

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

In re:)	Chapter 11
HO WAN KWOK, <i>et al.</i> ,)	Case No. 22-50073 (JAM)
Debtors.)	(Jointly Administered)
LUC A. DESPINS, CHAPTER 11 TRUSTEE FOR THE)	Adv. P. No. 23-05008 (JAM)
ESTATE OF HO WAN KWOK,)	Re: ECF No. 88
Plaintiff,)	
v.)	
MEI GUO,)	
Defendant.)	

APPEARANCES

Avram E. Luft
G. Alexander Bongartz
Paul Hastings LLP
200 Park Avenue
New York, NY 10166

Douglas Skalka
Patrick R. Linsey (argued)
Neubert, Pepe & Montieth
195 Church Street, 13th Floor
New Haven, CT 06510

and

Nicholas A. Bassett
Paul Hastings LLP
2050 M Street NW
Washington, D.C. 20036

Counsel for Movant Mr. Luc A. Despins, Chapter 11 Trustee for the Estate of Mr. Ho Wan Kwok, Plaintiff

Lee Vartan
Chiesa Shahinian & Giantomasi PC
One Boland Drive
West Orange, NJ 07052

Aaron A. Romney
James M. Moriarty
Zeisler & Zeisler PC
10 Middle Street, 15th Floor
Bridgeport, CT 06604

and

Sam Della Fera, Jr.
Melissa F. Wernick (argued)
Chiesa Shahinian & Giantomasi PC
105 Eisenhower Parkway
Roseland, NJ 07068

Counsel for Respondent Ms. Mei Guo, Defendant

**MEMORANDUM OF DECISION AND ORDER
GRANTING IN PART MOTION FOR SUMMARY JUDGMENT**

Julie A. Manning, United States Bankruptcy Judge

I. INTRODUCTION

Before the Court is the Motion for Summary Judgment (the “Motion for Summary Judgment” or the “Motion”) filed by Mr. Luc A. Despins, in his capacity as Chapter 11 trustee (the “Trustee”) for the bankruptcy estate (the “Estate”) of Mr. Ho Wan Kwok (the “Individual Debtor”). (ECF No. 88.)¹ The Motion seeks summary judgment in favor of the Trustee on the first and fourth claims of the complaint (the “Complaint”) (ECF No. 1) filed against Ms. Mei Guo (“Ms. Guo”), the Individual Debtor’s daughter, in this adversary proceeding, or, in the alternative, summary judgment on the third claim of the Complaint. The first and fourth claims assert a beneficial ownership cause of action. In the alternative, the third claim asserts fraudulent transfer cause of action. For the reasons stated below, the relief sought by the Motion is

GRANTED IN PART.

II. BACKGROUND

¹ References to the docket in this adversary proceeding will be styled “ECF No. ___.” References to the docket in the main case, *In re Kwok*, Case No. 22-50073 (JAM), will be styled “Main Case ECF No. ___.”

On February 15, 2022, Individual Debtor filed a voluntary Chapter 11 petition in this Court. (Main Case ECF No. 1.) The Individual Debtor’s case is jointly administered with two affiliated corporate Chapter 11 cases. (Main Case ECF Nos. 970, 1141.) For the reasons set forth therein, on June 15, 2022, the Court entered a memorandum of decision and order appointing a Chapter 11 trustee. (Main Case ECF No. 465.) *In re Kwok*, 640 B.R. 514 (Bankr. D. Conn. 2022). On July 8, 2022, Mr. Despina was appointed as the Trustee. (Main Case ECF No. 523.)

On May 16, 2023, the Trustee filed the Complaint initiating this adversary proceeding. (ECF No. 1.) The Complaint states four claims for relief against Ms. Guo:

1. The first claim (the “First Claim”) (Complaint ¶¶ 48–52) seeks declaratory judgment that (i) pursuant to section 541(a) of title 11 of the United States Code (the “Bankruptcy Code”), a Bombardier Global XRS private jet with serial number 9189 (the “Bombardier”), formerly indirectly owned by Ms. Guo, was property of the Estate because it was beneficially owned by the Individual Debtor as of the filing of his bankruptcy petition and at the time of its post-petition sale; and (ii) pursuant to section 541(a)(6) the proceeds of the sale of the Bombardier (the “Bombardier Proceeds”) are property of the Estate. On these bases, pursuant to sections 542 and 544 of the Bankruptcy Code, the First Claim seeks turnover of the Bombardier Proceeds to the Estate via delivery to the Trustee.

