UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
NEW HAVEN DIVISION

In re:	:	Chapter 7
Sheri Speer,	:	Case No. 14-21007(AMN)
Debtor	:	Re: ECF Nos. 847, 850, 858, 881, 887,
	:	888, 923, 924, 925, 931, 951

Ruling and Order Denying Motions to Reconsider, Motion to Strike, and Motions to Compel, while Granting Motions for Protective Orders

I. Introduction

Before the court are numerous motions and objections filed by debtor Sheri Speer ("Speer), one of her creditors, Seaport Capital Partners, LLC ("Seaport"), the chapter 7 trustee of Speer's bankruptcy estate (the "Trustee"), and one of Seaport's attorneys, Patrick Boatman ("Boatman") on his own behalf,[1] all of which arise out of ECF No. 851, an order granting the Trustee's motion to compromise claims of the estate.

[1] The motions and objections resolved herein are:
- ECF No. 847, Speer's motion to strike a hearing that had yet to be held;
- ECF No. 850, Boatman's motion for a protective order on his own behalf;
- ECF No. 858, Speer's motion to reconsider the court's order granting the motion of the Trustee to compromise various claims of the estate;
- ECF No. 881, the Trustee's motion for a protective order;
- ECF No. 887, Speer's motion to continue a hearing on her objections to Seaport's claims 8 and 20;
- ECF No. 888, Speer's motion to compel responses to discovery demands;
- ECF No. 923, Speer's motion for reconsideration of the court's oral order dismissing her objections to claims (the court memorialized its decision via written order ECF No. 962);
- ECF No. 924, Speer's "Notice that [Speer] is a Party in Interest with Standing to Object to the Claims 8 and 20";
- ECF No. 925, Speer's second motion to compel responses to written discovery requests;
- ECF No. 931, Seaport's motion for protective order (named objection to notice of discovery); and
- ECF No. 951, Speer's third motion to compel responses to her written discovery demands.

This case is the result of approximately fifteen (15) real estate mortgage loans from Seaport to Speer that originated before the financial crisis of 2008 and went into default thereafter. *See* ECF No. 865 at 12. Prior to the bankruptcy case commencing in 2014, Speer was engaged in defending heated litigation by mortgage lenders and municipalities seeking to foreclose on their mortgages and tax liens against her properties. ECF No. 865 at 12. Through "overly litigious and generally baseless defense to the various . . . proceedings pending against her," as well as a pattern of "delay, obfuscation . . ., and intimidation, of her opponents," Speer successfully delayed numerous foreclosure cases for years. ECF No. 219 at 19-20 (Dabrowski, J.); *see*, *e.g*., *JPMorgan v. Speer*, KNL-CV09-5012136-S; *Seaport Capital Partners, LLC v. Speer*, KNL-CV12-6012074-S; *Deutsche Bank National Trust Company v. Speer*, KNL-CV09-6002065-S; *Deutsche Bank National Trust Company as Trustee v. Speer*, KNL-CV09-6002128-S.

This case has a similar history. Presently there are more than 1,100 docket entries for this almost three-year old case, with no fewer than 20 notices of appeal. As night follows day, the court anticipates this ruling and order will also be appealed. Thus far, Speer has objected to nearly every motion filed by most every party, moved to reconsider nearly every ruling, and then finalized the cycle by filing a notice of appeal for several adverse rulings following reconsideration. Starting in mid-June 2015, Speer has also sought to indefinitely delay all proceedings in this case due to her claim that she is unable to participate in court hearings, by filing eight "notices of unavailability" on the eve of hearings. *See*, *e.g*., ECF Nos. 646; 701; 794; 843; 885; 906; 928; 989. The notices of unavailability were accompanied by submissions of medical information to chambers for *in camera* review. While the submissions have not complied with

D.Conn.L.Civ.R. 5e, the court determined the documents should be sealed as medical records. The medical records are filed as ECF Nos. 818, 905, and 1012, in this case. Notwithstanding the court's orders sealing the medical records, the court did not and does not agree that the medical records present a basis to delay the administration of the bankruptcy case.

It is against this backdrop that the court considers Speer's current motions to reconsider, her motion to strike a hearing, and a motion for protective order.

II. Procedural History

A. The Involuntary Petition.

On May 20, 2014, three of Speer's creditors, SLS Heating, LLC, Clipper Realty Trust, and Dr. Michael Teiger, filed an involuntary chapter 7 bankruptcy petition against her. ECF No. 1. In August 2014, a two-day trial (the "Trial") was held to determine whether Speer – at that time only an alleged debtor – was, in fact, insolvent. *See,* 11 U.S.C. §§ 303(h)(1) and (h)(2). Seaport filed a motion to join as a co-petitioner in the involuntary case and the court granted the motion. ECF Nos. 91; 109. *See* 11 U.S.C. § 303(c).

B. The Trial Regarding Insolvency Pursuant to 11 U.S.C. § 303(h).

The narrow issue presented to the bankruptcy court (Dabrowski, J.) in August 2014 was whether Speer, as to her debts that were not subject to a *bona fide* dispute, was generally not paying her debts as they became due. 11 U.S.C. § 303(h)(1). The evidence presented to the court during the trial consisted of testimony by of seven witnesses, including Seaport's principal Steven Tavares ("Tavares"), and Speer, and in excess of 50 exhibits, including a copy of discovery responses by Seaport. ECF Nos. 188 (transcript of trial held August 5, 2016) 305 (transcript of trial held August 27, 2014).

In an effort to demonstrate that the involuntary petition was filed in bad faith as part of a scheme on the part of her creditors, Speer served interrogatories, requests for admissions, and requests for production of documents on Seaport in July 2014, and on August 4, 2014, Seaport responded to Speer's discovery requests. ECF No. 55; *see also* ECF No. 133 at 8-21; Exhibit 16.[2]

1. Tavares' testimony.

Tavares testified that, in 2007, Speer approached him about borrowing money for real estate investments. ECF No. 305 at 152-153. Seaport's business was making commercial, asset-based loans secured by interests in real property, and it made 15 such loans to Speer, secured by 16 properties. ECF No. 305 at 153-154, 167. Seaport borrowed the money it loaned to its customers, including the funds it loaned to Speer, from other lenders, and it did not have any investors or partners. ECF No. 305 at 176-177.

