7]** subject-matter jurisdiction to hear them. Before reaching **[**5]** the question of whether Autumn Wind should have brought claims in its own name in the bankruptcy court, however, we consider the effects of Insight's September 2021 stipulated dismissal of its claims with prejudice. If, after all, as the district court concluded, Insight is a privy of Autumn Wind, then Autumn Wind would be bound by any ***res judicata*** effect of Insight's actions.

We conclude that Insight's stipulated dismissal with prejudice does not bar Autumn Wind's present claims despite the district court's observation that a stipulated dismissal with prejudice "operates as a final adjudication on the merits." *See Warfield v. AlliedSignal TBS Holdings, Inc., 267 F.3d 538, 542 (6th Cir. 2001)*. Contrary to the district court's understanding, the stipulated dismissal goes only to the first element of ***res judicata***; it does not mean that the claims were "actually litigated" or "should have been litigated." *See Sanders, 973 F.2d at 480*. ***HN4***[⬆] "An issue is actually litigated when it 'is properly raised, by the pleadings or otherwise, and is submitted for determination, and is determined.'" *In re Leonard, 644 F. App'x 612, 616 (6th Cir. 2016)* (quoting Restatement (Second) of Judgments § 27 cmt. *d* (Am. L. Inst. 1982)).

The issues underlying Insight's purported claims against Siegel, Cecelia, Halas, and Oasis were never determined by the bankruptcy court; **[*8]** rather, the dismissal was effective by virtue of the parties' stipulation, without any contestation or litigation and without any judicial action. *See Exact Software N. Am., Inc. v. DeMoisey, 718 F.3d 535, 540 (6th Cir. 2013)* (quoting *Green v. Nevers, 111 F.3d 1295, 1301 (6th Cir. 1997)*) (highlighting that stipulations of dismissal are "'self-executing' and do 'not require judicial approval'"); *see also Levi Strauss Co. v. Abercrombie & Fitch Trading Co., 719 F.3d 1367, 1372-73 (Fed. Cir. 2013)* (noting that a stipulated dismissal with prejudice counts as an adjudication on the merits but does not count as the actual litigation of any issue); 18A Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 4435 (3d ed. Aug. 2023 update) ("A stipulated dismissal with prejudice operates as an adjudication on the merits for ***claim-preclusion*** purposes, but ordinarily should not of itself count as the actual adjudication of any issue."); *cf. Semtek Int'l Inc. v. Lockheed Martin Corp., 531 U.S. 497, 501, 121 S. Ct. 1021, 149 L. Ed. 2d 32 (2001)* (cautioning against the assumption that "all judgments denominated 'on the merits' are entitled to claim-preclusive effect").

[6]** Nor *should* Insight have litigated these claims in the adversary proceeding. Insight was not the proper party to seek damages from the Defendants because Autumn Wind, not Insight, was the entity that allegedly suffered the injury as a result of Insight breaching the terms of the Agreement. *See Carroll v. Hill, 37 F.4th 1119, 1121 (6th Cir. 2022)* (quoting *TransUnion LLC v. Ramirez*, 594 U.S. 413, 427 (2021)) ("A defendant's **[*9]** alleged misconduct must 'personally harm the plaintiff.'"). Insight itself was not harmed when the Defendants loaned money to Insight because Insight was obviously a willing participant. Insight was not forced to incur the additional debt, nor was it misled by Siegel. Instead, Siegel served as the manager of Insight when the company took on the debt, and thus Insight knew that accepting the new financing would violate the Agreement. In sum, Insight had no cause of action against the Defendants for the fraud and tortious-interference claims to begin with.