2. The second claim (the “Second Claim”) (Complaint ¶¶ 53–56) seeks, in the alternative to the First Claim and pursuant to sections 549 and 550 of the Bankruptcy Code, avoidance of a post-petition transfer of the Bombardier Proceeds from the Individual Debtor to Ms. Guo.

3. The third claim (the “Third Claim”) (Complaint ¶¶ 57–66) seeks, in the alternative to the First and Second Claims and pursuant to sections 544 and 550 of the Bankruptcy Code and former section 276 of the New York Debtor and Creditor Law (repealed effective April 4, 2020), the value of Anton Development Limited (“Anton Development”), a former owner of the Bombardier, at the time of its transfer from Mr. Han Chunguang (“Mr. Han”) to Ms. Guo on the basis of fraudulent transfer.

4. The fourth claim (the “Fourth Claim”) (Complaint ¶¶ 69–74) seeks declaratory judgment that pursuant to section 541(a) of the Bankruptcy Code, several British Virgin Islands (“BVI”) entities owned by Ms. Guo, namely, Whitecroft Shore Limited (“Whitecroft”), Allied Capital Global Limited, Creative Apex Investments Limited, Crystal Breeze Investments Limited, Elite Well Global Limited, Globalist International

Limited, Infinite Increase Limited, Infinitum Developments Limited, Noble Fame Global Limited, and Rosy Acme Ventures Limited (each a “BVI Entity,” and together, collectively, the “BVI Entities”) are beneficially owned by the Individual Debtor. On this basis, pursuant to sections 542 and 544 of the Bankruptcy Code, the Fourth Claim seeks turnover of the BVI Entities to the Estate via delivery to the Trustee.

On June 30, 2023, Ms. Guo filed an answer to the Complaint and asserted affirmative defenses. (ECF No. 21.)

On December 28, 2023, the Trustee filed the Motion for Summary Judgment, seeking summary judgment on the First and Fourth Claims, or, in the alternative, the Third Claim. (ECF No. 88.) Together with the Motion, the Trustee filed a memorandum of law in support of the Motion, a Local Civil Rule 56(a)(1) statement of undisputed facts (the “Local Rule 56(a)(1) Statement”), the Declaration of Patrick R. Linsey (the “Linsey Declaration”) with attached exhibits (each a “Trustee Exhibit” and together, collectively, the “Trustee Exhibits”), and an appendix of foreign law. (ECF Nos. 88 (redacted memo & Local Rule 56(a)(1) Statement; appendix of foreign law), 89 (redacted Linsey Declaration), 91 (unredacted memo), 92 (unredacted Local Rule 56(a)(1) Statement), 93 (unredacted Linsey Declaration).)

On January 24, 2024, Ms. Guo filed an objection to the Motion, a Local Civil Rule 56(a)(2) statement in response to the Local Rule 56(a)(1) Statement (the “Local Rule 56(a)(2) Statement”), and the Declaration of Lee Vartan, Esquire (the “Vartan Declaration”) with attached exhibits (each a “Guo Exhibit” and together, collectively, the “Guo Exhibits”). (ECF Nos. 110 (redacted objection & Local Rule 56(a)(2) Statement; Vartan Declaration), 112 (unredacted objection), 113 (unredacted Local Rule 56(a)(2) Statement).)

On February 1, 2024, the Trustee filed a reply in support of the Motion, a reply to the Local Rule 56(a)(2) Statement (the “Reply Statement” and, together with the Local Rule 56(a)(1) Statement and the Local Rule 56(a)(2) Statement, the “Statements”), and the Supplemental

Declaration of Patrick R. Linsey (the “Supplemental Linsey Declaration”) with attached exhibits consecutively enumerated with the Trustee Exhibits (each a “Supplemental Trustee Exhibit” and together, collectively, the “Supplemental Trustee Exhibits”; together with the Reply Statement and the Supplemental Linsey Declaration, collectively, the “Reply Documents”). (ECF Nos. 115 (redacted reply & Reply Statement), 116 (redacted Supplemental Linsey Declaration), 117 (unredacted reply), 118 (unredacted Reply Statement), 119 (unredacted Supplemental Linsey Declaration).) On February 2, 2024, the Trustee filed corrected versions of Supplemental Trustee Exhibits 72 and 74.