Speer defaulted on all of the loans between 2009 and 2010. ECF No. 305 at 166. By the time of Trial, Speer had lost title to seven properties through "tax lien sale and foreclosure sale[s]," and still held title to nine properties. ECF No. 305 at 157-158; 167-168. Of the seven properties to which Speer lost title, three were sold through judicial tax foreclosure sales after the City of Norwich foreclosed on tax liens. ECF No. 305 at 158. Seaport did not receive any funds from those sales. ECF No. 305 at 165-166. The tax collector for the City of New London sold the other four properties at tax lien sales. ECF No. 305 at 158-159. In each sale, the City of New London repaid itself the balance of the real estate taxes it was owed from the sale proceeds and deposited

[2] All references to Exhibits are to documents entered into evidence as full exhibits at a trial on the involuntary petition on August 5 and August 27, 2014. *See* ECF Nos. 188 and 305 (trial transcripts).

the remaining funds with the New London Superior Court (the "Superior Court"). ECF No. 305 at 159-165. Seaport filed a claim against the funds, and the Superior Court awarded it the remainder of the funds that were available. ECF No. 305 at 159-165.

2. Speer's testimony.

Speer admitted that she borrowed approximately $2 million from Seaport and that she had "numerous other mortgages," the majority of which were in foreclosure. ECF No. 305 at 250. In total, the mortgages outstanding that Speer was personally obligated to pay totaled approximately $3 million. ECF No. 305 at 251. She was not paying the "bulk" of the mortgages because she was "not allowed to" due to the mortgage servicers' refusal to accept payment. ECF No. 305 at 252. Speer could not recall the last time she made payment on Seaport's loans, but she knew that she made no payments in 2013 or 2014. ECF No. 305 at 254-256.

3. Close of trial.

Seaport rested, and so did Speer, presenting no evidence in opposition to the involuntary petition. ECF No. 305 at 276-277. In her post-trial memorandum, Speer contended that the mortgage loans Seaport issued to her were invalid because, among other things, Seaport was not actually in the business of issuing commercial loans, but instead was really selling unregistered securities. ECF No. 189 at 23-24.

The court (Dabrowski, J.) rejected Speer's arguments and entered a 22-page decision and order for relief on the involuntary petition on November 11, 2104 (the "Order for Relief"). ECF No. 219.

C. The Motion to Compromise with Chapter 7 Trustee.

1. Seaport's proofs of claim.

On August 7, 2014, Seaport filed proof of claim 8 in the amount of $1,185,391.20 for its claim of deficiencies on the seven mortgage loans secured by seven properties to which Speer had already lost title (and about which Tavares testified). Approximately one year later, on April 4, 2015, Seaport filed proof of claim 20 in the amount of $1,471,783.21, for its interest in the remaining eight mortgage loans (secured by nine other properties) it made to Speer. Of those nine properties, Speer's bankruptcy estate still held title to four of them at the time the Chapter 7 Trustee filed his motion to compromise.

2. Seaport's adversary proceeding objecting to Speer's bankruptcy discharge.

On May 29, 2015, Seaport filed a complaint objecting to Speer's discharge under 11 U.S.C. §§ 727(a)(2)(A), (a)(2)(B), (a)(4), and (a)(5), commencing *Seaport Capital Partners, LLC v. Speer*, 15-02031 (the "Adversary Proceeding"). Seaport alleged, among other things, that Speer failed to turn over proceeds from an insurance settlement to the Trustee, filed false or inaccurate schedules, failed to provide the Trustee with documents he requested, and began conducting her business entirely in cash in an effort to defraud "the numerous creditors who were then pursuing her in foreclosure litigation." ECF No. 1 in the Adversary Proceeding.

3. The Trustee's rule 9019 motion.

On August 28, 2015, the Trustee filed a motion to compromise various claims of the bankruptcy estate pursuant to Fed.R.Bankr.P. 9019 (the "Motion to Compromise"). ECF No. 725. The Motion to Compromise required the Trustee, among other things, to execute quitclaim deeds in favor of Seaport for the four properties that Speer's

bankruptcy estate still owned that were subject to Seaport's mortgages.[3] It also provided that the Trustee would transfer "whatever interests the bankruptcy estate" had to the four properties that the tax collector for the City of New London had sold through tax sales. The Trustee further agreed to stipulate to judgment in favor of Seaport in nine foreclosure actions still pending in the Superior Court.[4] In exchange, Seaport agreed to pay the bankruptcy estate $20,000, to bear the cost of all taxes and fees incurred as a result of the title transfers, and to cap its claim for administrative expenses at one-third of the funds available to the Trustee at the end of the case for distribution to unsecured creditors. ECF No. 725 at 7-9.

Speer filed an objection to the Motion to Compromise, arguing, among other things, that it was result of "collusive bargaining" between the Trustee and Boatman, and that it was not a fair and equitable agreement (the "Objection to Compromise"). ECF No. 766. Speer presented no evidence or argument as to her standing to make her Objection to Compromise. Subsequently, Speer served discovery demands on the Trustee and Boatman, seeking to obtain information as to their alleged collusion. *See* ECF Nos. 838; 844; 850-1; 873-1; 888. Neither Seaport nor the Trustee filed a response to the Objection to Compromise.

4. Hearing on the Motion to Compromise.

The court scheduled a hearing on the Motion to Compromise and Objection to Compromise for November 5, 2015, at 10:00 a.m. ECF No. 815. The day before the

[3] Pursuant to 11 U.S.C. § 541, the commencement of a bankruptcy case creates an estate that is comprised of the debtor's pre-bankruptcy property. Pursuant to 11 U.S.C. § 323, the chapter 7 trustee is the representative of the estate, and, pursuant to 11 U.S.C. § 704(a), he is charged with liquidating its assets.

