



BUSINESS LAW SECTION
OF THE FLORIDA BAR

Creditors' Rights and Estate Planning

January 29, 2026 | 1:00 PM Eastern

Sponsored By: The Florida Bar Business Law Section

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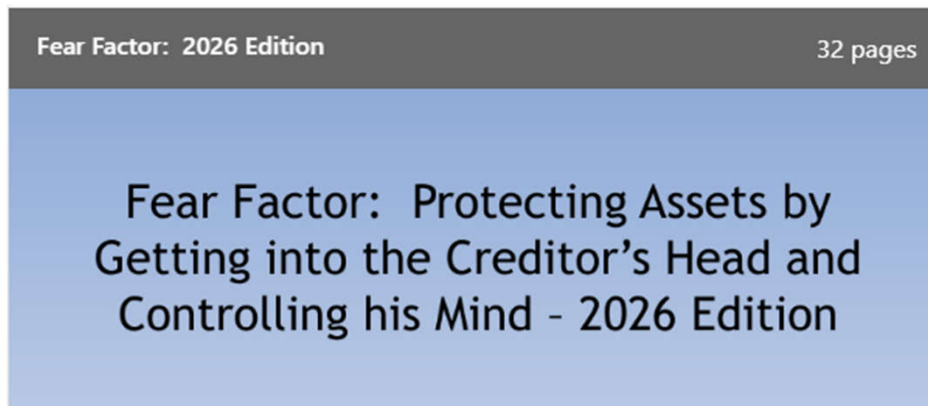
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Why Should Estate Planners Care?

- Estate plan disruption
- Creditor relief may exceed mere avoidance
- Bankruptcy
- Ethical issues
- Substance over form
- Equity
- All of the above present planning traps and should be considered
- This presentation should provide answers to common scenarios encountered in estate planning

Why Should Creditors Care?

- Planning techniques are evolving to evade exposure to creditor attack
- Planning bar actively influencing legislative changes
- Recent LinkedIn presentation:



Fraudulent Transfer law

- Definitions
 - “creditor” and “claim”
 - “transfer”
- Intent
 - contrast with planning described as “forward-thinking” or “safe-guarding” or “thwarting” or “getting in a creditor’s mind”
- Issues with forum shopping
- Remedies
- Ethics

Equitable Ownership

- Sham
- Nominee
- Alter ego
 - Types
 - Trust application
 - Jurisdictional consequences. *See Matijkiw v. Strauss*, 2011 D.C. Super. LEXIS 13, *23-25, where D.C. Superior Court finds Delaware Asset Protection Trust is debtor's alter ego.

Bankruptcy

- Why should planners know about bankruptcy?
- Types of bankruptcy
- Transfer avoidance in bankruptcy
- Issues for attorneys
 - attorney client privilege
 - initial transferee
 - malpractice claim for bad planning
- Fraudulent transfer

Other Laws

- Governmental creditors
- Spouses and children
- State laws

Self-Settled Spendthrift Trusts

- Common law
- Fraudulent transfer law
- Current landscape (Asset Protection Trusts)
- Enforceability and creditor strategies
- Variations on SSSTs (Power of Appointment Trusts, etc.)
- Bankruptcy

Third Party Trusts

- Early support from US Supreme Court
- Combined with independent trustee
- Bankruptcy

Limited Liability Companies

- Protecting personal assets from business creditors
- Protecting personal assets from personal creditors
- Bankruptcy

Exemptions

- Public policy
- Bankruptcy (including pre-bankruptcy planning)

Recent Cases

- **United States v. Kroner**

- “Defendant Burt Kroner has evaded collection of his federal income tax debt for nearly two decades. A debt that has ballooned to over \$27 million since his dispute began with the Internal Revenue Service. This repatriation suit seeks an order requiring Mr. Kroner to repatriate millions held by self-settled asset protection trusts in the Bahamas.” *United States v. Kroner Et Al*, No. 9:25cv80877, 2025 U.S. Dist. Ct. Motions Lexis 211575 (S.D. Fla. 2025).

- **Korotki v. Kurman P.A.**

- Allegations included “advising Mr. Korotki to file a personal bankruptcy, despite the fact that his Asset Protection Plan essentially rendered him ‘judgment proof’ from creditors...”
- “We, therefore, conclude that Korotki has failed to clearly identify a “case within a case” in which he would have prevailed. Accordingly, we agree with the trial court's determination that any damages caused by Appellees' purported negligence are so speculative and uncertain [*46] that recovery is precluded as a matter of law where Korotki also cannot show the Offit Parties were the proximate cause of any of plaintiffs' harm. Therefore, we affirm the order granting summary judgment.” *Korotki v. Kurman, P.A.*, 2026 Pa. Super. Unpub. LEXIS 197, *45-46.



Fact or Fiction?

- Future unforeseeable creditors may not utilize the fraudulent transfer law.
- If you transfer assets to an LLC in exchange for LLC interests, you have received “reasonably equivalent value” and therefore, have not made a fraudulent transfer.
- You miss 100% of the shots you don’t take. The same goes for aggressive creditor planning.
- If you make a transfer to hinder creditor A, creditor B cannot assert a fraudulent transfer claim.
- Bankruptcy decisions “don’t count.”

Fact or Fiction?

- The debtor may decide to set aside a reasonable amount for a creditor's claim. If debtor sets that amount aside and engages in planning, the creditor cannot argue the debtor made a fraudulent transfer.
- A clause in a trust agreement that requires a creditor obtain a judgment from the highest court before the trustee may satisfy the claim will negate a fraudulent transfer argument.
- Transfer assets to your spouse as TBE
- Transfer your assets to your spouse, then get a divorce. A creditor can't go after the assets.
- Strip the equity out of an asset; that's not a transfer.

Fact or Fiction?

- It's nearly impossible to throw someone into bankruptcy.
- Asset protection is a mind game; once a creditor sees a sophisticated structure, the creditor will give up.
- Transfers to self-settled trusts cannot be fraudulent; if a jurisdiction provides for it, you can use it so long as you comply with the formalities under that jurisdiction's law.

Fact or Fiction?

- If your business has creditor issues, have the business pay you back for amounts you previously “loaned” to the business over the years.
- Fraudulent transfer law does not apply to self-settled trusts; King Henry VII (rule against self-settled trusts) “preempted” Queen Elizabeth I (fraudulent conveyances) as it applies to voiding transfers to trusts.
- Offshore trusts work better; a judge cannot compel you to repatriate assets since doing so would be impossible

United States Of America V. Kroner Et Al

9:25cv80877

US District Court for the Southern District of Florida

August 28, 2025, Filed

Reporter

2025 U.S. DIST. CT. MOTIONS LEXIS 211575

State: US-FL

Type: Preliminary Injunction

Title

MOTION for Preliminary Injunction by United States of America. (Attachments: # 1 Exhibit 2004 Trust Deed, # 2 Exhibit 2007 Trust Deed, # 3 Exhibit Bankruptcy Court Order, # 4 Exhibit Burt Kroner Deposition Transcript, # 5 Exhibit Second Amended Disclosure Statement, # 6 Exhibit Burt Kroner CDP Hearing Appeal, # 7 Exhibit Burt Kroner Bankruptcy Motion, # 8 Exhibit United States Bankruptcy Motion Response, # 9 Exhibit Burt Kroner Bankruptcy Court Motion Reply, # 10 Exhibit 2023 IRS Transcript 200

Text

Defendant, the United States, requests that the Court grant a preliminary injunction in its favor under [Fed. R. Civ. P. 65\(a\)](#). As explained in the supporting memorandum, the United States requests that the Court limit the beneficiaries' ability to dissipate and transfer assets held by the Kroner Family Trust 2004 and the Kroner Family 2007 Trust Settlement B. The United States alleges that its federal tax liens attach to the corpus of the trusts and should be repatriated to satisfy the \$27 million tax debt of Defendant Burt Kroner. Thus, the Court should grant the United States's Motion for Preliminary Injunction.

Dated: August 28, 2025 Respectfully submitted, By: /s/ Nicholas S. Willingham

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2, 2005), report and recommendation adopted, No. 00-08986-CIV-JORDAN, 2005 WL 3747779 (S.D. Fla. Dec. 22, 2005) 6 United States v. Greene, No. C-83-6107-MHP, 1984 WL 256, at *1 (N.D. Cal. Mar. 30, 1984) ... [6 United States v. Schwarzbaum, No. 18-CV-81147, 2021 WL 4958307, at *4 \(S.D. Fla. Oct. 26, 2021\)](#) 6 Statutes [11 U.S.C. § 362\(a\)\(1\)](#) 4 [11 U.S.C. § 541\(c\)\(1\)](#) 4 [11 U.S.C. § 362\(c\)\(1\)](#) 5

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MEMORANDUM IN SUPPORT OF THE UNITED STATES' MOTION FOR PRELIMINARY INJUNCTION

Defendant Burt Kroner has evaded collection of his federal income tax debt for nearly two decades. A debt that has ballooned to over \$27 million since his dispute began with the Internal Revenue Service. This repatriation suit seeks an order requiring Mr. Kroner to repatriate millions held by self-settled asset protection trusts in the Bahamas. These self-settled asset protection trusts received millions in cash transfers at issue in Mr. Kroner's Tax Court case. To prevent Mr. Kroner from dissipating assets held by the Kroner Family Trust 2004 ("2004 Trust") (Ex. 1) and the Kroner Family 2007 Trust Settlement B ("2007 Trust") (Ex. 2) (collectively, "Bahamas Trusts"), the United States requests a preliminary injunction to freeze assets held by the Bahamas Trusts, subject to certain allowable expenses. Separately, we request that the injunction require the trustee, Equity Trust Bahamas, Ltd. ("Equity"), to provide an accounting of the frozen assets.

The United States requests that the Court enter a preliminary injunction that: A) Subject to paragraphs B and C, infra, prohibits Mr. Kroner--as well as any beneficiaries of the Bahamas Trusts--from directly or indirectly encumbering, liquidating, transferring, or otherwise spending or disposing of the assets held by the Bahamas Trusts.

B) Require Mr. Kroner, and any other beneficiary to disclose each request for distribution they request from the trustee to counsel for the United States;

C) Require Mr. Kroner, and any other beneficiary, to disclose each distribution they receive from the trustee to counsel for the United States;

D) Limit the Kroner Defendants' access to the frozen assets to pay only those expenses allowed by the IRS's 2025 Allowable Living Expenses Housing Standards, for a 3- person family;

E) Prohibit the Defendants from requesting or making any amendments to the Bahamas Trusts;

F) Require the Defendants to inform the Court if the trust protector exercises any power in relation to the Bahamas Trusts; and G) Require Defendant Equity Trust Bahamas, Ltd. to provide an accounting of all the assets of the Bahamas Trusts and to identify all transfers into and out of the Bahamas Trusts from August 1, 2023 through the date of the Complaint.

BACKGROUND

The IRS Examines Mr. Kroner's Tax Returns

Two decades ago, Mr. Kroner received a phone call from a former business associate, David Haring ("Mr. Haring"), who offered Mr. Kroner an unspecified value of future cash transfers. *Kroner v. Comm'r of Internal Revenue*, T.C.M. (RIA) 2024-041 (T.C. 2024) ("Kroner II") at pg. 3. Before Mr. Kroner received any cash transfers, he sought the advice of their shared tax attorney, Mr. Robert Bernstein, a partner in the tax group at Foley & Larder, LLP. Kroner II at pg. 5. Mr. Bernstein advised Mr. Kroner that the cash transfers from Mr. Haring were not subject to income tax despite the omission of key facts about the future cash transfers. *Id.*

Over the course of the 2005, 2006 and 2007 tax years ("relevant tax years"), Mr. Kroner received approximately \$25 million in cash transfers from Mr. Haring. Kroner II at pg. 2. Much of the cash transfers were received by the 2004 Trust. And the 2007 Trust was set up to receive \$5 million from Mr. Haring during the 2007 tax year.

But the story that these cash transfers were gifts unraveled under IRS scrutiny. As it turned out, the cash transfers were an attempt to end around a noncompete agreement that prevented Mr. Kroner from having an interest in a company owned by Mr. Haring. Kroner II atpg. 4. In March 2011, the IRS selected Mr. Kroner's returns for the relevant tax years for examination. [*Kroner v. Comm'r of Internal Revenue*, 119 T.C.M. \(CCH\) 1507 \(T.C. 2020\)](#), *rev'd in part*, [*48 F.4th 1272 \(11th Cir. 2022\)*](#) ("Kroner I").

During the examination, the IRS determined that the cash transfers were income subject to federal income taxes. Kroner I at pg. 6. And so, the IRS issued Mr. Kroner a Notice of Deficiency, which proposed an increase in tax, interest, and an accuracy penalty under 26 U.S.C. § 6662 for the relevant tax years. And gave Mr. Kroner the opportunity to contest the IRS's determination in U.S. Tax Court. *Id.*

Mr. Kroner Tax Court Case

After the IRS issued the Notice of Deficiency, Mr. Kroner retained attorneys at Greenberg Traug as litigation counsel. On October 8, 2014, Mr. Kroner exercised his right to challenge the proposed deficiencies in U.S. Tax Court. There, Mr. Kroner contested the IRS' treatment of the cash transfers as income and the IRS's imposition of accuracy-related penalties. Kroner I at pg.

2. On February 4-5, 2016, the Tax Court held a trial on all issues raised by Mr. Kroner.

On June 1, 2020, the Tax Court upheld the IRS' determination that the cash transfers were taxable income to Mr. Kroner but found that the IRS could not impose accuracy-related penalties because it failed to obtain written supervisory approval as required by [*26 U.S.C. § 6751*](#). See generally Kroner I.