On February 5, 2024, this matter being fully briefed, a hearing on the Motion for Summary Judgment was held. During the hearing, the parties advanced their respective arguments. Ms. Guo also orally moved to strike (the “Motion to Strike”) the Reply Documents, which motion the Trustee opposed. At the conclusion of the hearing, the Court took the matter under advisement.

This matter is ripe for decision.

III. JURISDICTION

The United States District Court for the District of Connecticut has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). This Court has authority to hear and determine this matter pursuant to 28 U.S.C. § 157(a) and the Order of Reference of the District of Connecticut dated September 21, 1984. The issues raised by the Motion are statutorily core. 28 U.S.C. § 157(b)(2)(A), (E), (O). A motion to withdraw the reference of this adversary proceeding is pending in the District of Connecticut. *Guo v. Despins ex rel. Kwok (In re Kwok)*, No. 23 mc 00093 (KAD) (D. Conn. Nov. 9, 2023). While the Court concludes that the Constitution does not preclude it from ruling on the Motion for Summary Judgment, should a reviewing court

disagree in whole or in part, the Court submits this decision, or pertinent portion thereof, as proposed conclusions of law. *See* Fed. R. Bankr. P. 9033; *cf. Stern v. Marshall*, 564 U.S. 462, 487–99 (2011).

Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

IV. SUMMARY JUDGMENT STANDARD

Upon a motion for summary judgment, a court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a) *made applicable by* Fed. R. Bankr. P. 7056.

“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson*, 477 U.S. at 248. While a movant “bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,’ which it believes demonstrate the absence of a genuine issue of material fact,” a movant is not required to “support its motion with affidavits or other similar materials negating the opponent's claim.” *Celotex Corp. v. Catrett ex rel. Catrett*, 477 U.S. 317, 323 (1986). Where the movant meets its factual burden, an “opponent must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

Finally, to succeed on the motion, the movant must be entitled, upon the undisputed material facts, to judgment as a matter of law – the judge, in ruling on the motion, is not acting as

a finder of fact. *Anderson*, 477 U.S. at 250. Summary judgment should enter “where the evidence is such that it ‘would require a directed verdict for the moving party.’” *Id.* at 251 (internal citations omitted).

V. UNDISPUTED FACTS

Certain evidentiary disputes must be determined before the undisputed facts are found. Pursuant to Fed. R. Civ. P. 56(c)(2) and (4), made applicable by Fed. R. Bankr. P. 7056, Ms. Guo raises objections to the admissibility of many Trustee Exhibits in her opposition to the Motion for Summary Judgment. In his reply, the Trustee raises objections to the admissibility of the Guo Exhibits and testimony by Ms. Guo because she has invoked her Fifth Amendment right against self-incrimination in this adversary proceeding.

A. Motion to Strike

A preliminary issue must be determined before addressing these evidentiary disputes, namely, the Motion to Strike. Ms. Guo argues that *Jones v. Sansom* stands for the proposition that because Local Civil Rule 56 does not contemplate a reply statement with supporting exhibits, the Reply Documents must be stricken. No. 3:21-cv-442 (VAB), 2023 WL 1069487, at *1 n. 1 (D. Conn. 2023). The Trustee argues it is within the Court’s discretion to consider the Reply Documents, but also argued, even without reference to the Reply Documents, the Trustee Exhibits are admissible and support summary judgment.