[4] Case numbers KNL-CV12-6022702-S through KNL-CV12-6012080-S.

hearing, on November 4, 2015, and after the Clerk's Office had closed, Speer delivered an objection to Seaport's proofs of claim 8 and 20 pursuant to 11 U.S.C. § 521(b) (the "Claims Objection") and a "notice of unavailability." ECF Nos. 843; 845. The Clerk's Office placed the Claims Objection and the notice on the docket of the case the following morning, November 5, 2015. In her Claims Objection, Speer raised essentially the same arguments as to the validity of Seaport's mortgage loans that she made in her post-trial memorandum, a year earlier, in opposition to the entry of the Order for Relief. *Compare* ECF No. 189 at 19-20; *with* ECF No. 845 at 2-5. Again, Speer provided no evidence or argument as to her standing to make the Claims Objection. ECF No. 845. In her notice of unavailability, Speer requested an indefinite continuance of all matters in her case. ECF No. 843.

The court held the hearing on the Motion to Compromise on November 5, as scheduled, during which it stated that it would read a decision on the Motion to Compromise into the record at a hearing scheduled for November 10, 2015. ECF No. 846 [audio file]. On November 9, Speer filed a document titled "Motion to Strike Hearing," seeking preemptively to enjoin the court from holding the November 10 hearing (the "Strike Hearing Motion"). ECF No. 847. Speer contended that (1) the court could not rule on the Motion to Compromise without first ruling on her Claims Objection, and (2) it could not rule on her Claims Objection without allowing her to conduct "meaningful discovery." ECF No. 847 at 2-3.

The court held the November 10 hearing as scheduled, during which it read its decision approving the settlement proposed by the Trustee and granted the Motion to Compromise. ECF No. 930 [transcript]. As part of its ruling, the court found that Speer

did not meet her burden of proving that she was a party-in-interest with standing to assert her Objection to Compromise. ECF No. 930 at 16.

On November 16, 2015, Speer filed a motion to reconsider that ruling (the "First Motion to Reconsider"), in which she essentially raised the same contentions as those she raised in her Strike Hearing Motion. *Compare* ECF No. 847 at 2-3 *with* ECF No. 858 at 2-5. On November 17, 2015, Seaport objected to the First Motion to Reconsider, arguing, among other things, that: Speer also lacked standing to make the Claims Objection; she had already been afforded the opportunity to conduct discovery in the context of the Trial as to the same contentions she made in her Claims Objection; and that her contentions lacked merit in any event. ECF No. 860 at 2-3.

On or about November 27, 2015, Speer served Seaport, with discovery demands. *See* ECF Nos. 893; 931. According to Speer, she was asking for essentially the same information regarding Seaport's mortgage loans that she sought in her discovery demands served before the Trial. *See* ECF No. 951 at 2-3 ¶5. (Speer's motion to compel Seaport to respond to her discovery demands). However, a review of Speer's discovery requests reveals that, in addition to information as to Seaport's mortgage loans, Speer also sought a substantial amount of information as to Seaport's communications with her other creditors in 2014, well after Seaport issued the loans to Speer. *See* ECF Nos. 893-1; 931-1.

On December 1, 2015, Speer filed a motion to compel the Trustee and Boatman to comply with her discovery demands. ECF No. 888 at 2. On the same day, Speer filed a reply to Seaport's objection, in which she argued that: (1) if the court disallowed either claim 8 or 20, then "there [would] be a surplus" from her estate, and that, therefore, she had standing to make the Claims Objection; and (2) where, as here, a

creditor was seeking an order determining a debt listed in a proof of claim to be non-dischargeable through an adversary proceeding, the debtor always had standing to object to the proof of claim. ECF No. 889 at 4-5.

The court scheduled a hearing on the Claims Objection for December 2, 2015. ECF No. 848. The day before the hearing, Speer filed a motion to continue it, arguing that the hearing could not proceed until she had received full compliance with the discovery demands she served on Seaport. ECF No. 887 at 1. The court continued the hearing to December 10, 2015. Then, on the morning of December 10, 2015, Speer delivered to the Clerk's Office another "notice of unavailability" (which the Clerk's Office filed on the docket of the case), asking for an indefinite continuance of all matters in her case due to an undisclosed medical condition. ECF No. 906.

The court held the hearing on the Claims Objection on December 10, as scheduled, and, after considering Speer's additional arguments as to her standing, once again determined that she was not a party in interest with standing to object to matters relating to the administration of her estate, including the Claims Objection. ECF No. 910 [audio file] at 00:01:30 – 00:01:50.

On December 14, 2015, Speer filed a motion to reconsider the court's determination that she lacked standing to make the Claims Objection (the "Second Motion to Reconsider"). ECF No. 923. Speer also filed a document titled "Notice that [Speer] has Standing to Object to the Claims 8 and 20." ECF No. 924. In both documents, Speer argued that the fact that Seaport was seeking a determination that its debt was not dischargeable in the Adversary Proceeding conferred standing on her to make the Claims Objection. ECF Nos. 923 and 924. The same day, December 14,

2015, Speer also filed another motion to compel compliance with her written discovery demands. ECF No. 925.

III. Discussion

A. The First Motion for Reconsideration (ECF No. 858).

Speer contends, among other things, that the court must reconsider its order overruling her Objection to Compromise because it committed clear error by, among other things, granting the Motion to Compromise before ruling on her Objection to Claims. ECF No. 858 at 3-4.

1. The law of the case.

Initially, the court disagrees with Speer's characterizations of its rulings because its ruling on the issue of standing in its order granting the Motion to Compromise (and thus overruling the Objection to Compromise) also constituted a ruling on her standing to make the Claims Objection.

The law-of-the-case doctrine generally provides that "'when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.' " *Musacchio v. United States*, ___ U.S. ___, 136 S.Ct. 709, 716 (2016)(quoting *Pepper v. United States*, 562 U.S. 476, 506, 131 S.Ct. 1229, 179 L.Ed.2d 196 (2011); *Arizona v. California*, 460 U.S. 605, 618, 103 S.Ct. 1382, 75 L.Ed.2d 318 (1983)). "The doctrine "expresses the practice of courts generally to refuse to reopen what has been decided, [but is] not a limit to their power.." *Messinger v. Anderson*, 225 U.S. 436, 444, 32 S.Ct. 739, 56 L.Ed. 1152 (1912).

While a court has the power to reconsider a decision prior to final judgment, particularly when new evidence is presented, the court declines to do so here. *See, Sagendorf-Teal v. County of Rensselaer*, 100 F.3d 270, 277 (2d Cir. 1996).