The IRS appealed the Tax Court's decision about the proposed assessment of accuracy- related penalties, and the Eleventh Circuit reversed the Tax Court's procedural ruling on imposing accuracy-related penalties. See [*Kroner v. Comm'r of Internal Revenue*, 48 F.4th 1272 \(11th Cir. 2022\)](#). The case was remanded to the Tax Court to address Mr. Kroner's "reasonable cause" defense. Kroner II at pg. 2. On April 8, 2024, the Tax Court held that Mr. Kroner "ha[d]not proven that he had reasonable cause for, or acted in good faith with respect to, the underpayments in this case." Kroner II at pg. 7. Consistent with the Tax Court's decisions, the IRS assessed additional income tax, interest, and accuracy-related penalties against Mr. Kroner on the following dates and in the following amounts:

Type	Year	Assessment Date	Amount	Additional Tax Assessed by
Examination Interest Assessed	2005	11/9/2020	\$1,635,206.00	2005
Accuracy-Related Penalty	2005	11/9/2020	\$1,490,844.66	8/19/2024
Examination Interest Assessed	2006	11/9/2020	\$5,821,198.00	2006
Accuracy-Related Penalty	2006	11/9/2020	\$4,412,331.99	8/19/2024
Examination Interest Assessed	2007	11/9/2020	\$1,821,277.00	2007
Accuracy-Related Penalty	2007	11/9/2020	\$1,152,049.84	8/19/2024
Examination Interest Assessed	2007	11/9/2020	\$1,152,049.84	2007
Accuracy-Related Penalty	2007	11/9/2020	\$364,255.00	8/19/2024

Mr. Kroner Files for Chapter 11 Bankruptcy Protection

On August 1, 2023, the Mr. Kroner filed for Chapter 11 bankruptcy. In re Kroner, Case No. 23-16097-MAM (Bankr. S.D. Fla.). Mr. Kroner later filed an Adversary Proceeding against the United States to determine the dischargeability of his tax liabilities for the years at issue.

Kroner v. United States, Adv. No. 24-01011-MAM (Bankr. S.D. Fla.). Both proceedings are pending before the bankruptcy court. While the bankruptcy case is pending, the IRS is barred from collecting Mr. Kroner's unpaid tax assessments. [11 U.S.C. § 362\(a\)\(1\)](#). But that bar extends only to assets of the bankruptcy estate.

On December 30, 2024, Mr. Kroner elected to exclude the Bahamas Trusts from the bankruptcy Estate under [11 U.S.C. § 541\(c\)\(1\)](#). The exclusion meant that the Bahamas Trusts were not property of the bankruptcy Estate and not subject to the automatic stay. [11 U.S.C. § 362\(c\)\(1\)](#). To confirm this, the United States filed a Motion for Relief from the Automatic Stay to allow the United States to file this suit to order Mr. Kroner to repatriate the corpus of the Bahamas Trusts. After the motion was fully briefed and argued, Mr. Kroner consented to relief from the automatic stay. On July 10, 2025, the Court entered an Agreed Order which states that the Bahamas Trusts were excluded from the bankruptcy Estate and that the United States was entitled to sue Mr. Kroner to repatriate assets held by the Bahamas Trusts. Ex. 3 ¶ 3.

STANDARD OF REVIEW

The Court has jurisdiction to issue equitable relief "as may be necessary or appropriate for the enforcement of the internal revenue laws." [I.R.C. § 7402\(a\)](#). The Court's authority under § 7402(a) is "in addition to and not exclusive of any and all other remedies" available to the United States to ensure compliance with internal revenue laws. Id. Section 7402(a) thus "encompasses a broad range of powers necessary to compel compliance with . . . tax laws." [United States v. Ernst & Whinney, 735 F.2d 1296, 1300 \(11th Cir. 1984\)](#). The Court's power to restrain conduct under § 7402(a) "is governed by the traditional factors" for equitable relief. Id.

at 1301. Separately, [Fed. R. of Civ. P. 65\(a\)](#) empowers the Court to issue preliminary injunctions.

To obtain injunctive relief under § 7402(a) or Rule 65(a), the United States must show that: "(1) it has a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest." [Siegel v. LePore, 234 F.3d 1163, 1176 \(11th Cir.](#)

2000) (en banc).

ARGUMENT

I. THE UNITED STATES IS SUBSTANTIALLY LIKELY TO SUCCEED ON THE MERITS

A preliminary injunction is appropriate here because the United States is substantially likely to succeed on the merits of this action for a repatriation order. A repatriation order is appropriate when the taxpayer owes a significant tax liability and the IRS's ability to collect on the taxpayer's liability will be jeopardized absent repatriation.

The United States readily satisfies these requirements. Mr. Kroner owes over \$27 million in unpaid taxes. The United States has federal tax liens that attach to all his property and rights to property, including his interest as the settlor of the Bahamas Trusts. But the IRS cannot enforce its liens against the property that Mr. Kroner intentionally placed offshore to thwart IRS collection. Thus, the IRS's ability to collect Mr. Kroner's liability is jeopardized by his use of self-settled offshore asset protection trusts.

A. The Elements for Repatriation Are Met

District courts have broad authority to issue repatriation orders. This Court has held that it has "personal jurisdiction over [a] [d]efendant to reach assets overseas, when the Defendant has an outstanding judgment or tax liability to the Government." [United States v. Schwarzbaum, No. 18-CV-81147, 2021 WL 4958307, at *4 \(S.D. Fla. Oct. 26,](#)

[2021](#)). This Court has also held that "[o]nce the power of the person who is either the owner or the beneficiary of the asset to repatriate is established, the court can require that person to repatriate the funds." *United States v. Grant*, No. 00-8986-CIV-JORDAN/K, 2005 WL 2671479, at *2 (S.D. Fla. Sept. 2, 2005), report and recommendation adopted, No. 00-08986-CIV-JORDAN, 2005 WL 3747779 (S.D. Fla. Dec. 22, 2005). Thus, "[r]epatriation is appropriate where the record shows a substantial tax liability exists and the government's ability to collect the tax might otherwise be jeopardized." *United States v. Greene*, No. C-83-6107-MHP, 1984 WL 256, at *1 (N.D. Cal. Mar. 30, 1984) (quoting 9 Mertens, *Law of Federal Taxation*, ¶ 49.222 (Cum. Supp. 1982)). The United States is substantially likely to prove both elements necessary for repatriation.

1. Mr. Kroner Owes a Substantial Tax Liability

Mr. Kroner owes the IRS over \$27 million dollars for the 2005, 2006, and 2007 tax years.

This is not in dispute. Indeed, the Tax Court determined his liabilities for those years. See generally *Kroner I*; *Kroner II*. That decision is final and any further challenge of his liability for the relevant years is barred. See [26 U.S.C. § 7483](#).

Following the Tax Court's decisions in *Kroner I* and *Kroner II*, the IRS assessed against Mr. Kroner income tax, interest, and penalties totaling more than \$18 million. Interest has continued to accrue on the assessments and added to Mr. Kroner's already substantial tax debt.

He now owes more than \$27 million--a substantial tax debt by any measure.

2. The Government's Ability to Collect Mr. Kroner's Tax Liability Would Be Jeopardized Without a Repatriation Order

Collection of Mr. Kroner's tax liabilities will be jeopardized if the assets held by the Bahamas Trusts are not repatriated. The Bahamas Trusts are Mr. Kroner's largest asset. And he established the Bahamas Trusts outside the reach of the IRS's administrative collection actions, such as levies. Ex. 4 at 45:4-17, 47:10-19.

Although he structured the Bahamas Trusts outside the reach of the IRS's administrative collection tools, Mr. Kroner ensured his access to the Trusts' funds. He receives approximately \$76,000 per month from the Trusts. Ex. 5 at 30. And Mr. Kroner uses those distributions to fund his lavish lifestyle.

As long as the funds held by the Bahamas Trusts are offshore, the IRS is essentially powerless to prevent Mr. Kroner from dissipating the Trusts. The IRS's only collection tool is to levy the distributions from the Bahamas Trusts. But to levy the distributions, the IRS must know when each distribution will occur, and which bank will receive the distribution in advance. And that information is not publicly available. If the levy is not in place before the distributions are spent, then the levy will come up empty.

But there are also procedural tools the taxpayer can use to delay an IRS levy. A taxpayer can request a Collection Due Process hearing to halt IRS levies. [26 U.S.C. § 6330\(b\)](#). In fact, the IRS notified Mr. Kroner that it intended to levy his assets in December 2022. But Mr. Kroner exercised his CDP hearing rights to delay the IRS levy which remained pending until he filed for bankruptcy. Ex. 6 at 3-6. Another tactic that also stayed the IRS's collection activities. Thus, the IRS's ability to collect Mr. Kroner's liability is at risk as long as he continues to hold his assets offshore.

B. Mr. Kroner's Bankruptcy Is Not a Defense to Repatriation

Mr. Kroner has asserted three affirmative defenses that stem from his pending bankruptcy case. ECF 18. But these affirmative defenses are barred by claim or issue preclusion for two reasons. [Montana v. United States, 440 U.S. 147, 153 \(1979\)](#) ("[O]nce an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation.") (citations omitted). First, Mr. Kroner has raised these same arguments against the IRS in bankruptcy court since this suit was filed. These issues are pending decision. See generally Exs.

7-9 (briefing in bankruptcy court). Once the bankruptcy court enters a decision on the merits, that decision will preclude Mr. Kroner from raising these defenses here. But even if the bankruptcy court denies Mr. Kroner's motion on jurisdictional grounds raised by the United States, his affirmative defenses are barred by claim preclusion.

After all, Mr. Kroner could have raised these issues in defense of the United States' Motion for Relief from the Automatic Stay. The Supreme Court has ruled that an order granting a motion for relief from the automatic stay constitutes a final judgment on the merits. [Ritzen Grp., Inc. v. Jackson Masonry, LLC, 589 U.S. 35, 37-38 \(2020\)](#). So issues that could have been raised in defense of a motion for relief from the automatic, but are not, are waived. These issues are waived because "[r]es judicata bars litigation of claims that were or could have been raised in a prior action." [In re FFS Data, Inc., 776 F.3d 1299, 1306 \(11th Cir. 2015\)](#). In FFS Data, the Eleventh Circuit ruled that chapter 11 plan confirmation is given preclusive effect. *Id.* The Court should apply that principle to orders granting relief from the automatic stay. Especially because Mr. Kroner consented to relief from the automatic stay. See Ex. 3 (agreed order granting relief from the automatic stay). Thus, Mr. Kroner's affirmative defenses are barred by claim preclusion.

C. Federal Tax Liens Attach to the Assets Held by the Bahamas Trusts

Mr. Kroner may argue that repatriation is inappropriate because tax liens do not attach to the Bahamas Trusts. To begin, the United States had to show that it had a property interest in the Bahamas Trusts to obtain relief from the automatic stay. To do so, the United States made these same arguments in support of its claim. Mr. Kroner consented to that relief so he should be barred from further litigation of this issue under the principles of res judicata. [In re FFS Data, Inc., 776 F.3d at 1306](#). But even if Mr. Kroner can relitigate this issue, this argument, too, fails because both Florida and federal law prevent the enforcement of self-settled asset protection trusts, like the Bahamas Trusts. A self-settled trust is a trust where the settlor retains an interest in the trust as a beneficiary. As discussed below, Mr. Kroner cannot defeat federal tax liens by enforcing provisions of a self-settled asset protection trust. Thus, the IRS's federal tax liens attach to Mr. Kroner's interest in the Bahamas Trusts.

Federal tax liens arise upon assessment and attach to all property and rights to property of a taxpayer. [26 U.S.C §§ 6321, 6322](#). Thus, when the IRS assessed Mr. Kroner's tax liabilities following the Tax Court's judgments, statutory liens arose in favor of the United States and attached to all Mr. Kroner's property and rights to property, including the Bahamas Trusts.

The reach of the federal tax lien is broad. As the Supreme Court explained, the term "property" in § 6321 "aims to reach `every species of right or interest protected by law and having an exchangeable value.'" [Drye v. United States, 528 U.S. 49, 55, \(1999\)](#) (quoting [Jewett v. Commissioner, 455 U.S. 305, 309, \(1982\)](#)). Indeed, "[s]tronger language could hardly have been selected to reveal a purpose to assure the collection of taxes." [Glass City Bank of Jeanette, Pa., v. United States, 326 U.S. 265, 267 \(1945\)](#).

Despite its broad reach, § 6321 "creates no property rights but merely attaches consequences, federally defined, to rights created under state law." [United States v. Bess, 357 U.S. 51, 55 \(1958\)](#). And so, courts must first look "to state law to determine what rights the taxpayer has in the property the Government seeks to reach, then to federal law to determine whether the taxpayer's state-delineated rights qualify as `property' or `rights to property' within" § 6321. [Drye, 528 U.S. at 58](#).

Federal tax liens attach to Mr. Kroner's interest in the Bahamas Trusts because: (1) the Trusts are governed by Florida Law; (2) Mr. Kroner is the settlor of the 2007 Trust; (3) the spendthrift clauses are invalid against claims of the United States or for self-settled trusts; and (4) creditors may liquidate discretionary trusts that are self-settled. Together, these arguments establish that Mr. Kroner has a state law property interest in the Bahamas Trusts as the settlor.