The Court agrees with the Trustee. Courts have broad discretion to consider argument and evidence first introduced on reply when determining motions for summary judgment. *See Bayway Refin. Co. v Oxygenated Mktg. & Trading A.G.*, 215 F.3d 219, 226–227 (2d Cir. 2000); *Compania del Bajo Caroni (Caromin), C.A. v. Bolivarian Republic of Venez.*, 556 F. Supp. 2d 272, 283 n. 40 (S.D.N.Y. 2008) (considering arguments and evidence submitted with reply

despite belated argument by plaintiff's substitute counsel) *affirmed by* 341 F. App'x 722, 724 (2d Cir. 2009) (citing *Ruggiero v. Warner-Lambert Co.*, 424 F.3d 249, 252 (2d Cir. 2005)); *see also KLP Enters., LLC v. Sassani*, No. 3:17-cv-665 (MPS), 2018 WL 4516667, at *5 (D. Conn. 2018) (noting broad discretion and declining to consider exhibits submitted with reply because discovery had not closed and the exhibits were a surprise) (citing *Bajo Caroni*, 341 F. App'x at 724); *Beck v. Rayco Mfg., Inc.*, No. 3:14-cv-00327 (JAM), 2015 WL 737114, at *2 n. 2 (D. Conn. 2015) (considering evidence submitted on reply in response to unanticipated arguments). The decision in *Jones* reflects the District of Connecticut acting within its discretion.

Here, discovery is closed. The Reply Documents are directly responsive to Ms. Guo's evidentiary objections, rather than being additions to the Trustee's case-in-chief. Furthermore, the contents of the Reply Documents cannot be considered surprising. No additional facts are asserted to be undisputed in the Reply Statement and the Supplemental Linsey Declaration and Supplemental Trustee Exhibits address arguments raised in the objection and Local Rule 56(a)(2) Statement. "[M]aterial relied on at summary judgment need not be admissible in the form presented. Rather, so long as the evidence in question 'will be presented in admissible form at trial,' it may be considered on summary judgment." *Smith v. City of New York*, 697 F. App'x 88, 89 (2d Cir. 2017) (summary order) (citing *Santos v. Murdock*, 243 F.3d 681, 683 (2d Cir. 2001) (per curiam)). Documents that facially appear to be business records of banks and corporations or internet content may arguably meet this standard. *See Santos*, 243 F.3d at 683. Ms. Guo argues that the Trustee Exhibits do not. In response, the Trustee presents authentication evidence. Similarly, it is not surprising that the Trustee would respond to each of Ms. Guo's hearsay objections in the Local Rule 56(a)(2) Statement with the Reply Statement.

For these reasons, Ms. Guo is not prejudiced by the Court's consideration of the Reply Documents. Accordingly, the Motion to Strike is denied.

B. Evidentiary Disputes

The Court now turns to the evidentiary disputes, beginning with Ms. Guo's objections. First, Ms. Guo objects to certain Trustee Exhibits that appear to be documents of (i) UBS AG ("UBS"), namely, Trustee Exhibits 2, 3, 4-a, 4-b, 8, 9, and 39; (ii) ACASS Canada Ltd. ("ACASS Canada"), namely, Trustee Exhibits 5, 6, 17, 35, 36, 37, and 64; (iii) Raich Ende Malter & Co. LLP ("REM"), namely, Trustee Exhibits 7, 54, and 55; (iv) Axos Bank, namely, Trustee Exhibit 40; (v) the Sherry-Netherland, Inc., namely, Trustee Exhibit 41; (vi) Kyrgyz-Swiss Bank, namely, Trustee Exhibit 60; or (vii) Golden Spring (New York) Ltd. ("Golden Spring"), namely, Trustee Exhibit 63, on the basis that they are unauthenticated and contain hearsay.

The Court overrules Ms. Guo's objection. Among the Reply Documents, the Trustee has filed the declarations of authentication from individuals with personal knowledge of the practices of each respective entity for (i) UBS as Supplemental Trustee Exhibit 68; (ii) ACASS Canada as Supplemental Trustee Exhibit 69; (iii) REM as Supplemental Trustee Exhibit 70; (iv) Axos Bank as Supplemental Trustee Exhibit 73; (v) the Sherry-Netherland and Hodgson Russ LLP as Supplemental Trustee Exhibits 76 and 77, respectively; (vi) Kyrgyz-Swiss Bank as Supplemental Trustee Exhibit 75; and (vii) Golden Spring as Supplemental Exhibit 78, which, collectively, declare that all these Trustee Exhibits are business records produced in the ordinary course. Upon review of the authentication declarations and the Trustee Exhibits, the Court concludes that these Trustee Exhibits would be presented in an admissible manner at trial as excepted from the

preclusion of hearsay. Fed. R. Evid. 802, 803(6), 901, 902(11). Therefore, these Trustee Exhibits will be considered. *See Santos*, 243 F.3d at 683.