Here, Speer's Objection to Compromise required the court to determine whether she was a party in interest with standing to object to the manner in which the Trustee was administering her estate. *See In re 60 E. 80th St. Equities, Inc*., 218 F.3d 109, 115 (2d Cir. 2000); *In re Complete Retreats*, LLC, 06-50245 (AHWS), 2011 WL 1434579 (Bankr. D. Conn. 2011). Further, as a chapter 7 debtor, the burden was on Speer to demonstrate that she had standing. *See Pascazi v. Fiber Consultants, Inc*., 445 B.R. 124, 127 (S.D.N.Y. 2011). Based on Speer's failure to present any evidence (let alone any argument) demonstrating that she was a party in interest with standing to object to the administration of her estate by the Trustee, including the Motion to Compromise, the court determined that she was not, ECF No. 930, at which point, that determination became the law of the case.

Speer's Claims Objection raised precisely the same standing issue as her Objection to Compromise. *Compare In re 60 E. 80th St. Equities, Inc*., 218 F.3d at 115 (a chapter 7 debtor is a party in interest with standing to object to a motion to compromise "only if there could be a surplus after all creditors' claims are paid"); *with In re Vebeliunas*, 231 B.R. 181, 189 (Bankr. S.D.N.Y. 1999) (a chapter 7 debtor is a party in interest with standing to object to a claim only where her estate "stands to produce a surplus"). Consequently, the court's determination of Speer's standing to make her Claims Objection was governed by the law of case that the court established in overruling her Objection to Compromise.

In effect, the court's determination as to whether Speer had standing to object to the Trustee's administration of her estate, first made in the context of granting the Motion to Compromise and overruling Speer's Objection to Compromise, determined that issue as to all future motions, including Speer's Claims Objection. *See Sagendorf-*

Teal, 100 F.3d at 277. Accordingly, the court did not overrule Speer's Objection to Compromise and *then* overrule her Objection to Claim; rather, it determined Speer's standing which had the effect of creating the law of the case regarding the standing issue. Therefore, the court considers all of the documents that Speer filed after the entry of the oral ruling on the Motion to Compromise to be, in effect, motions for the court to reconsider its determination that she was not a party-in-interest with standing.

However, a court should not depart from its own decisions absent "cogent" or "compelling" reasons: "an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *United States v. Tenzer*, 213 F.3d 34, 39 (2d Cir. 2000) (quoting *Doe v. New York City Dep't of Social Servs*., 709 F.2d 782, 789 (2d Cir. 1983)). The party seeking reconsideration must demonstrate that the court overlooked controlling decisions or other information that would "reasonably be expected to alter the conclusion reached by the court." *In re Beacon Associates Litig*., 818 F. Supp. 2d 697, 704 (S.D.N.Y. 2011) (quoting *Shrader v. CSX Transp., Inc*., 70 F.3d 255, 256-257 (2d Cir. 1995)). A motion for reconsideration is not a vehicle for putting new arguments before the court that a party failed to raise in her papers before the order entered. *See In re PBS Foods, LLC*, 09-bk-15629-jlg, 11-ap-02717, 2015 WL 3465815, at *8 (Bankr. S.D.N.Y. May 29, 2015). Where a party raises an argument for the first time in her motion(s) for reconsideration, "it cannot have been 'overlooked' by the court during its consideration of the initial motion." *Lewis v. New York Tel*., No. 83 Civ. 7129 (RWS), 1986 WL 1441, at *1 (S.D.N.Y. Jan. 29, 1986) (citing *United States v. International Business Machines*, 79 F.R.D. 412, 414 (S.D.N.Y.1978)); *see also Griffin Indus., Inc. v. Petrojam, Ltd*., 72 F. Supp. 2d 365, 368

(S.D.N.Y. 1999); *In re Asia Glob. Crossing, Ltd*., 332 B.R. 520, 524 (Bankr. S.D.N.Y. 2005).

Here, while each of the documents Speer filed in support of her argument that she had standing raise similar arguments, Speer raised none of those arguments prior to the court's ruling on the Motion to Compromise. Therefore, the court could not have committed clear error in overlooking Speer's contentions as to her standing because she did not raise them before the court ruled on the issue. *See Lewis v. New York Tel*., 1986 WL 1441 at *1. As it was Speer's burden to establish standing to oppose the Motion to Compromise – in effect, to establish that the court's decision would impact her financially – and in the absence of any such showing, the court declines to reconsider its decision on this ground.

2. Harmless Error.

To the extent the court was bound to consider the Claims Objection before ruling on Speer's Objection to Compromise, and to the extent a ruling on the latter did not constitute a simultaneous ruling on the former, any error was harmless. Rule 61 of the Fed.R.Civ.P., as incorporated by Fed.R.Bankr.P. 9005, provides that "[a]t every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights." Here, as discussed in greater detail below, had the court considered all of Speer's contentions as to her standing to make the Claims Objection before it ruled on the Motion to Compromise, it would have reached the same conclusion: that Speer did not have standing to make the Claims Objection. Accordingly, there was no harm to Speer in the court's entry of an order denying her Objection to Compromise before denying her Claims Objection, and thus no basis for

the court to reverse its earlier ruling. *See*, *e.g.*, *In re Sanshoe Worldwide Corp.*, 993 F.2d 300, 305 (2d Cir. 1993).

B. The Second Motion for Reconsideration (ECF No. 923).

Speer contends that the court committed clear error in determining that she did not have standing to make the Claims Objection because: (1) if she prevailed on her objection and the claims were disallowed, then there would be a surplus, giving her a pecuniary interest in her estate; and (2) a debtor always has standing to object to proofs of claim where an adversary proceeding has been brought against the debtor seeking to deny her a discharge under 11 U.S.C. § 727. ECF No. 889 at 4-5; 923 at 2-4; 924.

The court notes that, while it did not expressly address these arguments in its decision overruling the Claims Objection on the basis that Speer lacked standing, it did consider and reject them as lacking merit. Further, as stated above, even if the court had considered all of these arguments before overruling Speer's Objection to Compromise, it would still have concluded that she lacked standing to make either the Objection to Compromise or the Claims Objection.