And federal tax liens attach to the assets held by self-settled asset protection trusts under federal law. [First Nw. Tr. Co. of S. Dakota v. Internal Revenue Serv., 622 F.2d 387, 390 \(8th Cir. 1980\)](#) (Federal tax liens attach to assets held by a trust even when "the elements of a spendthrift trust are combined with provisions granting discretionary powers of distribution to the trustee[.]"); see also [United States v. Dallas Nat. Bank, 152 F.2d 582, 585-86 \(5th Cir.](#)

[1945](#)) ("Although the legal title to the corpus of the trust estate is not in the taxpayer, and the corpus is not subject to alienation by her or to execution or levy by her creditors, nevertheless, it cannot be said that she has no rights whatsoever in the corpus of the property of the trust estate in the hands of the Trustee.") Thus, the IRS's federal tax liens attach to the assets held by the Bahamas Trusts.

1. Florida Law Applies to the Bahamas Trusts

Although the Bahamas Trusts are held offshore, Florida law applies. The Florida Trust Code says that "a trust is not controlling as to any matter for which the designation would be contrary to a strong public policy of this state." [Fla. Stat. Ann. § 736.0107](#) (flush paragraph).

Courts in this district have refused to apply the laws of offshore asset protection trusts and applied Florida law instead. See *In re Rensin*, 600 B.R. 870, 880 (Bankr. S.D. Fla. 2019) (applying Florida law to a Belize trust because a trust "designed to offend [the debtor's] creditors, is contrary to Florida public policy"); [In re Lawrence](#), 227 B.R. 907, 917-18 (Bankr.

S.D. Fla. 1998) (applying Florida law to a Mauritian trust), *aff'd*, [251 B.R. 630, 642](#) (S.D. Fla.

2000); see also, e.g., [In re Portnoy](#), 201 B.R. 685, 700-01 (S.D.N.Y. 1996) (applying New York law to Jersey trust). As explained in *Rensin*, "Florida courts will not enforce a spendthrift trust designed to permit a person to place his or her assets beyond the arms of creditors." 600 B.R. at 880. Indeed, it "is against public policy to permit the settlor [sic] beneficiary to tie up her ownproperty in such a way that she can still enjoy it but prevent creditors from reaching it." [Lawrence](#), 227 B.R. at 917 (quoting [In re Cameron](#), 223 B.R. 20, 24 (Bankr. S.D. Fla. 1998)).

But that is the exact purpose of the Bahamas Trusts. They are asset protection trusts that Mr. Kroner admits were settled to protect his assets from the IRS. Ex. 4 at 45:4-17, 47:10-19.

While the Bahamas Trusts shield Mr. Kroner's assets from collection, he enjoys \$76,000 per month distributions. Ex. 5 at 30. Mr. Kroner cannot rely on Bahamian law to enforce his asset protection trust that was created to shield his assets from the IRS. Allowing him to do so is contrary to Florida law. Thus, Florida law applies to the Bahamas Trusts. See, e.g., *Rensin*, 600 B.R. at 880.

2. Mr. Kroner is The Settlor of the 2007 Trust

Mr. Kroner is the settlor of the Bahamas Trusts. Mr. Kroner is the settlor of the 2004 Trust because he listed as the settlor. ECF 18 at 33. Although Mr. Haring is listed as the settlor of the 2007 Trust, Mr. Kroner admits that the trustee determined he was the settlor of the 2007 Trust and that he files annual returns as settlor of the 2007 Trust. ECF 18 at 43. Mr. Kroner cannot tell the IRS that he is the settlor of the 2007 Trust and tell the courts he is not the settlor. The inquiry about Mr. Kroner's status as settlor of the 2007 Trust should end there.

But even if it doesn't, the Court should disregard Mr. Haring's designation as the settlor of the 2007 Trust because it was settled with Mr. Kroner's income. Kroner I at 25. The designation of a settlor has important implications under Florida law. And that is because, as discussed below, a creditor may collect the full value of the settlor's interest in a trust despite a valid spendthrift clause or the fact that the trust is discretionary. [Fla. Stat. Ann. § 736.0505\(1\)\(b\)](#).

The Florida Trust Code adopts the definition of a settlor embraced by the Uniform Trust Code. See Uni. Trust Code § 103(15); [Fla. Stat. Ann. § 736.0103\(21\)](#). The drafters of the Uniform Trust Code considered a situation like the one here:

"The fact that a person is designated as the `settlor' by the terms of the trust is not necessarily determinative. For example, the person who executes the trust instrument may be acting as the agent for the person who will be funding the trust. In that case, the person funding the trust, and not the person signing the trust instrument, will be the settlor."

See Uniform Trust Code § 103(15) cmt (Emphasis added). Thus, the drafters recognized that the settlor may be the person funding the trust, rather than the person executing the documents as the settlor. And federal courts have

recognized this principle, too, holding "that the person furnishing consideration for the creation of a trust is the settlor despite, in form, the trust is created by another." *Danielson v. Astrue*, No. 1:10-CV-125, [2011 WL 1485995, at *5 \(N.D.W. Va. Mar. 28, 2011\)](#), report and recommendation adopted sub nom., *Danielson v. Comm'r of Soc. Sec. Admin.*, No. 1:10CV125, [2011 WL 1483990 \(N.D.W. Va. Apr. 19, 2011\)](#) (collecting cases). Mr. Kroner funded the 2007 Trust with \$5 million of his income. ECF 18 at ¶ 21. And thus, he is the settlor, no matter who executed the trust instruments.

3. The Spendthrift Clauses Are Invalid Against Federal Tax Liens & Self-Settled Trusts

The Bahamas Trusts contain invalid spendthrift clauses under Florida law. A valid spendthrift clause usually prevents the settlor or beneficiary from transferring their interest in the trust to creditors. But under Florida law, a spendthrift clause is unenforceable against federal tax liens. And even if a spendthrift clause was enforceable against the IRS, it is unenforceable when the settlor retains an interest in the trust as a beneficiary. For those reasons, the spendthrift clauses do not prevent collection of the Bahamas Trusts under Florida law.

Because Florida law applies, a spendthrift clause does not prevent the IRS's liens from attaching to the corpus of the Bahamas Trusts. The Florida Trust Code says that the enforcement of a spendthrift clause is invalid against "[a] claim of . . . the United States[.]" Fla. Stat. Ann. §736.0503(2)(c). Indeed, the Fifth Circuit has held that the settlor "of a spendthrift trust cannot overcome . . . a spendthrift trust beneficiary's duty to pay tax." *In re Orr*, [180 F.3d 656, 663](#). Put together, spendthrift clauses are unenforceable against the IRS under Florida law.

But even if spendthrift clauses were enforceable against the IRS, Florida law prohibits the enforcement of self-settled trusts. The Florida Trust Code says that even if a trust contains a spendthrift clause, "a creditor . . . of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit." [Fla. Stat. Ann. § 736.0505\(1\)\(b\)](#); see also [Kraft v. Comm'r](#), [142 T.C. 259, 267 \(2014\)](#) (applying District of Columbia Trust Code provision that is nearly identical to the Florida Trust Code to hold that the IRS could collect from a self-settled trust with a spendthrift provision). That rule applied at common law as well. Before § 736.0505(1)(b) was enacted, a creditor could "reach the maximum amount which the trustee . . .

could pay to [the settlor] or apply for his benefit, . . . even though the beneficiary could not compel the trustee to pay him anything," [In re Lawrence](#), [251 B.R. at 642](#). The Bahamas Trusts permit the trustee to distribute the entire cash value to Mr. Kroner. Thus, the spendthrift clauses are unenforceable.

4. The Trustee Discretion Provision Does Not Prevent Collection of the Self-Settled Bahamas Trusts

Likewise, the settlor's interest in a discretionary trust may be liquidated. The Bahamas Trusts gives Equity full discretion over distributions to the beneficiaries. But the drafters of the Uniform Trust Code have commented that a settlor-beneficiary of a trust cannot enforce a discretionary trust. Section 736.0505(1)(b), discussed above, adopts Uniform Trust Code § 505(a)(2). As the drafters of the Uniform Trust Code explained:

"[i]f the trustee has discretion to distribute the entire income and principal to the settlor, the effect of this subsection is to place the

settlor's creditors in the same position as if the trust had not been created." See Uniform Trust Code § 505(a)(2) cmt. The Uniform Trust Code's rationale has been accepted by at least one federal court.

In [Dexia Credit Loc. v. Rogan](#), [624 F. Supp. 2d 970, 980 \(N.D. Ill. 2009\)](#), the court was presented with the following question about a potential conflict of the Florida Trusts Code: "section 736.0504 provides that creditors of a beneficiary may not reach the assets of discretionary trusts, whereas section 736.0505 permits creditors to reach the maximum amount of a trust that can be distributed to the settlor." *Id.* The court ruled that "to the extent there is a conflict between sections 736.0504 and 736.0505, section 736.0505 controls." [Id. at 980-81](#). In other words, the creditors of a settlor-beneficiary may reach the assets of a discretionary trust even if that trust also contains a spendthrift clause.

II. THE UNITED STATES WILL BE IRREPARABLY HARMED IF MR. KRONER IS ALLOWED TO DISSIPATE OR TRANSFER ASSETS HELD BY THE BAHAMAS TRUSTS

United States Of America V. Kroner Et Al

A preliminary injunction will prevent irreparable harm that the United States will suffer if an asset freeze is not ordered. The irreparable harm here is simple: Mr. Kroner will continue to dissipate or transfer assets held by the Bahamas Trusts and successfully evade his substantial tax liabilities. After all, Mr. Kroner has admitted that this is the goal of the Bahamas Trusts. In the malpractice suit against his former tax attorney, Mr. Kroner testified that he "was under the impression from Bob Bernstein that [the Bahamas Trusts] were beyond the reach of the IRS, and that's why I had these trusts to begin with, for asset protection." Ex. 4 at 45:4-17, 47:10-19.

Given that the Bahamas Trusts were intended to thwart IRS collection, there is a strong likelihood that the United States will suffer irreparable injury by continued to dissipation or transfer of the assets held by the Bahamas Trusts.

The risk of dissipation of assets is a well-accepted basis for finding irreparable injury.

See, e.g., [Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc., 527 U.S. 308, 325-26 \(1999\)](#) (discussing the United States's ability to obtain a temporary injunction under [I.R.C. § 7402\(a\)](#) to prevent further dissipation of assets, and distinguishing it from the usual remedies available to a plaintiff at law) (citing [United States v. First Nat'l City Bank, 379 U.S. 378 \(1965\)](#) ("The temporary injunction issued by the District Court seems to us to be eminently appropriate to prevent further dissipation of assets.") The Eleventh Circuit has also upheld asset freezes where the plaintiff seeks equitable relief that relate to a particular asset the defendant holds. [Levi Strauss & Co. v. Sunrise Int'l Trading Inc., 51 F.3d 982, 987 \(11th Cir. 1995\)](#) ("A request for equitable relief invokes the district court's inherent equitable powers to order preliminary relief, including an asset freeze, in order to assure the availability of permanent relief."). That principle applies here because the Bahamas Trusts have received approximately \$30 million in cash since they were established but Mr. Kroner's tax filings say that only about \$10 million remain in the Bahamas Trusts as of December 2023. See Ex. 10 at 2 (reflecting gross value of \$8,012,603 for the 2004 Trust, but this figure includes approximately \$3 million in equity in Mr. Kroner's residence); Ex. 11 at 2 (reflecting gross value of \$5,203,956 for 2007 Trust).

The risk of irreparable harm due to dissipation or transfer of assets held by the Bahamas Trusts is especially high here because the Bahamas Trusts were settled offshore. Even with the oversight that the bankruptcy court has over Mr. Kroner, he has still managed to spend over \$2.5 million since August 2023. Ex. 12 at pg. 2, In. f. And in a recent bankruptcy filing Mr. Kroner has suggested that the trustee can remove or exclude him as a beneficiary to assist him with further evasion of his tax liabilities. Ex. 13 at ¶ 7.

If that was not enough, the Bahamas Trusts allow a trust protector to unilaterally change the trustee at will and the situs where the trusts are held. Ex. 1 at Article X, Section E; Ex. 2 at ¶ 12. Mr. Kroner has used the trust protector position to shield his assets from collection. When Mr. Kroner's Tax Court case went to trial in February 2016, Ms. Kroner, a U.S. resident, served as protector of the trusts. Ex. 14 at pg. 1; Ex. 15. But after trial, Mr. Kroner expressed concern over "the judge's negative comments." Ex. 16. Months later, Ms. Kroner was replaced by an offshore trust protector. For that reason, a preliminary injunction will prevent some of the irreparable harm that could be done by the trust protector at the request of Mr. Kroner.

The assets held by the Bahamas Trusts must be preserved to allow the United States to collect Mr. Kroner's tax liabilities. As a result, freezing the assets held by the Bahamas Trusts is an appropriate remedy to prevent any irreparable harm to the United States that will be caused by allowing Mr. Kroner to continue to dissipate or transfer assets held by the Bahamas Trusts.

III. THE RISK OF IMPROPER DISSIPATION OR TRANSFER OUTWEIGHS THE MINIMAL HARM TO THE DEFENDANTS

The balance of harms of issuing a preliminary injunction favors the United States.

Without a preliminary injunction, Mr. Kroner will be allowed to dissipate or transfer assets held by the Bahamas Trusts. As a result, the United States will be unable to collect anything to satisfy Mr. Kroner's tax liabilities. That result is unjustified because the Bahamas Trusts were set up offshore to frustrate the IRS's collection tools.