Second, Ms. Guo objects to the deposition testimony – filed as Trustee Exhibit 32 – of Ms. Hing Chi Ngok (“Ms. Ngok”), her mother, taken in the Individual Debtor’s Chapter 11 case on the basis that it is hearsay.

The Court is unpersuaded. In the event of trial, the Trustee would call Ms. Ngok and she would either testify as she had in her deposition or her deposition testimony could be introduced as a prior inconsistent sworn statement, which is not hearsay. Fed. R. Evid. 801(d)(1)(A). Therefore, Trustee Exhibit 32 will be considered. *See Santos*, 243 F.3d at 683.

Third, Ms. Guo objects to the certified translations of certain internet content filed as Trustee Exhibits 33 and 34 as well as content hyperlinked in the Trustee’s papers as unauthenticated hearsay.

The Court overrules this objection. Regarding authenticity, the Trustee has filed as Supplemental Trustee Exhibit 71 a declaration from a professional in forensic digital data collection and preservation attesting that the sites at issue authentically appear on the internet. The Trustee has also provided the metadata of the two translated videos. As to hearsay, the internet content contains prior statements of the Individual Debtor. Most of the Individual Debtor’s statements in the content translated in Trustee Exhibits 33 and 34 are present sense impressions excepted from the rule against hearsay. Fed. R. Evid. 803(1). Regarding the remainder of the statements in the translated videos and in the Vice News Interview, these statements are against the Individual Debtor’s interest insofar as he states he owns and controls private planes. Because the Individual Debtor has invoked his Fifth Amendment rights against self-incrimination regarding the subject matter of this adversary proceeding, he would likely be

unavailable at trial. Fed. R. Evid. 804(a)(1). Therefore, this evidence would be presented in admissible form at trial. Fed. R. Evid. 804(b)(3). Accordingly, the Trustee's internet evidence will be considered at summary judgment. *See Santos*, 243 F.3d at 683.

Fourth and finally, Ms. Guo objects to the Court's consideration of a previous judgment in another adversary proceeding related to the Individual Debtor's Chapter 11 case.

This objection is overruled. The Court may take judicial notice of its prior rulings in other adversary proceedings. *Krakowski v. Am. Airlines, Inc. (In re AMR Corp.)*, 567 B.R. 247, 250 n. 2 (Bankr. S.D.N.Y. 2017), *aff'd* by 610 B.R. 714 (S.D.N.Y. 2019), *aff'd* by 834 F. App'x 660 (2d Cir. 2021). Accordingly, the Court will take into consideration such rulings at summary judgment. *See Santos*, 243 F.3d at 683.

For his part, the Trustee raises two evidentiary objections related to Ms. Guo's invocation of her Fifth Amendment rights against self-incrimination. First, the Trustee objects to Ms. Guo's citation to her deposition testimony in the Individual Debtor's Chapter 11 case. The Court overrules this objection because Ms. Guo cites to portions the Trustee puts forward as evidence.

Second, the Trustee objects to Ms. Guo's introduction of the Guo Exhibits. The Court sustains the Trustee's objection. In a civil proceeding, Ms. Guo cannot decline to testify about issues – including the contents of the very documents she submits as exhibits – and, nevertheless, put forward evidence on those issues. *See Secs. & Exch. Comm'n v. Benson*, 657 F. Supp. 1122, 1129 (S.D.N.Y. 1987). Hence, the Guo Exhibits would not be admissible at trial. Therefore, the Guo Exhibits will not be considered at summary judgment. *See Santos*, 243 F.3d at 683.