1. Standing based on a pecuniary interest.

Generally, the chapter 7 bankruptcy trustee is "the representative of the estate," 11 U.S.C. § 323(a), and has the duty of bringing claims "founded on the rights of the debtor," *Hirsch v. Arthur Andersen & Co.*, 72 F.3d 1085, 1093 (2d Cir. 1995); *see also St. Paul Fire and Marine Ins. Co. v. PepsiCo, Inc.*, 884 F.2d 688, 700 (2d Cir. 1989), including investigating the financial affairs of the debtor and objecting to any improper claims of her creditors. 11 U.S.C. §§ 704(a)(4); (a)(5).

> The trustee, as representative of the estate, has the exclusive capacity to sue and be sued on behalf of the estate, and is charged by law with representing the interest of the estate

> against third parties claiming adversely to it. After appointment of a trustee, a debtor no longer has standing to pursue a cause of action that existed at the time the order for relief was entered. Only the trustee has the authority and discretion to prosecute, defend and settle, as appropriate in its judgment, such a cause of action.

In re Flanagan, 503 F.3d 171, 179 (2d Cir. 2007) (quoting 3 Collier on Bankruptcy ¶ 323.03, .03[1] at 323-7 to 323-9, Alan N. Resnick et al. eds., rev. 15th ed. 2007).

Accordingly, a chapter 7 debtor typically does not have standing to object to a proof of claim. *In re Chaitan*, 517 B.R. 419, 426 (Bankr. E.D.N.Y. 2014).

> Standing arises from a legally protected interest in a case's outcome. Standing in a bankruptcy case requires a pecuniary interest in the case's outcome. Although an individual has pecuniary interests in [her] debts before filing a bankruptcy petition, the chapter 7 discharge generally strips a debtor of these interests, thus eliminating [her] standing to object to most claims. However, if there is a reasonable possibility for a surplus or distribution in the case, then the chapter 7 debtor has standing to object as a residual claimant.

In re Chaitan, 517 B.R. at 426 (internal citations omitted); *see also Licata v. Coan*, 14-cv-1754 (MPS), 2015 WL 9699304, at *6 (D. Conn. Sept. 22, 2015), *aff'd,* 659 Fed.Appx. 704 (2d Cir. 2016). The burden is on the debtor to establish that she has standing to object to the claims, and she may be denied standing where she fails to meet her burden. *Pascazi*, 445 B.R. at 127; *see also In re Osborne*, 594 Fed. App'x 34, 35 (2d Cir. 2015), *cert dismissed sub nom Osborne v. Tulis*, 136 S.Ct. 28 (2015); *In re Desormes*, 497 B.R. 390, 394 (D. Conn. 2013).

Here, Speer is attempting to object to claims totaling $2,657,174.41. *See* Proof of Claim Nos. 8 and 20. In support of her standing to object to the claims, Speer alleges only that, once the claims "are disallowed, there will be a surplus." ECF Nos. 889 at 4; 923; 924. Speer offers no other argument and makes no other representation of fact to

support this conclusion. Accordingly, Speer has failed to meet her burden of establishing standing based on the presence of a surplus. *See Pascazi*, 445 B.R. at 127.

In any event, it also appears from a review of the docket that Speer's argument lacks merit. The Court reviewed the docket from two perspectives, first beginning with Speer's bankruptcy schedules, [5] and second, beginning with the proofs of claim her creditors have filed.[6] After review, the Court concludes that, no matter how the numbers are approached, there is no reasonable possibility of a surplus.

a. Speer's schedules.

Speer filed her bankruptcy schedules on February 5, 2015, ECF No. 375, amended schedules on February 18, ECF Nos. 404 and 405, and further amendments on May 20, 2015, that amended some, but not all of her schedules. ECF No. 581. Looking at her most recently filed versions of her schedules, Speer listed total real property assets of $2,096,516.00 against $5,643,193.52 in debt, most of which Speer lists as disputed. ECF No. 581 at 6; *see also* ECF No. 405 at 1. However, as Tavares testified, and various state court dockets demonstrate, Speer has already lost title to many of the properties listed on her schedules. Indeed, the Trustee has abandoned numerous properties, finding that they had no value to Speer's bankruptcy estate

[5] After the entry of the order for relief, a debtor must file a set of bankruptcy schedules sworn to under penalty of perjury. 28 U.S.C. § 1746; 11 U.S.C. § 521(a)(1); Fed.R.Bankr.P. 1008; *see also* 11 U.S.C. § 727(d). The schedules contain lists of the debtor's assets and liabilities. 11 U.S.C. § 521(a)(1). On the official forms, a debtor has the opportunity to list debt as disputed. Some of the Debtor's schedules or amendments to schedules are unsigned; the schedules and amendments to schedules were filed with the Clerk of the Court by or on behalf of the Debtor.

[6] Creditors may file proofs of claim against a debtor's estate. "A proof of claim executed and filed in accordance with [the Bankruptcy Rules] is prima facie evidence of the validity and amount of the claim." Fed.R.Bankr.P. 3001(f). Further, a proof of claim "is deemed allowed" unless objected to by a party in interest. 11 U.S.C. § 502(a).

whatsoever. *See* ECF Nos. 686 at 2; 929 at 2. Speer even conceded in a motion to compel abandonment filed earlier in this case that many of her properties were "over-encumbered" and that "Speer ha[d] no equity in them." ECF No. 719 at 3. Taken together, Speer's list of assets that includes properties she no longer owns and her list of debts that omits real property tax claims has the effect of overstating her net asset value. As noted earlier, even with Speer's skewed accounting of assets and liabilities, she admits there can be no surplus for her.

Leaving these issues aside, Speer's other primary asset she listed on her schedules was an interest in a state court claim that she valued at $2 million. *See* ECF Nos. 404 at 7-12; 405; 581 at 4. The Trustee has stated that, after investigating the claim, he concluded that it had no value to the estate because it was meritless. ECF No. 846 at 14:58-15:26, 20-21, 35:45-37:30; 930 at 11. Therefore, based on Speer's own submissions, and after discounting the value of the state court claim to zero based on the Trustee's analysis, even if the $2.65 million of Seaport's claims are disallowed, Speer's estate would still yield a deficit of approximately $850,000.[7] *See In re Manshul Constr. Corp*., 223 B.R. 428, 429 (Bankr. S.D.N.Y. 1998) ("a surplus is highly unlikely in a liquidation proceeding, and . . . standing based on a potential surplus is unlikely to succeed") (quoting *In re Martin*, 201 B.R. 338, 344 (Bankr. N.D.N.Y. 1996)).

b. The proofs of claim.