Because the Bahamas Trusts are held offshore, there is no oversight over dissipation and transfers. Without oversight, the United States in the dark about the amount of Mr. Kroner's monthly distribution requests,

amendments to the Bahamas Trusts, or actions the trustee or trust protector may take to assist him in evading his tax liabilities. And Mr. Kroner has suggested that the trustee can remove or exclude him as a beneficiary to assist him with further evasion of his tax liabilities. Ex. 13 at ¶ 7. If those actions are taken it would frustrate the United States' collection potential which has been prejudiced by dissipation. In fact, the last accounting that the United States received for the Bahamas Trusts are from Mr. Kroner's tax filings from the 2023 tax year, which shows a balance of only \$10 million. Ex. 10; Ex. 11. But the 2023 tax filings provide a value of the Bahamas Trusts that is over 20 months old.

That said, the United States has some information about dissipation of the Bahamas Trusts through Mr. Kroner's bankruptcy disclosures. Since filing for bankruptcy, Mr. Kroner has received over \$2.5 million in distributions from the Bahamas Trusts. Ex. 12 at 2. And Mr. Kroner does not have any intention of curbing his spending. Mr. Kroner's proposed Chapter 11 Plan allows him to continue to fund his lavish lifestyle with distributions from the Bahamas Trust. Ex.

5 at 30. Under Mr. Kroner's proposed Chapter 11 Plan, Mr. Kroner will continue receive at least \$76,000 per month in distributions from the Bahamas Trusts over the next five years.

At the same time, the harm to Mr. Kroner is minimal. Mr. Kroner will be allowed reasonable living expenses while the United States' interest in the Bahamas Trusts can be decided. Such terms are reasonable given Mr. Kroner's willful evasion of his tax liability. And the proposed spending limitations conform with the standards imposed on chapter 11 debtors for plan confirmation. See [11 U.S.C. §§ 707\(b\)\(2\)\(A\)\(ii\)\(I\)](#), [1129\(a\)\(15\)](#), [1325\(b\)\(3\)](#). Thus, the balance of harms caused by freezing the assets held by the Bahamas Trusts weighs in favor of the United States.

IV. THE COLLECTION OF ASSETS HELD BY THE BAHAMAS TRUSTS SERVES THE PUBLIC INTEREST

A preliminary injunction to preserve the status quo will serve the public interest in two ways. First, a preliminary injunction will serve the public interest by ensuring that the nation's tax laws are enforced. Second, a preliminary injunction will serve the public interest because Florida law does not recognize self-settled asset protection trusts. Thus, a preliminary injunction will serve the public interest.

A preliminary injunction will serve the public interest by ensuring that the nation's tax laws are enforced. The Supreme Court has recognized that taxes are the "lifblood of government," and it is in the public interest to enforce tax laws and maintain a sound system of taxation. See [Bull v. United States, 295 U.S. 247, 259 \(1935\)](#). But a stated purpose of the Bahamas Trusts was to prevent the IRS from enforcing our nation's tax laws. Ex. 4 at 45:4-17, 47:10-19. Mr. Bernstein, who set up the Bahamas Trusts, testified that his advice to Mr. Kroner was that the IRS could not reach foreign assets like the Bahamas Trusts. Ex. 17 at 468:16-22. In light of that advice, Mr. Kroner also testified that he was always under the impression that transferring his assets to the Bahamas Trusts would place his assets out of the reach of the IRS.

Ex. 4 at 45:4-17, 47:10-19.

While Mr. Kroner contested his liability against the IRS in Tax Court, he took actions to willfully evade collection of his pending liability by transferring assets to the Bahamas Trusts.

Just two months after filing his petition in Tax Court, Mr. Kroner earned \$14 million from the partial sale of his business. Ex. 4 at 116:10-18. Before the sale was final, Mr. Kroner wanted reassurance from Greenberg Traurig that the IRS could not reach assets transferred to the Bahamas Trusts. Ex. 18 (email to Mr. Kroner in response to request for advice on tax collection if he lost his Tax Court case). And Greenberg Traurig had discussions with Mr. Kroner about the IRS's ability to reach offshore assets. Ex. 19 at 62:19-25. Months later, Mr. Kroner transferred at least \$10 million to the Bahamas Trusts to place his assets out of the reach of the IRS. Ex. 20 at 3, 9 (bank statements showing \$14 million deposit in December 2014; \$10 million transfer in September 2015). Today, Mr. Kroner uses those same assets to fund his lavish lifestyle. Thus, a preliminary injunction will serve the public interest of enforcing the nation's tax laws.

Second, a preliminary injunction will serve the public interest because Florida law prohibits the enforcement of asset protection trusts. [Lawrence, 251 B.R. at 642](#). Indeed, Lawrence discusses the common-law rule against asset protection trusts under Florida law. *Id.*

Mr. Bernstein testified that the Bahamas Trusts were set up offshore because Florida law did not recognize asset protection trusts. Ex. 13 at 467:12-468:22. Nor does Florida law recognize asset protection trusts today. [Fla. Stat. Ann. § 736.0505\(1\)\(b\)](#). And yet Mr. Kroner will defend this suit to enforce the initial purpose of the Bahamas Trusts as an asset protection trusts. But that purpose violates Florida law. Thus, a preliminary injunction will serve the public interest by preventing Mr. Kroner from maintaining an asset protection trust in violation of Florida law.

CONCLUSION

Mr. Kroner has used the justice system to evade his substantial federal income tax liabilities. Over the last decade, Mr. Kroner has initiated three lawsuits to avoid personal accountability for his tax debt. The purpose of this lawsuit is to at last hold Mr. Kroner accountable for his tax liabilities. But Mr. Kroner cannot be held accountable if he can dissipate or transfer the assets held by the Bahamas Trusts before the Court can order repatriation.

Considering the substantial risk that Mr. Kroner will, absent a grant of relief, order the dissipation or transfer of the assets meant to collect the liabilities, a preliminary injunction is appropriate.

Dated: August 28, 2025 Respectfully submitted, By: /s/ Nicholas S. Willingham

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division
www.flsb.uscourts.gov

In Re:

Case No. 23-16097-MAM

Chapter 11

BURT KRONER,

Debtor.

BURT KRONER,

Plaintiff,

vs.

ADV. PRO. NO.:

UNITED STATES OF AMERICA
(INTERNAL REVENUE SERVICE)

Defendant.

**COMPLAINT (1) TO DETERMINE
DISCHARGEABILITY OF DEBT AND (2) FOR OBJECTION TO CLAIM**

The Debtor and Plaintiff, BURT KRONER, (hereinafter referred to as the “Debtor” and/or “Plaintiff”), by and through undersigned counsel, hereby files this Complaint to Determine Dischargeability of Debt against the United States of America (Internal Revenue Service), and states as follows:

1. Plaintiff is the Debtor in the main Chapter 11 proceeding, Case No. 23-16097-MAM (the “Bankruptcy Case”).
2. This is a core proceeding over which this Court has jurisdiction pursuant to 28 U.S.C. § 157(b)(2)(I).
3. This is an adversary proceeding to determine the dischargeability of debts, pursuant to 11 U.S.C. § 523, and Fed. R. Bankr. P. 3007(b), 7001(6).
4. Venue is proper in this district pursuant to 28 U.S.C. §1409(a) and other

applicable law.

5. Defendant, UNITED STATES OF AMERICA (INTERNAL REVENUE SERVICE), (hereinafter referred to as the “IRS”), is a creditor of the Plaintiff.

6. On August 1, 2023, the Debtor initiated the Bankruptcy Case by the filing of a Voluntary Petition under Chapter 11 of Title 11 of the United States Code in this Court.

7. The IRS filed a proof of claim on September 12, 2023, which claim has been assigned number 2 (“POC 2”).

8. In POC 2, the IRS asserts that it is a creditor of the Debtor for the following tax years and amounts:¹

<u>Tax Year</u>	<u>Income Tax</u>	<u>Interest to Petition Date</u>
2005	\$1,635,206.00	\$1,890,108.53
2006	\$5,718,288.85	\$5,712,944.59
2007	\$1,821,277.00	\$1,542,241.91

9. Additionally, in POC 2, the IRS asserts that the Debtor owes penalties for its delinquent income tax debt for the taxable years ending in 2005, 2006, and 2007 in the aggregate amount of \$2,293,692.97 (the “Penalty Claim”).

10. In POC 2, the IRS acknowledges that the Debtor’s tax liability for the taxable years ending in 2005, 2006, and 2007, was assessed on November 9, 2020.

11. November 9, 2020, predates the filing of the Bankruptcy Case by more than 240 days.

¹ The amounts listed in this paragraph and the next are for income tax debt plus interest and penalties through the petition date. The actual amount that the IRS may claim is due may be higher due to additional interest and penalties.

12. In POC 2, the IRS acknowledges that the Debtor's income tax liability for the taxable years ending in 2005, 2006, and 2007, inclusive of interest and penalties, is a general unsecured claim that is not entitled to priority treatment under 11 U.S.C. § 507(a)(8).

COUNT 1: DECLARATORY JUDGMENT

2007 Tax Year

13. The Debtor's tax liability for the taxable year ending in 2007 is for income taxes and interest, and a disputed penalty assessment (the "2007 Tax Debt").

14. The IRS's claim for the Debtor's 2007 Tax Debt is neither a gap claim in an involuntary case under 11 U.S.C. § 507(a)(3) nor a priority claim under 11 U.S.C. § 507(a)(8). Therefore, the 2007 Tax Debt is not excepted from discharge under 11 U.S.C. § 523(a)(1)(A).

15. The Debtor's 2007 tax return was due to be filed, including extension, by October 15, 2008.

16. October 15, 2008, predates the filing of the Bankruptcy Case by more than three years.

17. The IRS's claim for the 2007 Tax Debt is not a priority claim under 11 U.S.C. § 507(a)(8)(A)(i) because the Debtor filed his Bankruptcy Case more than three years after the 2007 tax return was due.

18. The IRS's claim for the 2007 Tax Debt is not a priority claim under either 11 U.S.C. § 507(a)(8)(A)(ii) or 11 U.S.C. § 507(a)(8)(A)(iii) because the IRS assessed the Debtor's 2007 Tax Debt more than 240 days before the Debtor filed his

Bankruptcy Case.

19. Although the IRS describes part of the 2007 Tax Debt as a “penalty”, the Debtor has not conducted discovery sufficient to determine whether the “penalty” is a penalty within the meaning of 11 U.S.C. § 507(a)(8)(G), and further disputes the IRS’s entitlement to any portion of its Penalty Claim.² Regardless, the “penalty” portion of the 2007 Tax Debt is not a priority claim under 11 U.S.C. § 507(a)(8)(G) because the “penalty” is neither related to a priority tax debt nor in compensation for actual pecuniary loss.

20. The Debtor’s 2007 Tax Debt is not excepted from discharge under 11 U.S.C. § 523(a)(1)(B) because the Debtor’s 2007 tax return was filed more than two years before the Debtor filed his Bankruptcy Case.

21. The Debtor’s 2007 tax return was filed on November 10, 2008.

22. November 10, 2008, predates the filing of the Bankruptcy Case by more than two years.

23. The Debtor did not make a fraudulent return or willfully attempt in any manner to evade or defeat his 2007 Tax Debt. The Debtor relied on the advice of counsel to determine his taxable income. Therefore, the IRS’s claim for the 2007 Tax Debt is not excepted from discharge under 11 U.S.C. § 523(a)(1)(C).

² The Debtor reserves the right to challenge whether the “penalty” portion of the 2007 Tax Debt is a penalty within the meaning of 11 U.S.C. § 507(a)(8)(G) and reserves the right to challenge the IRS’s entitlement to allowance of its Penalty Claim, should either determination become necessary.

2006 Tax Year

24. The Debtor's tax liability for the taxable year ending in 2006 is for income taxes and interest, and a disputed penalty assessment (the "2006 Tax Debt").

25. The IRS's claim for the Debtor's 2006 Tax Debt is neither a gap claim in an involuntary case under 11 U.S.C. § 507(a)(3), nor a priority claim under 11 U.S.C. § 507(a)(8). Therefore, the 2006 Tax Debt is not excepted from discharge under 11 U.S.C. § 523(a)(1)(A).

26. The Debtor's 2006 tax return was due to be filed, including extension, by October 15, 2007.

27. October 15, 2007, predates the filing of the Bankruptcy Case by more than three years.

28. The IRS's claim for the 2006 Tax Debt is not a priority claim under 11 U.S.C. § 507(a)(8)(A)(i) because the Debtor filed his Bankruptcy Case more than three years after the 2006 tax return was due.

29. The IRS's claim for the 2006 Tax Debt is not a priority claim under either 11 U.S.C. § 507(a)(8)(A)(ii) or 11 U.S.C. § 507(a)(8)(A)(iii) because the IRS assessed the Debtor's 2006 Tax Debt more than 240 days before the Debtor filed his Bankruptcy Case.

30. Although the IRS describes part of the 2006 Tax Debt as a "penalty", the Debtor has not conducted discovery sufficient to determine whether the "penalty" is a penalty within the meaning of 11 U.S.C. § 507(a)(8)(G), and further disputes the

IRS's entitlement to any portion of its Penalty Claim.³ Regardless, the "penalty" portion of the 2006 Tax Debt is not a priority claim under 11 U.S.C. § 507(a)(8)(G) because the "penalty" is neither related to a priority tax debt nor in compensation for actual pecuniary loss.

31. The Debtor's 2006 Tax Debt is not excepted from discharge under 11 U.S.C. § 523(a)(1)(B) because the Debtor's 2006 tax return was filed more than two years before the Debtor filed his Bankruptcy Case.