C. Statement of Undisputed Facts²

Upon review of the Statements; the Linsey Declaration and the Supplemental Linsey Declaration together with the attached Trustee Exhibits and Supplemental Trustee Exhibits; and the record of this adversary proceeding, the jointly administered Chapter 11 cases, and related adversary proceedings, and the Court having above ruled on the Motion to Strike and the evidentiary disputes between the parties; and unsealing material to the extent necessary to issue this Opinion and warranted under section 107 of the Bankruptcy Code, the following are the undisputed facts for the purposes of the Motion for Summary Judgment:

1. The Individual Debtor, Mr. Ho Wan Kwok, also known as Kwok Ho Wan, Guo Wengui, Miles Guo, and Miles Kwok, as well as numerous other aliases, is the debtor in the bankruptcy proceeding styled *In re Kwok*, Case No. 22-50073 (JAM) in this Court.
2. On February 15, 2022, the Individual Debtor filed a voluntary Chapter 11 petition in this Court. (Main Case ECF No. 1.)
3. The Individual Debtor is the father of the defendant in this proceeding, Ms. Guo. (Tr. Ex. 15, at *13.)

**2009–2016:
*Initial Purchase and Ownership of the Bombardier by Head Win***

4. The Bombardier is an aircraft; in particular, it is the 2006 Bombardier Global Express XRS model B70 bearing serial number 0X9189 and registration number T7-GQM, which registration number later changed to T7-17777. (Tr. Ex. 3, at *76; Tr. Ex. 57.)

² This statement of undisputed facts is derived from the Local 56(a)(1) Statement, adjusted upon review of the objections raised in the Local 56(a)(2) Statement and the replies to those objections in the Reply Statement and review of the supporting Trustee Exhibits and Supplemental Trustee Exhibits.

5. In September 2009, the Individual Debtor purchased the Bombardier for \$37,625,000.00 from its manufacturer, Bombardier, Inc., through Head Win Group Ltd (“Head Win”), which held legal title to the aircraft “contemplated for private use” by the Individual Debtor, its beneficial owner. (Tr. Ex. 2, at *UBS10838–45; Supp. Tr. Ex. 68 ¶ 5.)

6. Head Win is or was a BVI entity. (Tr. Ex. 56.)

7. In 2012, the Individual Debtor sought to partially refinance the Bombardier with UBS. At that time, the Individual Debtor represented to UBS that Head Win was a “Single Purpose Company with the only purpose of holding the aircraft.” The Individual Debtor identified himself to UBS as the “Beneficial Owner” of the Bombardier. (Tr. Ex. 2, at *UBS10838, UBS10841; Supp. Tr. Ex. 68 ¶ 5.)

8. In 2012, the Individual Debtor executed various loan documents with UBS on behalf of Head Win and provided a personal guaranty. (Tr. Ex. 3, at *UBS07278, UBS07183, UBS07268; Tr. Ex. 68 ¶ 6.)

9. Between 2012 and 2015, the Individual Debtor declared to UBS that Head Win was a single purpose company that “does not produce any financial statements”, “does not hold any other assets and liabilities” other than the Bombardier, and its only purpose “is the holding” of the Bombardier. (Tr Exs. 4-a, 4-b; Supp. Tr. Ex. 68 ¶¶ 7, 8.)

10. On July 24, 2015, Head Win engaged ACASS Canada to operate and manage the Bombardier, pursuant to an aircraft management agreement (the “Head Win ACASS Agreement”). (Tr. Ex. 6; Supp. Tr. Ex. 69 ¶ 6.)

11. The Individual Debtor executed the Head Win ACASS Agreement. (Tr Ex. 6, at *18; Supp. Tr. Ex. 69 ¶ 6.)

12. Under the Head Win ACASS Agreement, notices to Head Win were to be sent care of “Golden Spring NY Ltd, 46th Floor, 767 5th Avenue, New York, NY 10153.” (Tr. Ex. 6; Supp. Tr. Ex. 69 ¶ 6.)

13. Between July 30, 2015 and November 4, 2015, Golden Spring paid no less than \$264,000.00 to ACASS Canada for invoices issued to Head Win for operating and managing the Bombardier. (Tr. Ex. 35; Supp. Tr. Ex. 69 ¶ 8.)

14. Golden Spring is the Individual Debtor’s *alter ego*. (Order Granting Motion for Entry of Default Judgment, Case No. 22-50073 (JAM), Adv. P. No. 23-05018 (Bankr. D. Conn. Dec. 4, 2023), ECF No. 35.)