Creditors have filed a total of $3,666,979.90 in claims against Speer's bankruptcy estate, including claims for $1,020,111.61 in secured debt. *See* Claims # 1-1 through

[7] $4.1 million in assets against $5.6 million in debt listed on the Debtor's statistical summary of schedules, less $2 million in assets as the state court claim has no value, leaves $2.1 million in assets against $5.6 million in debt, less $2.65 million for Seaport's claims were they to be disallowed, leaves $2.95 in debt. The debt still exceeds Speer's assets by approximately $850,000.00.

29-1. The only claims to which any party has objected, are claims 8 and 20 of Seaport. Accordingly, there are $1,009,805.49 in presumptively valid claims to which there are no objections ($3,666,979.90 - $1,185,391.20 (Claim #8-1) - $1,471,783.21 (Claim # 20-1)). As discussed above, Speer's primary assets for paying off these debts are property to which she either no longer holds title or are over-encumbered, and various state court claims that the Trustee has investigated and determined to be meritless.

2. Standing premised on a pending adversary proceeding.

"[W]here the debt is non-dischargeable, some courts grant debtors standing, even in the absence of a reasonable possibility of a surplus, because the debtor is not absolved of liability at the conclusion of the bankruptcy proceedings." *Drake v. U.S.*, 1:13-CV-1136 (LEK), 2014 WL 6883104, at *2 (N.D.N.Y. Dec. 4, 2014), *aff'd sub nom Drake v. U.S. ex rel I.R.S.*, 622 Fed. App'x 42 (2d Cir. Nov. 19, 2015). However, this Circuit has not expressly adopted such a rule. *See Drake v. U.S. ex rel. I.R.S.*, 622 Fed. App'x at 43 (assuming without deciding that a debtor had standing to object a claim of the Internal Revenue Service). Rather, the Second Circuit has held that a "Chapter 7 debtor generally has standing to object *only* where there is a 'reasonable possibility' that the value of the bankruptcy estate assets exceeds estate debts." *In re Osborne*, 594 Fed. App'x at 34-35 (emphasis added); *see also EDP Medical Computer Systems, Inc. v. U.S.*, 480 F.3d 621, 626-627 (2d Cir. 2007) (holding that the debtor had standing to object to a proof of claim filed by the IRS for a nondischargeable debt because, if the claim were disallowed, its estate would have produced a surplus, and taking no position as to whether the nondischargeable nature of the debt conferred standing).

Further, courts that have held that a debtor has standing to object to claims where an adversary proceeding would deny her a discharge as to those debts have also applied an important exception: that a debtor does not have standing to object to claims where the objections would "undermine the efficient administration of the estate." *In re Choquette*, 290 B.R. 183, 187 (Bankr. D. Mass. 2003); *see also In re Cyrus II Partnership*, 358 B.R. 311, 316 (Bankr. S.D. Texas 2007); *In re Woods*, 139 B.R. 876, 877 (Bankr. E.D. Tenn. 1992) (holding that to allow a debtor standing to object to proofs of claim would permit her to "usurp the trustee's authority and to require the courts to rule on objections where the allowance or disallowance of the claim is meaningless to the administration of the estate); *In re I & F Corp*., 219 B.R. 483, 485 (Bankr. S.D. Ohio 1998).

This case illustrates the importance of protecting the efficient administration of the bankruptcy estate against meritless litigation of claims objections that serves only to delay creditors. In the Superior court, and before this court, Speer has engaged in a pattern of litigation tactics designed to delay proceedings and obfuscate issues. *See* ECF No. 219 at 19-20; *see*, *e.g.*, *JPMorgan v. Speer*, KNL-CV09-5012136-S (judgment of strict foreclosure entered on October 9, 2012, however, the case remains open due to multiple post-judgment motions, appeals, and an attempt to remove the action to the District Court); *Deutsche Bank National Trust Company v. Speer*, KNL-CV-09-6002065-S (judgment of strict foreclosure entered on July 30, 2012, the case remained open through February 10, 2017 due to multiple post-judgment motions, Speer's attempts to amend her answer and assert new special defenses, and an appeal that was dismissed); *Deutsche Bank National Trust Company as Trustee v. Speer*, KNL-CV09-6002128-S (the case commenced in 2009, a judgment of strict foreclosure entered on

November 20, 2014, following an unsuccessful motion to reargue/reconsider, Speer filed an appeal with the Connectucut Appellate Court in December 2014; the appeal remains pending). These tactics were apparent in her filings with regard to the Motion to Compromise. The evening before the hearing on the Motion to Compromise was scheduled to take place, Speer filed her Claims Objection and a "notice of unavailability." ECF Nos. 843 and 845. Moreover, Speer's notice sought an indefinite continuance of all matters in her case due to a "severe illness." ECF No. 843.[8]

Then, on November 9, notwithstanding her alleged severe illness, Speer filed a motion seeking to prevent the court from announcing its decision on the Motion to Compromise on November 10 before ruling on her Claims Objection. ECF No. 847. The court scheduled a hearing on Speer's Claims Objection for December 5, 2015, but on December 2, Speer filed a motion to continue the hearing, arguing that the court could not issue a ruling on her Claims Objection without allowing her to conduct additional discovery on both her Objection to Compromise and her Claims Objection. ECF No. 887; *see also* ECF No. 858.

However, the discovery she sought in connection with her Objection to Compromise was information as to the relationship between the Trustee and Boatman, and the court had already concluded that there was no basis for Speer's allegation that they were colluding for the purpose of depriving her of her interests in real property. ECF Nos. 807 (order denying the Debtor's motion to remove the Trustee); 930 (transcript of the court's oral decision granting the 9019 motion). Further, while Speer claimed the discovery she served on Seaport in connection with her Claims Objection

[8] The court notes that it has placed the documents that Speer contended supported her request for a continuance on the docket of the case under seal. ECF Nos. 818; 905; 1012.

addressed the validity of Seaport's mortgage loans based on the circumstances of the loans' origination (similar to the discovery she already served and received responses to in the context of the Trial), *compare* ECF No. 951 at 2-3 ¶5 *with* Exhibit 16, the information she was actually seeking had nothing to do with the validity of Seaport's proofs of claim, and instead, related to Seaport's contact with her other creditors in 2014. *See* ECF Nos. 893-1; 931-1.