32. The Debtor's 2006 tax return was filed on November 19, 2007.

33. The Debtor did not make a fraudulent return or willfully attempt in any manner to evade or defeat his 2006 Tax Debt. The Debtor relied on the advice of counsel to determine his taxable income. Therefore, the IRS's claim for the 2006 Tax Debt is not excepted from discharge under 11 U.S.C. § 523(a)(1)(C).

2005 Tax Year

34. The Debtor's tax liability for the taxable year ending in 2005 is for income taxes and interest, and a disputed penalty assessment (the "2005 Tax Debt").

35. The IRS's claim for the Debtor's 2005 Tax Debt is neither a gap claim in an involuntary case under 11 U.S.C. § 507(a)(3), nor a priority claim under 11 U.S.C. § 507(a)(8). Therefore, the 2005 Tax Debt is not excepted from discharge under 11 U.S.C. § 523(a)(1)(A)

³ The Debtor reserves the right to challenge whether the "penalty" portion of the 2006 Tax Debt is a penalty within the meaning of 11 U.S.C. § 507(a)(8)(G) and reserves the right to challenge the IRS's entitlement to allowance of its Penalty Claim, should either determination become necessary.

36. The Debtor's 2005 tax return was due to be filed, including extension, by October 15, 2006.

37. October 15, 2006, predates the filing of the Bankruptcy Case by more than three years.

38. The IRS's claim for the 2005 Tax Debt is not a priority claim under 11 U.S.C. § 507(a)(8)(A)(i) because the Debtor filed his Bankruptcy Case more than three years after the 2005 tax return was due.

39. The IRS's claim for the 2005 Tax Debt is not a priority claim under either 11 U.S.C. § 507(a)(8)(A)(ii) or 11 U.S.C. § 507(a)(8)(A)(iii) because the IRS assessed the Debtor's 2005 Tax Debt more than 240 days before the Debtor filed his Bankruptcy Case.

40. Although the IRS describes part of the 2005 Tax Debt as a "penalty", the Debtor has not conducted discovery sufficient to determine whether the "penalty" is a penalty within the meaning of 11 U.S.C. § 507(a)(8)(G), and further disputes the IRS's entitlement to any portion of its Penalty Claim.⁴ Regardless, the "penalty" portion of the 2005 Tax Debt is not a priority claim under 11 U.S.C. § 507(a)(8)(G) because the "penalty" is neither related to a priority tax debt nor in compensation for actual pecuniary loss.

41. The Debtor's 2005 Tax Debt is not excepted from discharge under 11

⁴ The Debtor reserves the right to challenge whether the "penalty" portion of the 2005 Tax Debt is a penalty within the meaning of 11 U.S.C. § 507(a)(8)(G) and reserves the right to challenge the IRS's entitlement to allowance of its Penalty Claim, should either determination become necessary.

U.S.C. § 523(a)(1)(B) because the Debtor's 2005 tax return was filed more than two years before the Debtor filed his Bankruptcy Case.

42. The Debtor's 2005 tax return was filed on August 7, 2006.

43. August 7, 2006, predates the filing of the Bankruptcy Case by more than two years.

44. The Debtor did not make a fraudulent return or willfully attempt in any manner to evade or defeat his 2005 Tax Debt. The Debtor relied on the advice of counsel to determine his taxable income. Therefore, the IRS's claim for the 2005 Tax Debt is not excepted from discharge under 11 U.S.C. § 523(a)(1)(C).

WHEREFORE, the Plaintiff/Debtor respectfully requests that this Court enter a declaratory judgment determining that the Debtor's federal income tax debt for the taxable years ending in 2005, 2006, and 2007, inclusive of penalties and interest, is not excepted from discharge under 11 U.S.C. § 523, and for such other and further relief as this Court deems just and equitable.

COUNT 2: OBJECTION TO CLAIM

45. The Debtor does not owe the Penalty Claim.

46. The Debtor relied in good faith on the advice of counsel in reporting his taxable income for the tax years ending in 2005-2007. Such good-faith reliance satisfies the "reasonable cause" exception to the imposition of penalties for filing inaccurate tax returns. 26 U.S.C. § 6664(c)(1).

47. On October 8, 2014, the Debtor filed a petition with the United States Tax Court (the "Tax Court") that challenges the Penalty Claim. *Kroner v. IRS*, Docket

No. 23983-14 (the “Tax Case”).

48. The Tax Court concluded a trial on the Debtor’s challenge to the Penalty Claim prior to the filing of the Bankruptcy Case, but the automatic stay prevented, and continues to prevent, the Tax Court from deciding whether there was a reasonable cause for underpayment of the income-tax debt due for the taxable years ending in 2005-2007.

49. The Debtor reserves the right to raise all of the arguments made in the Tax Case record in opposition to allowance of the Penalty Claim.

WHEREFORE, the Plaintiff/Debtor respectfully requests that this Court disallow the IRS’s Penalty Claim.

Respectfully submitted,

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Korotki v. Kurman, P.A.

Superior Court of Pennsylvania

January 26, 2026, Filed

No. 2983 EDA 2024

Reporter

2026 Pa. Super. Unpub. LEXIS 197 *; 2026 LX 14914

ABRAHAM KOROTKI, RESERVES DEVELOPMENT, LLC, THE RESERVES RESORT, SPA & COUNTRY CLUB, LLC, THE RESERVES MANAGEMENT, LLC, STL DEVELOPMENT, LLC, ST2K, LLC, AND SALEENA KOROTKI v. OFFIT KURMAN, P.A., MAURICE L. OFFIT, ESQ., JOSEPH J. BELLINGER, ESQ., TIMOTHY C. LYNCH, ESQ., THEODORE MARASCIULO, ESQ., SCHWARTZ & SCHWARTZ, ATTORNEYS AT LAW, P.A., STEVEN SCHWARTZ, ESQ., GELLERT SCALI BUSENKELL & BROWN, LLC, MICHAEL BUSENKELL, ESQ., HILLER & ARBAN, LLC, ADAM HILLER, ESQ., BRIAN ARBAN APPEAL OF ABRAHAM KOROTKI, RESERVES DEVELOPMENT, LLC, THE RESERVES RESORT, SPA & COUNTRY CLUB, LLC, THE RESERVES MANAGEMENT, LLC, STL DEVELOPMENT, LLC, ST2K, LLC

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Opinion

[*1] Appeal from the Order Entered October 11, 2024

In the Court of Common Pleas of Philadelphia County Civil Division at

No(s): 141201053

BEFORE: LAZARUS, P.J., SULLIVAN, J., and STEVENS, P.J.E.*

MEMORANDUM BY LAZARUS, P.J.:FILED JANUARY 26, 2026

*Former Justice specially assigned to the Superior Court.

J-A22005-25

Abraham Korotki, Reserves Development, LLC, The Reserves Resort, Spa & Country Club, LLC, The Reserves Management, LLC, STL Development, LLC, and ST2K, LLC (collectively, the Korotki Parties), appeal from the order, entered in the Court of Common Pleas of Philadelphia County, granting summary judgment in favor of Appellees, Offit Kurman, P.A. (Offit Firm), Maurice L. Offit, Esquire (Attorney Offit), Joseph J. Bellinger, Esquire, Timothy C. Lynch, Esquire (Attorney Lynch), Theodore Marasciulo, Esquire, Schwartz & Schwartz, Attorneys at Law, P.A., Steven Schwartz, Esquire (Attorney Schwartz), Gellert Scali Busenkell & Brown, LLC, Michael Busenkell, Esquire, Hiller & Arban, LLC, Adam Hiller, Esquire (Attorney Hiller), and Brian Arban, Esquire (Attorney Arban) (collectively, the Offit Parties or Appellees), and dismissing Korotki's amended complaint, with prejudice, in this malpractice [*2] action. We affirm.

On December 5, 2014, the Korotki Parties filed a civil complaint alleging that seven attorneys and their three law firms committed legal malpractice for their roles in a bankruptcy proceeding. At this juncture,

only three defendants remain: Attorney Offit, Attorney Lynch, and the Offit Firm. Despite the voluminous record and protracted proceedings, we conclude that this appeal presents a straightforward question of causation, and that the trial court correctly determined that Appellees were entitled to summary judgment. Supporting that conclusion, however, requires a lengthy discussion of the facts. We begin there.

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In 1998, Abraham Korotki (Korotki) began developing The Reserves Resort Spa & Country Club (Reserves), a 185-lot real estate community in Sussex County, Delaware. The Reserves Resort Spa & Country Club, LLC (RRSCC) was the Reserves Development's corporate entity. On August 13, 2001, Korotki transferred real estate to Reserves Development, Corporation (Development), a limited liability company with a place of business in Ventnor City, NJ. Id. at ¶¶ 8-9, 53. Reserves Development then filed a Declaration of Restrictive Covenants (covenants) [*3] that contained, among other things, assessments and charges that would impose "certain monetary obligations on future lot owners." Amended Complaint, 9/22/15, at ¶ 54. Later, these covenants were amended to require additional payments in order to help fund the construction of amenities, improvements, and maintenance and were "subject to increase or decrease as determined by" the Reserves Management Corporation, LLC (Management), a business owned solely by Korotki.¹ See id. at ¶ 59; see also id. at ¶ 62 ("Management was created to, among other things, administer and enforce the restrictions and covenants and levy and collect the assessments and charges created by" the conveyances).

The development project was split into four phases. A subset of the 185 lots was fully developed in the first phase of the project. See Amended Complaint, 9/22/15, at ¶ 59 ("[]Korotki completed the infrastructure (roads, utilities, sanitary[,] sewer[,] and storm water management) in Phase 1 of the

¹The corporate form for some of these entities changed at some point. Those changes are not relevant to this appeal.

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Reserves Development and sold most of the lots within Phase 1 to homebuyers."). In [*4] 2004, Korotki "began to sell undeveloped lots" to various residential home building companies, and at least some of those companies "assumed full responsibility to complete the Phase 2 infrastructure." Id. at ¶ 65. Other transactions required that the buyers "among other things[,] . . . pay infrastructure costs based upon their pro rata ownership of the lots in Phase 3[.]" Id. at ¶ 69. However, as the amended complaint states, "[d]evelopment [s]tall[ed and l]itigation [e]nsue[d]." Id. at ¶ 71. The complaint alleged that these lot sales "led to various breaches of contract by the purchasers and/or their successors and assigns, among others, together with incidents of outright fraud, which generated a multiplicity of litigation in

the state courts of Delaware." Id. at ¶ 68. Ultimately, Korotki, in his individual capacity, and RRSCC declared bankruptcy.²

Several law firms represented Korotki and the various corporate entities³ in this endeavor, with regard to the critical decision ultimately to declare bankruptcy. Attorney Hiller, his partner, Attorney Arban, and their law firm, Hiller & Arban, were retained "in or about 2007" for "certain litigation

²The other corporate entities did not seek bankruptcy. [*5]

³For ease of reference, from this point on in this decision we will generally refer to the Korotki Parties as Korotki, unless otherwise warranted, as Korotki was the sole owner of RRSCC, Management, and Development. The remaining two entities were initially owned by his ex-wife, Saleena Korotki. The two divorced during the pendency of these proceedings and a New Jersey court transferred ownership to Korotki. Additionally, Saleena Korotki was separately represented and has not appealed.

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and other matters" relating to the Reserves Development. Attorney Schwartz and his law firm, Schwartz & Schwartz, represented Korotki as his "litigation counsel in or about 2007, and, by 2008, were deeply involved in most, if not all of the pending litigations[.]" Id. at ¶ 26.4

The parties dispute the Offit Parties' level of involvement in the decision to file for bankruptcy. This much is clear—the Offit Parties entered the picture upon the advice of some or all of the Delaware Attorneys to assist with letters of credit issued by the Wilmington Trust Company (WTC). The amended complaint alleged that one of the residential buyers had "misrepresented to [K]orotki and Reserves that it would [*6] pay its pro rata share of the bonding costs. Relying upon [these] false assurances, Reserves posted \$2,500,000.00 in cash for two irrevocable letters of credit" from WTC to Sussex County. Id. at ¶ 78. Korotki then "personally guaranteed the [WTC] letters of credit and, as a result, effectively[] personally guaranteed the completion of the Phase 3 infrastructure[.]" Id. at ¶ 80. Later, WTC "accepted a mortgage from Reserves encumbering 22 lots . . . as replacement collateral[.]" Id. at ¶ 75.

The WTC lines of credit and those 22 lots loom large in the history of this case. "On October of 2008, the Sussex County council called the

⁴For ease of discussion, these firms and the lawyers are collectively referred to as the "Delaware Attorneys."

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Wilmington Trust letters of credit [and, one] week later, Sussex County sent WTC a letter, demanding that it release the funds." Id. at ¶ 88. As a result,

[i]n November 2008, . . . Korotki, upon the advice and counsel of the [Delaware Attorneys], retained the Offit Firm to represent [Korotki, his related business entities[,] and Saleena Korotki for the purpose of, among other things, creating and implementing an "asset protection plan [(the [*7] plan)]."

Id. at ¶ 89. The amended complaint summarizes the steps of the plan as

follows:

a. On December 1, 2008, STL Development Corporation was created and 100 shares of its common stock were issued to Reserves Development Corporation;

b. On December 2, 2008, Reserves Development Corporation transferred the stock of STL Development Corporation to Korotki;

c. On December 3, 2008, Reserves Development Corporation deeded 69 lots to STL Development Corporation (the "69 Lots");

d. On January 16, 2009, Korotki's stock in STL Development Corporation was transferred to Saleena (his now ex-wife); and

e. Lastly, all other real property owned by Korotki, as well as all of his personal property, including all monies, were transferred to Saleena.

Id. at ¶ 91.