15. Between January 11, 2016 and March 21, 2016, New Dynamic Development Limited (“New Dynamic”) paid no less than \$318,000.00 to ACASS Canada for invoices issued to Head Win for operating and managing the Bombardier. (Tr. Ex. 35; Supp. Tr. Ex. 69 ¶ 8.)

16. Accountants employed by the Individual Debtor identified New Dynamic as an offshore company held by the Individual Debtor. (Tr. Ex. 54, at *REM000001–02, REM000004; Tr. Ex. 55, at *REM000508; Supp. Tr. Ex. 70 ¶¶ 7, 8.)

17. As of December 31, 2015, Head Win’s accountants valued the Bombardier at more than \$25.7 million. (Tr. Ex. 7; Supp. Tr. Ex. 70 ¶ 9.)

18. As late as January 27, 2016, the Individual Debtor corresponded with UBS in connection with the financing for the Bombardier. (Tr. Ex. 39; Supp. Tr. Ex. 68 ¶ 10.)

2016–2018:

Transfer of Bombardier from Head Win to Anton Development, Ownership of Bombardier by Anton Development, and Transfer of Anton Development from Mr. Han to Ms. Guo

19. Between approximately March 1, 2016 and July 1, 2016, Head Win transferred title to the Bombardier to Anton Development. (Tr. Ex. 5, at *ACASS00000020 ¶ 6; Tr Ex. 6; Supp. Tr. Ex. 69 ¶¶ 5, 6.)

20. Anton Development is or was a Hong Kong entity. (Tr. Exs. 11, 12.)

21. Prior to June 27, 2017, Mr. Han was the sole shareholder of Anton Development. (Tr. Ex. 11, at *0142.)

22. Mr. Han is the Individual Debtor’s family chef. (Tr. Ex. 32, at *142:12–143:14.)

23. On May 18, 2016, the Individual Debtor was involved in a call with UBS regarding wiring of funds to repay loan obligations related to Head Win and an aircraft. (Tr. Ex. 8; Supp. Tr. Ex. 68 ¶ 11.)

24. On June 2, 2016, Head Win then transferred \$1.16 million to Anton Development from its UBS account. (Tr. Ex. 9; Supp. Tr. Ex. 68 ¶ 9.)

25. Between June 2016 and June 2019, Golden Spring paid no less than \$2.6 million to ACASS Canada for invoices issued to Anton Development for the operation and management of the Bombardier. (Tr. Ex. 64, Supp. Tr. Ex. 69 ¶ 8.)

26. On June 27, 2017, Mr. Han transferred Anton Development to Ms. Guo for \$1.00 (HKD). (Tr. Ex. 11, at *0136.)

27. That same day, June 27, 2017, Mr. Han transferred Eastern Profit Limited (“Eastern Profit”) to Ms. Guo for \$1,000.00 (HKD). (Tr. Ex. 13, at *0002, 0008.)

28. That same day, June 27, 2017, Ms. Qu Guojiao (“Ms. Qu”) transferred Hong Kong International Funds Investments Limited (“HK International”) to Ms. Guo for \$1.00 (HKD). (Tr. Ex. 14.)

**2018–2022:
Transfer of Bombardier from Anton Development to Whitecroft and Ownership of
Bombardier by Whitecroft**

29. In or around November 2018, Anton Development transferred the Bombardier to Whitecroft. (Tr. Ex. 58.)

30. Whitecroft is a BVI entity with a “permanent legal address at c/o Golden Spring (New York) LTD, PO Box 2120, New York, NY 10101.” (Tr. Ex. 19, at WHITECROFT_000006.)

31. Ms. Guo is and was the sole member and director of Whitecroft at all relevant times. (Complaint ¶ 28, ECF No. 1; Answer ¶ 28, ECF No. 21.)

32. Prior to the sale of the Bombardier, Whitecroft had no business other than holding the Bombardier and had no other material assets. (Tr. Ex. 25.)

33. Golden Spring paid no less than \$2,400,000.00 to ACASS Canada for maintenance and operation of the Bombardier while held by Whitecroft. (Tr. Ex. 36; Supp. Tr. Ex. 69 ¶ 8.)