That leaves the question: should Autumn Wind have litigated these claims in the adversary proceeding? Autumn Wind argued in its district-court briefing that, because it was not a party to the adversary proceeding, its claims could not have been litigated in the bankruptcy court. In its briefing on appeal, Autumn Wind now asserts that because Insight was the debtor, the bankruptcy court lacked subject-matter jurisdiction over Autumn Wind's claims. The Defendants assert that Autumn Wind has forfeited that argument by failing to raise it before the district court. ***HN5***[⬆] Despite these different rationales, however, "as long as a claim or issue **[*10]** was raised before the district court, a party may 'formulate any argument it likes in support of that claim here.'" *Chelf v. Prudential Ins. Co. of Am., 31 F.4th 459, 468 (6th Cir. 2022)* (cleaned up) (quoting *Yee v. City of Escondido, 503 U.S. 519, 534-35, 112 S. Ct. 1522, 118 L. Ed. 2d 153 (1992)*). Challenging the subject-matter jurisdiction of the bankruptcy court "is merely an argument in support of" Autumn Wind's basic position regarding this third element of ***res judicata***. *See id.*

We thus conclude that Autumn Wind has not forfeited its argument on appeal, leaving us free to address the merits of the issue. We agree with Autumn Wind that it could not have brought its claims in the adversary proceeding on its own behalf. Indeed, as Autumn Wind now recognizes, "[Insight] dismissed Count VII of its Complaint in the Adversary Proceeding as those claims belonged to [Autumn Wind] (a non-debtor), not [Insight]."

[7]** In response, the Defendants argue that the bankruptcy court would have had supplemental jurisdiction under 28 U.S.C. § 1367 over Autumn Wind's claims. Autumn Wind replies that whether bankruptcy courts may exercise supplemental jurisdiction is an open question in the Sixth Circuit, noting that most federal courts have determined that bankruptcy courts lack such jurisdiction.

The claims raised by Insight in the adversary proceeding and by Autumn Wind in **[*11]** the present case are nearly identical. Count VII of Insight's adversary complaint alleged that Siegel committed fraud by concealing Insight's then-existing indebtedness when the Agreement was entered into by Autumn Wind. In the present complaint, Autumn Wind alleges that Siegel fraudulently misrepresented Insight's indebtedness, thereby inducing Autumn Wind to enter the Agreement. The adversary complaint further alleged that the Defendants tortiously interfered with Insight's performance under the Agreement by impermissibly increasing Insight's indebtedness. Similarly, the present complaint alleges that the Defendants tortiously interfered with Insight's performance of its obligations under the Agreement by causing Insight to take on additional debt without Autumn Wind's consent.

The reason for this near identity of pleadings is due to the adversary complaint comingling the claims of Autumn Wind and Insight without recognizing the corporate separateness of these two entities. Although the stipulation in the bankruptcy court does not detail why Insight agreed to dismiss Count VII of its adversary complaint, the record leaves little doubt that Autumn Wind and Insight belatedly came to **[*12]** the realization that the claims belong solely to Autumn Wind. Autumn Wind's present complaint concedes this point by noting that the parties to the adversary proceeding in the bankruptcy court stipulated to the dismissal of Insight's claims because "[Autumn Wind]'s claims against Defendants have not, and will not be resolved as part of the Bankruptcy action."

Contrary to the Defendants' contentions, Autumn Wind could not have pursued such claims in the adversary proceeding because Autumn Wind and the Defendants are both creditors of Insight, and the bankruptcy court lacks related-to jurisdiction to adjudicate a prepetition dispute between these two creditors that would have no conceivable effect on the bankruptcy estate. *See* Sanders Confectionery Prods. Inc. v. Heller Fin., Inc., 973 F.2d 474, 483 (6th Cir. 1992) ***[**8]*** 1992) ("[A] bankruptcy court would not hear a case between two creditors based on their prior dealings independent of the debtor."); In re Wolverine Radio Co., 930 F.2d 1132, 1140-42 (6th Cir. 1991) (quoting Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984), *overruled on other grounds by* Things Remembered, Inc. v. Petrarca, 516 U.S. 124, 129, 116 S. Ct. 494, 133 L. Ed. 2d 461 (1995)) (concluding that a proceeding is within a bankruptcy court's related-to jurisdiction only if "the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy"). Moreover, the conceivable-effect test applies only to related-to jurisdiction, and the **[*13]** Defendants acknowledge that neither arising-under nor arising-in jurisdiction is implicated. They solely argue that there is related-to jurisdiction here.