The 69 lots included in the plan did not include the 22 lots that were pledged as replacement collateral to WTC, and "[Attorney] Offit also directed Korotki . . . to retain 14 lots in his own name[,]" based on an assessment that 36 lots would be needed to cover the amount owed. Trial Court Opinion, 10/10/24, at 10. Thus, Korotki retained 36 lots in his name, while the 69 unsold lots subject to the plan were now owned by STL. The asset protection plan "ensured [*8] that no creditor . . . could look to the 69 [l]ots to satisfy its

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indebtedness, without first uncovering and then unwinding through judicial process the transfer to Saleena Korotki." Amended Complaint, 9/22/15, at ¶ 93.

Meanwhile, "[o]n or about June 9, 2010, WTC paid Sussex County on the letters of credit and demanded reimbursement from Korotki and Reserves." Id. at ¶ 94. Ultimately, "on February 13, 2012, USAP[5]obtained judgment against Reserves and [Korotki, in the amount of \$2,216,223[.00], plus interest, cost[s], and

attorneys' fees." Id. at ¶ 97. Korotki obtained his own judgment against USAP, with the intention of pursuing a counterclaim against USAP.

At this point, USAP had the ability to foreclose on the 22 lots that Korotki had pledged as replacement collateral to WTC. However, as Korotki concedes, foreclosure was unlikely due to the assessment fees owed to Management.⁶

Thus, USAP took other efforts to enforce its judgment. In "the latter part of 2012, among other times, Attorneys Offit and Lynch, together with Attorneys Hiller and Schwartz, advised [Korotki that both he and [RRSCC] should file bankruptcy under Chapter 11 of the United States Bankruptcy Code." Id. at ¶ 99. By filing under Chapter 11, Korotki [*9] would enjoy "debtor-in-possession"

⁵USAP obtained WTC's lien.

⁶In total, "each lot was encumbered with upfront charges of close to \$100,000[.00] on top of the cost of the undeveloped land." Trial Court Opinion, 10/10/24, at 5.

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status and retain control of his assets, including Management,⁷while the corporate entities reorganized and refinanced, as he intended to continue developing the project. The debtors hoped to have the court approve a reorganization, "establish[ing] a 'liquidating trust,' consisting of effectively one 'asset,' all of Korotki's pending and potential lawsuits against various defendants for alleged fraud and contractual breaches (known as the Multi-Million Dollar Claims). Id. at ¶ 127. Korotki alleged that these suits, if all were successful, were potentially worth over \$40,000,000.00, plus fees. The plan was to pay the expenses of administering the trust from the assets, thus "requir[ing] the creditors to fund the prosecution" of these claims. Id. at ¶ 129.

Importantly, debtor-in-possession status allowed Korotki "to continue to prosecute the highly valuable pending state court litigations[,] . . . while any pending claims asserted against [Korotki [*10] and Reserves would be halted." Id. at ¶ 106. Additionally, the Offit Firm "would seek appointment as special litigation counsel once the bankruptcy had been filed in order to continue to litigate the state court actions." Id. at ¶ 113. "On December 10, 2012, Attorney Hiller filed voluntary petitions for relief under Chapter 11 . . . on behalf of [Korotki and Reserves." Id. at ¶ 117. Korotki specially averred in the complaint that "[t]hese filings were the joint strategy and work product of the Offit [Parties] and the Delaware Attorneys." Id.

⁷ Management did not declare bankruptcy.

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Korotki describes the ensuing bankruptcy proceedings as "utter disasters" having "disastrous effects" on his own lawsuits and judgments pertaining to the Reserves Development. Id. at ¶ 120. "[T]he defendants in those actions, together with their respective affiliates, successors, assigns and agents[,] swarmed the bankruptcy cases . . . as purported 'creditors.'" Id.

The Office of the United States Trustee and several creditors persuaded the bankruptcy court to convert the Chapter 11 proceedings to Chapter 7 proceedings. This stripped Korotki and RRSCC of debtor-in-possession status and placed [*11] all assets under control of the Chapter 7 trustee, "who took possession of the assets for liquidation and distribution to creditors." *Id.* at ¶ 140. The various parties to the bankruptcy proceeding eventually reached a settlement, with Korotki releasing all his claims with the exception of these malpractice actions. The lots included in the settlement were sold at auction for approximately \$10,000,000.00, and some of the proceeds were used to pay various creditors. Korotki received approximately \$4,500,000.00 in cash from the settlement.

With that background in mind, we now turn to the instant legal malpractice proceedings. On December 5, 2014, Korotki filed a writ of summons against the Offit Parties and the Delaware Attorneys (collectively, Defendants) in the Court of Common Pleas of Philadelphia County. Then, on March 18, 2015, Korotki filed a complaint containing five counts: professional malpractice; breach of fiduciary duty; breach of contract; abuse of process (against Hiller Firm/Attorney Hiller/Attorney Arban); and conversion (against

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Offit Parties). See Complaint, 3/18/15, at 31-39. The essential theory was straightforward: the Defendants committed malpractice [*12] by recommending bankruptcy and failing to explain the potential drawbacks of the bankruptcy proceedings to Korotki, where Korotki ultimately lost everything, except approximately \$4,500,000.00 dollars, while "USAP and the other state court defendants were paid in full without paying any assessments or damages." Korotki's Brief at 55. Korotki alleged that if the Defendants had not recommended bankruptcy, then he "would not have suffered any damages." *Id.* He further avers that "[t]he worst-case scenario, absent bankruptcy," would have been losing all the state court cases and the 22 lots pledged as collateral, but he would still own everything else, including the assets protected by the plan.⁸ *Id.*⁹

⁸As stated earlier, Korotki kept a total of 36 lots to cover the USAP judgment- the 22 pledged as the replacement collateral plus 14 more. However, those additional 14 lots were not part of the asset protection plan, and Korotki later transferred those 14 lots, apparently without the Offit Parties' knowledge.

⁹Defendants filed preliminary objections and the attorneys from Delaware were quickly dismissed, as they successfully objected on jurisdictional grounds. Korotki, however, pursued a malpractice claim [*13] against those parties in Delaware (Delaware lawsuit).

On September 3, 2015, however, the trial court dismissed the instant complaint as to the remaining defendants, the Offit Parties, giving Korotki leave to file an amended complaint within 20 days, concluding that he had failed to adequately plead proximate causation that would link the Defendants' breach of fiduciary duty to any harm. See Order, 9/2/15. On September 22, 2015, Korotki filed an amended complaint,

now including allegations that, had the bankruptcies not been filed, he would have retained control of the Reserves and completed the remaining work on the project, including selling

(Footnote Continued Next Page)

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The court permitted the parties to file expert reports and dispositive motions no later than January 16th and 30th, respectively. On January 30, 2017, the Offit Parties filed a motion for summary judgment, arguing that Korotki could not establish causation or damages as a matter of law. On March 27, 2017, Korotki filed an answer to the motion. However, recognizing that relevant factual issues in the case were being decided by the Delaware Superior Court at the time, see Order, 6/26/17, the trial court [*14] denied the motion as "unripe without prejudice to refile and brief whether [res] judicata or c[o]llateral estoppel principles apply in support of [the Defendants'] burden to prove [entitlement to] summary judgment." *Id.*

Ultimately, the Delaware Attorney prevailed in the Delaware lawsuit following a jury trial in 2017. On August 29, 2017, the Offit Parties renewed their motion for summary judgment, alleging that there was nothing in the record to help a jury determine whether "any particular Plaintiff" had suffered harm or the reason that they suffered harm and that Korotki's damages expert's report did not address proximate causation. Memorandum of Law in Support of Defendants' Renewed Motion for Summary Judgment, 8/29/17, at 30, 38. Korotki filed an answer to the motion on October 12, 2017. On March 23, 2018, the Honorable Ramy Djerassi granted partial relief, entering

the remaining lots for more money than they were sold under the bankruptcy settlement. However, on September 30, 2015, the court ordered the case discontinued, without prejudice. Korotki filed a petition to strike off the discontinuance and, after considering the petition and the Offit Parties' answer thereto, the court [*15] granted the petition, struck the discontinuance, and reinstated the case on November 10, 2015.

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judgment in favor of Defendants Theodore Marasciulo, Esquire, and Joseph J. Bellinger, Esquire, both of whom worked for the Offit Firm, on all of plaintiff's claims on the basis that Korotki failed to produce any evidence that those two lawyers were in contact with Korotki at the relevant times. Judge Djerassi dismissed Korotki's claims for damages "based on the alleged value of [the] pending Delaware State Court litigation 'as too speculative and unsupported by expert testimony.'" Order, 3/22/18, at 1. Finally, the court denied the remainder of the motions, noting that "Plaintiffs' evidence that the remaining defendants' alleged malpractice caused plaintiffs to lose over \$10 million with respect to the sales of certain lots of real property is sufficient to allow such claims to survive summary judgment." *Id.* at 2, 2 n.3.

Proceedings were delayed for various reasons, including the COVID-19 pandemic. The Honorable James Crumlish, III, took over the case following Judge Djerassi's reassignment to Orphans' Court, and issued a revised case management order on June 5, 2024, setting [*16] jury selection for November 1, 2024. On August 15, 2024, the Offit Parties filed another summary judgment motion focusing specifically on the fact that "Plaintiffs . . . [failed to] explain how they would have escaped their financial and legal problems without bankruptcy [and] can[not] establish how they relied on the Defendants . . .

when filing the bankruptcies [] because those Defendants did not represent Plaintiffs in bankruptcy or prepare the bankruptcy petitions on Plaintiffs' behalf." Defendants' Motion for Summary Judgment, 8/15/24, at 2 (italics in original). Specifically, the Offit Parties focused on Korotki's failure to show

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they were the "but-for cause" of his damages and/or that they proximately caused his damages, and also argued that Korotki's claims were barred by plaintiff's own contributory negligence. *Id.* at 2-3. Korotki filed an answer opposing the motion on September 16, 2024. Following oral argument, on October 11, 2024, the trial court granted summary judgment with regard to the remaining Offit Parties and dismissed Korotki's amended complaint with prejudice. The court explained its rationale for the ruling in a thorough thirty-one-page opinion, [*17] ultimately concluding that "Korotki had actual bankruptcy attorneys who were retained for th[e] purposes [of pursuing bankruptcy] and whose advice and legal work to effectuate the proceeding implicated a series of decisions about the timing and content of the filing that have no proximal connection to the Offit [Parties]." Trial Court Opinion, 10/11/24, at 30 (emphasis added).

Turning to the Offit Parties' role in crafting the asset protection plan, the trial court reiterated that "[t]iming is everything" and cited Korotki's allegation in the Delaware malpractice action "that he only sought to devise the plan on the recommendation of lawyers representing him in litigation involving [WTC]

10 At the commencement of oral argument on their motion, the Offit Parties' reiterated the issues they laid out in their motion: (1) lack of but-for causation of any damages; (2) lack of proximate causation; (3) Korotki's contributory negligence is a contributing cause and bars his claims; and (4) Saleena Korotki's lack of damages. See N.T. Summary Judgment Hearing, 9/25/24, at 4.

11 The court's *Pa.R.A.P. 1925(a)* opinion directs this Court to its October 11, 2024 summary judgment opinion for its rationale. See *Pa.R.A.P. 1925(a)*.

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and in the context of limiting his exposure to liability on the letters of credit," meaning that Korotki must have "rush[ed] to effectuate asset transfers while the restraining order was in place." *Id.* at 9. Then, "during the status quo enabled by the restraining order," the Offit Firm created STL Development, LLC (STL), and "Korotki transferred his shares of stock in STL to his then-wife, Saleena, all tax-free transactions. Apart from this 'plan,' Korotki also converted a joint bank account containing at least \$8 million to an account solely in Saleena's name." *Id.* at 9-10 (footnote omitted).

The trial court noted that the Offit Parties' role in this "reshuffling" of assets concluded in early 2009 when the plan was executed. Ultimately, WTC and its successor, USAP, obtained a ruling in its favor, that was reduced to judgment, in 2012. Again, the trial court flagged the timing of the bankruptcy in relation to USAP's efforts to collect its judgment, concluding that the "proceedings to obtain payments on the letters of credit are critical to an assessment of the causal nexus to the purported advice and alleged losses purportedly the result of the bankruptcy filing." *Id.* at [*19] 12. USAP had sought to depose Korotki and Saleena, and additionally "sought the testimony of a corporate representative on behalf of STL[.]" *Id.* at 13. We quote at length the trial court's findings regarding USAP's efforts to collect and the bankruptcy filing.

Court records indicate that USAP had to seek to compel production of documents and a court-ordered date for depositions. An order was entered on November 16, 2012[,], directing production of documents by

December 10, 2012 and ordering Korotki to appear for deposition on December 14, 2012. As . . . conceded in their

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[d]isclosure statement in the [b]ankruptcy case, "USAP's persistent collection efforts eventually became too hostile and expensive, and the Debtors realized that their only chance of preventing a complete and total loss was to seek bankruptcy relief." The timing of the bankruptcy filing confirm[s] this objective - the [p]etition was filed on December 10, 2012-the day the documents were to be produced and four days before Korotki's court-ordered deposition. Korotki told [Attorney] Offit that he was concerned about having his deposition taken in the context of both of them having to give testimony related [*20] to the execution of the judgment, testimony that would likely reveal the efforts to protect assets and render Korotki judgment proof, transactions that the prevailing [p]laintiff, described as persistent and hostile, would likely unwind. [Korotki Parties] contend that, in response to Korotki's expressions of concern about having to respond, under oath, and to describe how he had no assets to pay the judgment (because of his potentially fraudulent transfers), [Attorney] Offit "strongly advised" Korotki to file for bankruptcy and that, but for [Attorney] Offit's strong encouragement, Korotki would have never considered it and would, accordingly, not have lost control over the assets in the proceeding. This assertion is totally in conflict with Korotki's sworn representations to the bankruptcy court.