The timing of Speer's filings – and the nature of her discovery demands – leads the court to conclude that the Objection to Compromise and the Claims Objection were not filed with the belief that they had any actual merit, and, instead, were filed in an attempt to further delay these bankruptcy proceedings and muddy the issues before the court. Therefore, the court concludes that, even if it were to apply a rule allowing a debtor to have standing to object to proofs of claim due to a pending adversary proceeding in which she could be denied a discharge after the opportunity for a trial, it would apply the corresponding exception, that a debtor does not have standing where the purpose of the objection is to undermine the effective administration of her estate. *In re Choquette*, 290 B.R. at 187; *see also In re Cyrus II Partnership*, 358 B.R. at 316; *In re Woods*, 139 B.R. at 877.

Speer cites three cases she believes support her position that she does, in fact, have standing: *In re Chaitan*, 517 B.R. 419 (Bankr. E.D.N.Y. 2014); *Drake v. United States*, 13-cv-1136 (LEK), 2014 WL 6883104 (N.D.N.Y. Dec. 4, 2014); and *In re Willard*, 240 B.R. 664 (Bankr. D. Conn. 1999). However, the court finds each of them distinguishable from the instant case.

In *Chaitan* and *Drake*, the courts held that the debtors had standing, not – as here – because of a pending adversary proceeding in which their debt may be

determined to be non-dischargeable, but rather because the objectionable claims were inherently non-dischargeable. *See In re Chaitan*, 517 B.R. at 426 (debts were for citations issued by the Environmental Control Board that the debtor conceded were non-dischargeable 11 U.S.C. § 523(a)(7)); *In re Drake*, 2014 WL 6883104 at *1, *3 (debt was for non-dischargeable unpaid tax deficiencies to the Internal Revenue Service 11 U.S.C. § 523(a)(1)).

Meanwhile, in *Willard*, the bankruptcy court held that a debtor had standing to object to the claim of a creditor, where doing so was the functional equivalent of allowing the debtor to file motion for reconsideration because the creditor's claim arose out of an order of the same bankruptcy court in an adversary proceeding in another bankruptcy case. 240 B.R. at 666, 667. The instant case is dissimilar because the debts Speer seeks to challenge do not arise out of an order of this court, but from loans she has conceded she accepted from Seaport many years ago.

Further, the Adversary Proceeding itself allows Speer to protect her interests. *See In re Watson*, No. 03-13355, 2004 WL 3244420, *2 (Bankr. M.D. La. Sept. 29, 2004). Specifically, Speer may prove that she is entitled to a chapter 7 discharge as to any debt she owes Seaport. Further, in none of the cases Speer cites was there evidence of the type of abuse of process in which Speer has engaged here, as described above.

C. The Merits of the Claims Objection.

Even if the court determined that it had committed clear error in ruling that Speer did not have standing to make the Claims Objection and reached its merits, the court would conclude that the Claims Objection lacked merit and would have overruled it

without providing Speer the opportunity for further discovery in any event. ECF Nos. 847, 858 at 3-4; 887, 923, 924.

1. Speer's failure to meet her burden of proof.

"A properly executed and filed proof of claim constitutes prima facie evidence of the validity of the claim." Fed.R.Bankr.P. 3001(f). To overcome this prima facie evidence, the objecting party must come forth with evidence which, if believed, would refute at least one of the allegations essential to the claim." *In re Reilly*, 245 B.R. 768, 773 (B.A.P. 2d Cir. 2000) *aff'd*, 242 F.3d 367 (2d Cir. 2000); *see also In re Allegheny Intern., Inc*., 954 F.2d 167, 173-174 (3d Cir. 1992). "If the objector does not 'introduce[ ] evidence as to the invalidity of the claim or the excessiveness of its amount, the claimant need offer no further proof of the merits of the validity and the amount of the claim.' " *In re Minbatiwalla*, 424 B.R. 104, 111 (Bankr. S.D.N.Y. 2010) (quoting 4 Collier on Bankruptcy 502.03[3][f] (rev. ed.2007)).

Objecting to a proof of claim creates a contested matter between the debtor and creditor pursuant to which the parties may seek discovery. *See In re Tender Loving Care Health Services, Inc*., 562 F.3d 158, 162 (2d Cir. 2009) (citing Fed.R.Bankr.P. 9104 advisory notes). However, the court may limit discovery where the discovery a party seeks is not relevant to her claims, or is duplicative of prior discovery demands *See* Fed.R.Civ.P. 26(b)(1) and (b)(2)(C)(ii) and (iii), incorporated by Fed.R.Bankr.P. 7026.

Here, Speer's Claims Objection raises essentially the same contentions as to the validity of Seaport's loans as those she made in opposition to the involuntary petition, for example, that Seaport was engaged in selling securities without a license. Prior to the Trial, Speer served discovery demands on Seaport, to which Seaport responded.

Despite, these efforts, Speer failed to articulate a credible legal theory and produced no evidence that Seaport's proofs of claim were not valid.

Further, the additional discovery she served in connection with her Claims Objection had little to do with the validity of Seaport's claims, and instead, sought information about Seaport's communications with her other creditors. ECF Nos. 893-1; 931-1. Such discovery falls outside what is permissible under Fed.R.Civ.P 26(b)(1) insofar as it was not relevant to Speer's claims.

Presumably, Speer was trying to prove some type of collusion among her creditors to drive her into bankruptcy to establish that the involuntary petition was filed in bad faith. However, this court, in its decision and Order for Relief after the Trial already determined that the petition was not filed in bad faith. ECF No. 219 at 16-21. Indeed, at the Trial, she conceded that she owed creditors, including Seaport, approximately $3 million dollars, and that she borrowed approximately $2 million dollars from Seaport. She did not contest the authenticity of notes admitted into evidence at the Trial, nor did she contest Seaport's calculations as to how much she owed on the loans. Even if her discovery demands did not fall outside what is permissible under Fed.R.Civ.P. 26(b)(1), they would be duplicative of her prior efforts to establish that the involuntary petition was filed in bad faith, an argument that this court already rejected.