The Defendants also argue that the bankruptcy court's related-to jurisdiction includes supplemental jurisdiction under 28 U.S.C. § 1367. But, as explained above, the bankruptcy court had no related-to jurisdiction over Autumn Wind's fraud and tortious-interference claims against the Defendants. We thus have no need to explore the open question in this circuit of whether a bankruptcy court has supplemental jurisdiction under 28 U.S.C. § 1367. *See* In re Bruemmer Dev., LLC, 515 B.R. 551, 560-61 (Bankr. E.D. Mich. 2014) (discussing the split of authority on this issue and noting that the Sixth Circuit has not addressed the question directly); *see also* In re Wolverine Radio Co., 930 F.2d at 1140-45 (endorsing a narrow view of bankruptcy courts' jurisdiction, holding that "the bankruptcy court's jurisdiction over a case involving nondebtors [is] to be determined solely by 28 U.S.C. § 1334(b)").

In conclusion, the Defendants have failed to establish the third element of ***res judicata***. Autumn Wind's claims are therefore not precluded by the bankruptcy court's ***final judgment***.

B. The Defendants' alternative argument

The Defendants alternatively argue that we should affirm the judgment of the district court because **[*14]** the confirmation of the ***Chapter 11*** reorganization plan precludes Autumn Wind's claims. They raised this argument before the district court, which disagreed.

As a threshold matter, Autumn Wind contends that the Defendants' argument is now barred because they failed to file a cross-notice of appeal as required by *Rule 4(a)(3) of the Federal Rules of Appellate Procedure*. ***HN6***[↑] *Rule 4(a)(3)*'s cross-notice of appeal requirement is a **[**9]** claim-processing rule and is not jurisdictional. Georgia-Pac. Consumer Prods. LP v. NCR Corp., 40 F.4th 481, 487 (6th Cir. 2022). "An appellee who does not take a cross-appeal may 'urge in support of a decree any matter appearing in the record, although his argument may involve an attack upon the reasoning of the lower court.'" Jennings v. Stephens, 574 U.S. 271, 276, 135 S. Ct. 793, 190 L. Ed. 2d 662 (2015) (quoting United States v. Am. Ry. Exp. Co., 265 U.S. 425, 435, 44 S. Ct. 560, 68 L. Ed. 1087 (1924)). Here, the Defendants'

alternative argument "merely asserts additional grounds" to affirm the dismissal granted by the district court. *See Am. Ry. Exp. Co., 265 U.S. at 436*. The Defendants do not ask us to "provide relief beyond the district court's determination," so a cross-notice of appeal is not required here. *See Georgia-Pac. Consumer Prods. LP, 40 F.4th at 483*.

We therefore turn to the merits of the issue. Autumn Wind contends that we should adopt the district court's reasoning that the plain language of the reorganization plan released Autumn Wind's claims against Insight, but not against the Defendants. The Defendants do not contend that they received **[*15]** an express release under the plan. Rather, they argue that the plan satisfied all "Obligations" of Insight to Autumn Wind under the initial term loan and that those "Obligations" included all of Autumn Wind's damages arising from Insight's breach. According to the Defendants, if the plan satisfied "all damages" from the breach, there can be no remaining recovery for tortious inducement of that breach, so the Defendants should be "effectively released from liability."

The authority that the Defendants rely upon does not support this premise. The claims here are related to intentional torts, not to a guarantor's liability for a debt satisfied in bankruptcy. Nor does the potential overlap in damages for breach of contract and tortious interference serve to bar either claim. *See, e.g., Midwest Precision Servs., Inc. v. PTM Indus. Corp., 887 F.2d 1128, 1138 (1st Cir. 1989)* (holding that "the issue of double recovery should be resolved after rather than before the jury has returned a verdict on each claim"); *Monumental Life Ins. Co. v. Nationwide Ret. Sols., Inc., 242 F. Supp. 2d 438, 450 (W.D. Ky. 2003)* (finding "incorrect" the statement that the damages for breach of contract and tortious interference are "identical" because tortious interference allows punitive damages); *Restatement (Second) Torts § 774A(2)* (holding that any overlap in damages in claims for tortious interference and breach of contract **[*16]** "does not affect the damages awardable," but that any overlap might "reduce **[**10]** the damages actually recoverable on the judgment"). In sum, we agree with the district court that the plan does not release the Defendants from liability for Autumn Wind's claims.

III. CONCLUSION

For all of the reasons set forth above, we **REVERSE** the judgment of the district court and **REMAND** the case for further proceedings consistent with this opinion.

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