While [Attorney] Offit admits to having raised the issue with Korotki at some point after learning about his concerns over testifying, [Korotki Parties] leave the impression that [Attorney] Offit was the first advisor to broach the topic and pushed Korotki in the direction as his key legal advisor. However, there is no support in the record for such an impression other than Korotki's self-serving [*21] statements and those of his self-interested co-plaintiff and ex-wife and his paid expert (who relies on Korotki's self-serving statements). More importantly, documents and testimony in the record wholly undermine [this] position.

Id. at 14-15 (citations and footnote omitted).

The trial court then cited facts belying Korotki's attempt to "have this court believe that he was blindsided by the bankruptcy proceedings and entered them only after his attorneys, including [Attorney] Offit, made insufficiently considered recommendations to go down this road." Id. at 16.

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In particular, Korotki's own exhibits attached to his reply to the motion for summary judgment established that Korotki spoke to Attorney Hiller about insolvency on September 5, 2012, which was one day after Attorney Schwartz advised Korotki that a deposition was imminent. The timesheets from certain Delaware Attorneys showed that Korotki had discussed bankruptcy on several occasions, including the impact of Chapter 11 proceedings. See id. at 15. Turning to the legal elements of professional malpractice, the trial court

observed that Korotki "allege[d] that if [the Offit Parties] had 'properly designed' this [asset protection] [*22] plan, Korotki's assets would have been protected and the bankruptcy proceeding would not have been necessary." *Id.* at 10. In short, "but for [Attorney] Offit's strong encouragement, Korotki would have never considered [bankruptcy] and would, accordingly, not have lost control over the assets in the proceeding." *Id.* at 14. The trial court noted that the Offit Parties' motion for summary judgment only challenged whether the advice caused harm and thus did not challenge whether the Offit Parties had a duty to properly advise Korotki or RRSCC and/or whether that duty was breached. The court then concluded that, as a matter of law, Korotki could not show either "but for" causation or proximate harm.

[E]ven if [the Korotki Parties] could demonstrate a factual basis for the existence of a duty, the issue for this court is whether there is a causal link between the alleged professional deficiencies and the claimed damages. [Offit Parties] contend that the evidence does not establish "but for causation"-i.e. that [Korotki] would have prevailed in the underlying matters (either the USAP litigation, the liability from which they were seeking to avoid in the [b]ankruptcy [c]ourt[,], or in the [b]ankruptcy [*23] proceeding) or fared better but for the negligence of the [Offit Parties]. [Offit

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Parties] also argue that the challenged advice is not proximally related to the aspects of the bankruptcy that are tied to the [Korotki Parties]' claimed damages. Finally, the [Offit Parties] raise an issue related to a break in any asserted causal chain attributed to Korotki's own conduct that impacts the causal nexus.

In considering the "but for" issue, [Korotki] dismissively suggest[s] that the USAP litigation was a non-issue because . . .

the \$80,000[.00] infrastructure assessment made the lots unsaleable and any judgment allegedly uncollectible because "[Korotki] had no money and no attachable assets because of the Asset Protection Plan." Allegedly, Korotki would never have had to pay any judgment. This argument ignores the "elephant in the room" and wholly disregards Korotki's statements under oath in his disclosure statements. The "elephant" is the series of asset protection moves that Korotki undertook for the express purpose of making himself judgment proof, moves that would only succeed if he could fend off creditors for long enough, while they had [no] knowledge of the transfers. [*24] This did not occur. USAP had a judgment against him before the four-year expiration[12]period and without knowledge of the transfers and was poised to uncover the transfers during the discovery in aid of execution. [Korotki Parties] at oral argument conceded that the plan was not airtight and that they had no guarantee that it would prevent a fraudulent transfer claim. Additionally, [Korotki Parties] further conceded that they were not claiming that [Offit Parties] committed malpractice in the formulation of the plan. The only claim is that the plan should have allowed Korotki to fend off or discourage creditors-not so with USAP. As Korotki stated, under oath, to the Bankruptcy Court: "USAP's persistent collection efforts eventually became too hostile and expensive, and the Debtors realized that their only chance of preventing a complete and total loss was to seek bankruptcy relief." Plaintiffs are bound by this admission statement and cannot now contend that the bankruptcy and

advice from Offit was the but-for in their abandoning the litigation against USAP and diverting to the bankruptcy remedy. In addition, this admission undermines any suggestion that the debtors would have fared [*25] better against USAP but for Offit "strongly recommending bankruptcy." [Korotki Parties] admit that they were facing circumstances in which Korotki's efforts to hide his assets were about to be uncovered, giving USAP the ability to unwind the transfer to [Saleena] and potentially wresting

12 This point is addressed in the body of this memorandum.

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control of the development from the debtors. Vis-a-vis the USAP judgment, Korotki was neither better nor worse off for filing bankruptcy and has no evidence to show that he would have secured a more favorable outcome. Any assertion to the contrary is purely unsubstantiated opinion and wholly speculative.

Id. at 26-28 (emphasis added; original footnotes and citations to record omitted).

Separately, the trial court concluded that Korotki could not show proximate harm, as the bankruptcy did not "prevent[] [Korotki] from succeeding in [his] financial goals." Id. at 28. The trial court concluded that any realization of "alleged 'assets' in the form of projected litigation proceedings are purely speculative and do not represent a legitimate source of income." Id. The trial court determined that Korotki is "precluded from making such a claim [*26] by virtue of [his] assertions in the [b]ankruptcy [c]ourt that [he] had NO assets whatsoever." Id. Accordingly, the trial court was not persuaded that Korotki "would have retained control over the development had there not been malpractice." Id.

[T]his court is compelled to conclude, as the [b]ankruptcy [c]ourt found in concluding that the debtors had mismanaged the business, which was no longer a going concern, had only the 22 encumbered lots in the debtors' possession and no financing and no wherewithal to conduct a rehabilitation[,] that [Korotki] lacked the ability to complete the development and realize[]d the asserted damages (despite speculation to the contrary). These findings of financial incapacity did not arise out of the bankruptcy but existed prior to it-by design and to render Korotki "judgment proof." Thus, the causal nexus between the loss of control and the inability to realize significant income from the development is of Korotki's own purposeful making and not the produc[t] of attorneys failing to warn him not to file for bankruptcy.

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Id. at 28-29.13

Korotki timely filed a notice of appeal and court-ordered Rule 1925(b) statement. Korotki presents one issue for our [*27] consideration: "Did the trial court err when it granted summary judgment in favor of [the Offit Parties] where there existed genuine issues of material fact as it relates to causation?"

Korotki's Brief, at 7.

Our standard of review of an order granting or denying summary judgment is well-settled:

We view the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Only where there is no genuine issue as to any material fact and it is clear that the moving party is entitled to a judgment as a matter of law will summary judgment be entered. Our scope of review of a trial court's order granting or denying summary judgment is plenary, and our standard of review is clear: the trial court's order will be reversed only where it is established that the court committed an error of law or abused its discretion.

Daley v. A.W. Chesterton, Inc., 37 A.3d 1175, 1179 (Pa. 2012) (citation omitted).

The "failure of a non-moving party to adduce sufficient evidence on an issue essential to his case and on which he bears the burden of proof establishes the entitlement of the moving party to judgment as a matter of law." [Sokolsky v. Eidelman](#), 93 A.3d 858, 862 (Pa. Super. 2014) (citation omitted). We must "determine [*28] whether the record either establishes that the

13The trial court alternatively concluded that Korotki could not prevail regardless because the conversion from Chapter 11 to Chapter 7 was attributable to Korotki's conduct during bankruptcy, not anything his lawyers did or did not do. See Trial Court Opinion, 10/10/24, at 31-32.

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material facts are undisputed or contains insufficient evidence of facts to make out a prima facie cause of action, such that there is no issue to be decided by the fact-finder." *Id.* (citation omitted). Summary judgment is not permitted if the evidence permits "a fact-finder to render a verdict in favor of the non-moving party[.]" *Id.* (citation omitted).

We begin with prefatory matters regarding the trial court's factual findings and application of the standard of review. In Korotki's view, the trial court's opinion "reads more like a closing argument . . . [and] is even outfitted with a theme: 'timing is everything.'" Appellant's Brief, at 38. Korotki emphasizes that "the trial court ignored that it was [Attorney] Offit's idea to file bankruptcy." *Id.* at 44 (emphasis in original). Citing the trial court's references to Korotki exploring bankruptcy [*29] before consulting the Offit Parties, Korotki argues that the trial court incorrectly resolved a disputed factual point in the movant's favor. See *id.* at 45. More specifically, Korotki claims that the trial court made "unsupported inferences, improper credibility

determinations, and . . . grafte[d] the content of pleadings from other cases in other jurisdictions onto this case." See id. at 37.

We disagree with Korotki, as the trial court cited those facts to illustrate the dire financial straits Korotki faced as early as 2008 and to supply context for its causation analysis. Moreover, a conclusion that the Offit Parties had no role in the decision to seek bankruptcy would imply that the trial court granted summary judgment on the basis that there was no duty, an incorrect

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presumption where the court's ruling was based on a lack of causation.¹⁴

Notably, Judge Crumlish's opinion emphasized the timing of the Offit Parties' role in the project, pointing out that, prior to retaining the Offit Firm in November of 2008, "Korotki . . . took other steps to erect hurdles to his potential and actual litigation opponents obtaining any meaningful recovery against him." Trial Court [*30] Opinion, 10/10/24, at 6. The trial court cited the complaint against the Delaware Attorneys filed in Delaware, which alleged that Korotki "consulted Hiller in June 2008[.]" Id. (emphasis omitted).

Next, the trial court pointed out that in November of 2008, Korotki sought "a temporary restraining order" against WTC to halt the letters of credit being called, thus "demonstrat[ing] that Korotki was concerned about the [l]etters of [c]redit, was anticipating a financial impact on himself and the development if the letters were called, and followed his TRO lawyers' recommendation to take steps to 'protect his assets' in response to the potential risk." Id. at 7-8. Therefore, "as early as the filing of the injunction case in 2008, [Korotki] had considered the prospect of having to file for bankruptcy and represented to the court that it would cause irreparable injury, presumably having explored it fully before arguing it as a factor[.]" Id. at 8. Accordingly, the trial court concluded that Korotki "had admittedly talked to

¹⁴The Offit Parties raising the "idea" of seeking bankruptcy is analogous, in our view, to a primary care physician recommending that a patient see a specialist for a potential [*31] medical concern. If the specialist opts to treat the concern in a negligent fashion, it is not readily apparent that the referring physician would have any liability.

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attorneys about bankruptcy" before consulting the Offit Firm in November of 2008. Id.; see also id. at 12 (trial court concluding "proceedings to obtain letters of credit are critical to an assessment of the causal nexus to the purported advice and alleged losses purportedly the result of the bankruptcy filing"). We, therefore, reject the overarching assertion that the trial court "completely ignore[d] the record evidence . . . regarding Korotki's decision to pursue bankruptcy." Id. at 43.¹⁵

We now review Korotki's claims of legal malpractice. To maintain that cause of action, Korotki must demonstrate: "1) employment of the attorney

or other basis for a duty; 2) the failure of the attorney to exercise ordinary skill and knowledge; and 3) that such negligence was the proximate cause of damage to the plaintiff." *Sabella v. Est. of Milides*, 992 A.2d 180, 187 (Pa. Super. 2010) (emphasis added) (quoting *Kituskie v. Corbman*, 714 A.2d 1027, 1029 (Pa. 1998)). As previously noted, the Offit

15In a related argument, Korotki argues that the trial court erred by applying [*32] the doctrine of judicial notice to the contents of filings in other matters, such as the bankruptcy proceedings. This argument is meritless.

First, Korotki himself submitted these documents as exhibits to his reply to the motion for summary judgment and relied on their contents for other points. Korotki fails to describe exactly how the trial court erred by relying on materials Korotki included for its consideration. Certainly, it is fair for Korotki to argue that any contradictions in those materials creates a factual dispute. However, he does not explain how he can deny his own statements. Cf. *In re Adoption of S.A.J.*, 838 A.2d 616, 621 (Pa. 2003) (discussing doctrine of judicial estoppel; "Federal courts have long applied this principle of estoppel where litigants play 'fast and loose' with the courts by switching legal positions to suit their own ends.") (citation omitted).

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Parties' summary judgment argument was limited to the third element, causation. We, thus, confine our review to that element, noting that the *Sabella* test is conjunctive, not disjunctive.¹⁶

We have recognized the "unique nature of a legal malpractice claim[.]" *Heldring v. Lundy Beldecos & Milby, P.C.*, 151 A.3d 634, 641 (Pa. Super. 2016), where a plaintiff "must prove a case within a case since he must initially [*33] establish[.] by a preponderance of the evidence[.] that he would have recovered a judgment in the underlying action[.]" *Kituskie*, 714 A.2d at 1030. This "case within a case" element was described in *Kituskie* as a precedent condition. There, the Court noted:

It is only after the plaintiff proves he would have recovered a judgment in the underlying action that the plaintiff can then proceed with proof that the attorney he engaged to prosecute or defend the underlying action was negligent in the handling of the underlying action and that negligence was the proximate cause of the plaintiff's loss since it prevented the plaintiff from being properly compensated for his loss.