Therefore, the court could have properly denied Speer's requests to conduct additional discovery as seeking information not relevant to her claims and/or duplicative of discovery she already conducted, *see* Fed.R.Civ.P.26(b)(1) and (b)(2)(C)(ii) and (iii), incorporated by Fed.R.Bankr.P. 7026, and overruled her objection for her failure to meet her burden of overcoming the prima facie evidence of the claims' validity. See *In re Reilly*, 245 B.R. at 773; *In re Minbatiwalla*, 424 B.R. at 111.

2. Collateral Estoppel.

In the alternative, the court could have collaterally estopped Speer from making the Claims Objection in the first place. "Once a court has decided an issue, it is 'forever settled as between the parties.' " *B&B Hardware, Inc. v. Hargis Industries, Inc*., -- US --, 135 S.Ct. 1293, 1302 (2015) (quoting *Baldwin v. Iowa State Traveling Men's Assn*., 283 U.S. 522, 525 (1931)). The doctrine of collateral estoppel "precludes the parties . . . from relitigating issues that were or could have been raised" in a previous action. *Allen v. McCurry*, 449 U.S. 90, 94 (1980). "[T]he whole premise of collateral estoppel is that once an issue has been resolved in a prior proceeding, there is no further factfinding function to be performed." *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 336 n.23 (1979).

"An issue may be precluded by collateral estoppel in the Second Circuit when each of the following four part test is satisfied:

> (1) the issues in both proceedings are identical,
>
> (2) the issue in the prior proceeding was actually litigated and actually decided,
>
> (3) there was full and fair opportunity to litigate in the prior proceeding, and
>
> (4) the issue previously litigated was necessary to support a valid and final judgment on the merits."

In re Raytech Corp., 217 B.R. 679, 686 (Bankr. D. Conn. 1998) (quoting *Liona Corporation, Inc. v. PCH Associates (In re PCH Associates)*, 949 F.2d 585, 593 (2d Cir.1991)). Further, the court may apply the doctrine of collateral estoppel *sua sponte*, due to the "strong public policy in economizing the use of judicial resources and avoiding relitigation". *Doe v. Pfrommer*, 148 F.3d 73, 80 (2d Cir. 1998); *see also*

Smeraldo v. City of Jamestown, 512 Fed. App'x 32, 34 (2d Cir. 2013); *Curry v. City of Syracuse*, 316 F.3d 324, 330-331 (2d Cir. 2003).

Speer has already had the opportunity to challenge the validity of many of the notes at issue in proofs of claim 8 and 20 in both the context of the Trial as well as the in various state court proceedings. For example, proof of claim 8 relates to loans on 7 pieces of property. However, as to four of those properties, the Superior Court entered judgment in favor of Seaport, ordering that proceeds on deposit with the clerk's office were to be paid to Seaport. *Seaport Capital Partners v. Speer*, KNL-CV14-6020315-S, Docket No. 104.00; KNL-CV14-5020316-S, Docket Entry 105.00; KNL-CV14-6020317-S; *see also* ECF No. 5-5 at 2.

Proof of Claim No. 20 relates to loans on 9 additional properties for which judgments of strict foreclosure entered in favor of the City of Norwich, setting the law days for Seaport to purchase the equity of redemption, which Seaport did. *See* ECF Nos. 20-1; 20-2 ; 23-1; 23-4; 349-5; 349-6; 352-15. Speer appealed the foreclosures and the appellate court dismissed her appeals, and subsequently entered an order prohibiting Speer from filing further appeals in the foreclosure actions without leave of the court. *See* ECF Nos. 20-5; 23-5; 23-5; 352-6; 352-7; 352-8; 352-14.

It appears to the court that Speer is simply attempting to relitigate here the state court claims she already lost. *See*, *e.g.*, ECF No. 352-23 (copy of affidavit filed by the Debtor on the land records of 371 Laurel Hill Avenue stating that, even though Seaport had purchased the equity of redemption, she intended to challenge Seaport's ownership of the property in the bankruptcy court); 352-24 (copy of affidavit filed by the Debtor on the land records of 35-37 Second Street stating that she intended to challenge Seaport's ownership of the property in the bankruptcy court). Accordingly, the court

could have collaterally estopped Speer from challenging the validity of Seaport's loans in this case.

D. The Discovery Motions and Objections.

Pursuant to her Objection to Compromise and Objection to Claims, Speer served discovery demands on the Trustee, Boatman, and Seaport, and Speer filed several motions seeking to compel production of that discovery. In response, the Trustee, Boatman, and Seaport, filed respective motions for protective orders. Speer sought discovery in the context of two contested matters, the Motion to Compromise and her Objection to Claims. However, since the court has determined – under the circumstances presented here – that Speer has no standing to make either her Objections to Claims or Objection to Compromise, she is not entitled to discovery as to those matters. *See*, *e.g.*, *In re Refco*, 505 F.3d 109, 119 (2d Cir. 2007). Therefore, the court denies the motions to compel and grants the motions for protective orders.

IV. Conclusion

The court notes that Speer has raised numerous other contentions in her pleadings that the court has not expressly addressed herein. The court has carefully considered each of Speer's contentions and determined that they are without merit.

For the reasons stated above, it is hereby

ORDERED, that:

1. ECF No. 847, motion to strike hearing, is denied;
2. ECF No. 850, motion for protective order, is granted;
3. ECF No. 858, motion to reconsider the court's order granting the Motion to Compromise is, is denied;
4. ECF No. 881, motion for protective order, is granted;

5. ECF No. 887, motion to continue hearing, is denied;

6. ECF No. 888, motion to compel responses to written discovery, is denied;

7. ECF No. 923, motion for reconsideration of the court's order overruling the Claims Objection, is denied;

8. ECF No. 925, motion to compel responses to discovery, is denied;

9. ECF No. 931, objection to discovery, is sustained;

10. ECF No. 951, motion to compel response to discovery, is denied

IT IS SO ORDERED.

Dated on March 31, 2017, at New Haven, Connecticut.

Ann M. Nevins
United States Bankruptcy Judge
District of Connecticut