Id. at 1030 (emphasis added). See also *Garman v. Angino*, 230 A.3d 1246, 1251 (Pa. Super. 2020) (same).

16The trial court opinion and the parties' briefs discuss both "but for" causation and proximate causation. The former concept is often used synonymously with factual causation. "In the usual course, this standard requires the plaintiff to show 'that the harm would not have occurred in the absence of- that is, but for-the defendant's conduct.'" [Univ. of Texas Sw. Med. Ctr. v. Nassar , 570 U.S. 338, 346-47 \(2013\)](#). To establish proximate cause, "a plaintiff must adduce evidence to show that the defendant's act was a substantial factor in bringing about [*34] the plaintiff's harm." [Constantine v. Lenox Instrument Co., Inc., 325 A.3d 725, 738 \(Pa. Super. 2024\)](#) (citation omitted).

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"An essential element to [a legal malpractice] cause of action is proof of actual loss[,] rather than a breach of a professional duty causing only nominal damages, speculative harm[,] or the threat of future harm." Kituskie, 714 [A.2d at 1030](#). Logically, the failure to establish entitlement to a recovery in the "other case" renders any such harm entirely speculative for purposes of causation in a malpractice action.

Relatedly, this case presents an unusual twist on the usual legal malpractice cases that "are [typically] brought by former plaintiffs who allege that in prior litigation, absent negligence by their former counsel, they would have obtained judgment[.]" [FCS Cap. LLC v. Thomas, 579 F. Supp. 3d 635, 649 \(E.D. Pa. 2022\)](#). Here, Korotki's amended complaint does not allege that the Offit Firm negligently performed litigation services when structuring the asset protection plan or representing Korotki in any particular lawsuit. Cf. [Sokolsky, supra](#) (plaintiff alleged her attorneys negligently failed to file medical malpractice action prior to statute of limitations expiring). While it is not entirely clear what constitutes the "case within a case" in the instant matter, Korotki's expert, Jeffrey Kurtzman, [*35] Esquire, sheds some light on this concept in the "Resulting Damages" section of his expert report, which states:

Based upon by review of the record, including the [a]ffidavit of Abraham Korotki [r]egarding damages, I have seen sufficient evidence to conclude [Offit Kurman]'s negligence caused damages to [Korotki], including [(i)] the loss of the extremely valuable state court lawsuits which included judgments; [(ii)] the total loss [of] the Reserves [Development]; [(iii)] substantial losses resulting from the bulk sale of the lots at the Reserves [Development] at a substantial discount per the Chapter 7 trustee's resolution of the bankruptcy cases; and [(iv)] substantial

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legal fees paid to [Offit Kurman] for legal work that provided no benefit to . . . [Korotki]."

Expert Report of Jeffrey Kurtzman, Esq., 10/3/16, at 20 (attached as Exhibit 10 to Memorandum of Law in Support of Defendants' Motion for Summary Judgment). Thus, we view Korotki's claim that he suffered substantial losses by proceeding to bankruptcy-versus pursuing his state court cases, keeping his asset protection plan, and continuing development of the Reserves-as the "case within the case."

However, again, unlike [*36] a typical legal malpractice action, we are not examining whether the Offit Parties breached a duty by mishandling or negligently handling the bankruptcy proceedings where, in fact, they never performed the bankruptcy work.¹⁷ The fact remains that Korotki retained his own attorneys to specifically give him bankruptcy advice and perform legal work for purposes of pursuing bankruptcy. See Trial Court Opinion, 10/10/24, at 30. The trial court concluded that any realization of "alleged 'assets' in the form of projected litigation proceedings are purely speculative[,] do not represent a legitimate source of income [and Korotki is] precluded from making such a claim by virtue of [his] assertions in the [b]ankruptcy [c]ourt

¹⁷In fact, Korotki only raises the issue of causation, not duty, on appeal. Thus, we confine our review to that specific issue. See Sabella, supra. To the extent that Korotki claims the Offit Parties' "strong recommendation" to pursue bankruptcy was the equivalent of bad advice that breached some sort of duty, we again fall back on the fact that to succeed with that line of reasoning, he must also prove that there was causation. See Trial Court Opinion, 10/10/24, 28 (even if Offit [*37] Parties owed Korotki duty, Korotki could not show proximate harm as bankruptcy did not "prevent[] [Korotki] from succeeding in [his] financial goals.").

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that [he] had NO assets whatsoever." Id. Accordingly, the trial court was not persuaded that Korotki "would have retained control over the development had there not been malpractice." Id. See also id. at 29 ("[The] causal nexus between the loss of control and the inability to realize significant income from the development is of Korotki's own purposeful making and not the produc[t] of attorneys failing to warn him not to file for bankruptcy.").

Next, Korotki claims that the trial court implicitly applied the collateral estoppel doctrine by attaching preclusive effect to the instant matter based on the 2017 Delaware court verdict. See Appellant's Brief at 47 ("While not outright saying so, the trial court's summary judgment ruling was in large part grounded in what occurred in the 2017 Delaware [a]ction."). Korotki points out that Judge Djerassi rejected the Offit Parties' summary judgment motion raising that claim, and, thus, the law-of-the-case doctrine precluded Judge Crumlish from revisiting that ruling. Korotki is [*38] entitled to no relief on this claim. Substantively, the trial court decided the instant summary judgment motion based on the fact that there was a lack of causation, not that the instant action was precluded based upon the Delaware verdict.

Furthermore, Korotki argues that "the elements of the[] doctrines [of res judicata/collateral estoppel¹⁸] are not satisfied because the parties to the

¹⁸Collateral estoppel "bars re-litigation of an issue that was decided in a prior action, although it does not require that the claim as such be the same."

[Appeal of Coatesville Area Sch. Dist., 244 A.3d 373, 379 \(Pa. 2021\)](#). Res judicata, or claim preclusion, "bars actions on a claim, or any part of a claim,

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2017 Delaware Action are not the same[.]" *Id.* at 47 (italics in original). More importantly, for present purposes, is Korotki's argument that plaintiffs "are not attempting to circumvent the jury verdict in the 2017 Delaware [a]ction."

Id. at 48 (italics in original). They argue:

Instead, [Korotki] sought redress for the harm caused by Offit Kurman's malpractice. Whereas the underpinnings of the 2017 Delaware [a]ction were against different parties and centered on the bankruptcy plan, the underpinnings of the Offit Kurman [*39] malpractice claim focus on the [a]sset [p]rotection [p]lan and Offit Kurman's failure to advise [Korotki] regarding [the] bankruptcy's effect on that [p]lan.

Id.

This is a distinction without a difference. First, unless Korotki can establish that Chapter 11 bankruptcy had no hope whatsoever of succeeding, then ascertaining what "effect" the mis-advice had on the bankruptcy necessarily includes the results of that proceeding, which in turn entails an examination of whether the Delaware Attorneys committed malpractice. Had the initial bankruptcy plan succeeded, Korotki would have retained the assets covered by the asset protection plan, in addition to numerous other benefits. What Korotki fails to address is that the "effect" of bankruptcy was

unknowable at the time the complained-of advice was supplied. Lawyers must exercise skill and knowledge, but they are not required to be clairvoyant.

which was the subject of a prior action, or could have been raised in that action." *Id. at 378* (citations omitted). To the extent that the claim is one of res judicata or collateral estoppel, Korotki, himself, acknowledges that the Delaware case centered on the bankruptcy plan, not the alleged legal malpractice raised [*40] in the instant matter. See Appellant's Brief, at 48.

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Furthermore, this analysis does not require any application of collateral estoppel principles. It simply reflects an acknowledgment that, regardless of whether the bankruptcy was wildly successful or an utter disaster, the Offit Parties' role would not be the cause of that success (or failure). See N.T. Summary Judgment Hearing, 9/25/24, at 21 (Offit attorney arguing "there is no evidence that the plaintiffs would have done any better if they hadn't filed for bankruptcy[,] there was no evidence that they would have been able to develop the Reserves outside of bankruptcy any better than they did in bankruptcy[, a]nd . . . they, in fact, benefitted from the bankruptcy filing").

Second, even if we could completely ignore the Offit Parties' lack of participation in the bankruptcy, Korotki fails to explain how he could have escaped his financial problems absent bankruptcy. The record evidence leaves little doubt that Korotki and RRSCC faced significant financial hurdles. In his proposed disclosure statement setting forth his reorganization plan, Korotki and RRSCC represented that Korotki "has no substantial assets from [*41] which creditors can be paid besides his interests in RRSCC and the Management Company and the causes of action described below." Disclosure Statement Regarding Debtors' Plan of Reorganization, 12/11/12, at 4. That filing references the USAP judgment, stating that "USAP's persistent collection efforts eventually became too hostile and expensive and the [d]ebtors realized that their only chance of preventing a complete and total loss was to seek bankruptcy relief." *Id.* at 10. We, thus, agree with the trial court that "Korotki was neither better nor worse off for filing bankruptcy and has no evidence to

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show that he would have secured a more favorable outcome." Trial Court Opinion, 10/10/24, at 27-28. USAP was making progress on its attempts to enforce the judgment and was poised to unwind the STL transactions. Korotki has done nothing more than speculate that he could have fended off that judgment had he not opted for bankruptcy.

Moreover, as Korotki concedes, the asset protection plan worked as intended from 2009 through bankruptcy. And, in his sustained effort to distract the courts from the fact the Offit Parties did not litigate the bankruptcy, Korotki argues that [*42] the Offit Parties "failed to advise [Korotki] to simply stick with the [a]sset [p]rotection [p]lan (which was doing it's [sic] job) and forego bankruptcy." But that alleged failure is only relevant to whether the attorneys and their firm breached their duties. Korotki must show that this purported misadvice caused the bankruptcy proceedings to fail. It plainly did not. Whether the bankruptcy failed or succeeded was in the hands of the Delaware Attorneys, not the Offit Firm. We are therefore unpersuaded that the relevant question is whether the advice inspired Korotki to pursue bankruptcy.

In an apparent effort to further divert our attention from the proper legal analysis, Korotki points to the timing of the bankruptcy. In his view, the Offit Parties should have advised Korotki to wait to file

bankruptcy until more than four years had passed from when the STL transfers were completed, based on a Delaware statute setting a four-year time limit on challenging fraudulent

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transfers.¹⁹ According to Korotki, waiting one more month would have foreclosed any attempt to judicially unwind the STL transfers. This argument is meritless. The assertion that the Offit Parties should [*43] have informed Korotki that he needed to delay bankruptcy until the statute of limitation expired presumes that there is merit to the claim that the transactions were indeed fraudulent.²⁰ If that is true, then USAP had every reason to try and undo the transactions outside of bankruptcy, which it was prepared to do, to say nothing of whether USAP could have simply sought to unwind the transactions through other means.

Therefore, Korotki posits that his options were either to file for bankruptcy or simply wait out USAP in the hope the asset protection plan was bulletproof. The record does not support that waiting would have made any difference due to Korotki's lack of assets. In one of his several depositions, Korotki stated that he "cared about [the USAP judgment] less than the lawyers did" for the following reasons:

Well, I told Mr. Schwartz, and he knew, as did Offit Kurman and your client, Mr. Hiller, I had nothing. All the bills had been paid by Saleena or her companies. I never paid their bills after-as a matter of fact, whoever signed checks, I'm sure it was Saleena, for years, several years before that, but as of 2008 or early 2009

¹⁹ The trial court opines that the clock does not begin running [*44] from the date the transaction was made, but, rather, when USAP received its judgment and, thus, had a reason to investigate. Based on our analysis, we have no need to discuss how Delaware law would apply.

²⁰ If the transactions were clearly not fraudulent, then there was no risk that USAP or the trustee would be unable to unwind the transaction. Hence, the timing of the bankruptcy was of no moment.

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I didn't sign any more checks. I didn't even have a personal account. It was all gone. So[,] I had nothing and I even told Mr. Schwartz again that when this came out I had nothing.

Videotape Deposition of Abraham Korotki, 3/24/16, at 325-26.

The attorney for Attorney Hiller asked, "If[,] for whatever reason[,] you believed it was in the best interest of you and in the best interests of Reserves to pay this final judgment, there were monies available under your control to do it?" Korotki replied, "That's not true. The monies that Saleena had were not under my control." Id. at 327. He added, "[The judgment] was non-collectible." Id. Thus, Korotki admitted he had no assets and his assets were depleted. In fact, his lack of assets was why Korotki believed that the judgment was not [*45] collectible. Korotki fails to explain how, in light of these dire financial circumstances, he could have continued to fend off USAP, let alone continue to finance his other litigation and/or continue building the Reserves Development.

Additionally, Korotki's plan to "wait it out" requires this Court to ignore the fact that Korotki had other reasons to seek bankruptcy. Korotki maintained that he could obtain approximately \$40,000,000.00 in damages from his non-USAP cases. Judge Djerassi determined that those claims were too speculative, and Korotki states they are "not relevant to this appeal." Appellant's Brief, at 10. That is true, but somewhat misleading where his plan was to pursue those claims during bankruptcy. Again, had bankruptcy succeeded, Korotki could have pursued those claims as well as the USAP

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counterclaim. Korotki would have this Court overlook the fact that bankruptcy had several goals.

We, therefore, conclude that Korotki has failed to clearly identify a "case within a case" in which he would have prevailed. Accordingly, we agree with the trial court's determination that any damages caused by Appellees' purported negligence are so speculative and uncertain [*46] that recovery is precluded as a matter of law where Korotki also cannot show the Offit Parties were the proximate cause of any of plaintiffs' harm. Therefore, we affirm the order granting summary judgment.

Order affirmed.

Date: 1/26/2026

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