**2022:
Post-Petition Sale of the Bombardier to ACASS USA**

34. A Letter of Intent by ACASS Canada dated January 25, 2022 to purchase the Bombardier was addressed to Whitecroft care of Golden Spring and to the attention of Ms. Yvette Wang (“Ms. Wang”) and Mr. Max Krasner (“Mr. Krasner”), both at @gsnyus.com email suffixes. (Tr. Ex. 21.)

35. An executed purchase and sale agreement (the “Aircraft Purchase Agreement”) dated August 2, 2022 set forth the terms of the sale of the Bombardier to ACASS U.S.A. Inc. (“ACASS USA”). (Tr. Ex. 19.)

36. The Aircraft Purchase Agreement reflects that the Bombardier was sold in consideration for \$13,500,000.00 (USD). (Tr. Ex. 19, at *WHITECROFT_000008.)

37. Jetlaw LLC (“Jetlaw”) represented Whitecroft in connection with the sale of the Bombardier.

38. Jetlaw understood that Mr. Krasner was the “direct contact between all parties involved in the sale of [the Bombardier] and the principal” and Jetlaw’s client contact form reflects Mr. Krasner acted as Golden Spring’s “Director of Operations.” (Tr. Exs. 20, 22.)

39. Jetlaw’s corporate representative testified at a deposition in this adversary proceeding that Mr. Krasner was Jetlaw’s sole contact with the seller and that Jetlaw had never spoken to Ms. Guo. Jetlaw’s corporate representative confirmed that the firm understood Mr. Krasner to be affiliated with Golden Spring. (Tr. Ex. 23, at *17:8–16, 21:10–24, 58:2–21, 63:9–18.)

40. On August 29, 2022, ACASS Canada wired \$134,980.00 to Golden Spring. On its end, ACASS Canada accounted for this transfer as a “REFUND” to Whitecroft. (Tr. Exs. 36, 40; Supp. Tr. Exs. 69 ¶ 8, 73 ¶ 5.)

**2022–2024:
Bombardier Proceeds**

41. On October 19, 2022, Insured Aircraft Title Service, LLC (the “Escrow Agent”) confirmed it had received the Bombardier Proceeds in an amount of \$12,032,995.86 (USD) to be held in escrow. (Tr. Ex. 24.)

42. Initially, Whitecroft sought to have the Bombardier Proceeds wired to Mr. Qiang Guo (“Mr. Guo”) – Ms. Guo’s brother and the Individual Debtor’s son – at an account at Kyrgyz-Swiss Bank. (Tr. Ex. 52.)

43. G Club Operations LLC also banks at Kyrgyz-Swiss Bank. (Tr. Ex. 60; Supp. Tr. Ex. 75, at ¶¶ 3–6.)

44. On December 21, 2022, Whitecroft, in a corporate resolution (the “Disbursement Resolution”) signed by Ms. Guo, instructed the Escrow Agent to remit the Bombardier Proceeds to an account at JNFX Limited (“JNFX”) for the purpose of receiving them. (Tr. Ex. 25.)

45. The Disbursement Resolution purported to ratify all actions of Whitecroft’s authorized agents, specifically including Mr. Krasner. (Tr. Ex. 25.)

46. On January 20, 2023, at her deposition in the Individual Debtor’s Chapter 11 case, Ms. Guo testified the Bombardier was sold in the summer of 2022 to a buyer whose name she did not remember for consideration of more than \$10,000,000.00 (USD). According to Ms. Guo, she decided to sell the Bombardier in the summer of 2022 and she is the owner of the proceeds. Ms. Guo testified she could not recall where the Bombardier Proceeds were located – other than that they were held by a third party, which third party she could not remember and did not know whether it was a corporation. Ms. Guo testified she had to speak to her brother, Mr. Guo, to receive the Bombardier Proceeds. (Tr. Ex. 18, at 68:16–73:15.)

47. On February 22, 2023, Whitecroft deposited \$12,017,995.86 (USD) in Bombardier Proceeds in an account in its name at JNFX as reflected by a JNFX account statement (the “JNFX Statement”). (Tr. Ex. 30-a.)

48. Between February and March 2023, the JNFX Statement reflects deductions of \$540,614.87 in fees. (Tr. Ex. 30-a.)

49. As of October 19, 2023, the JNFX Statement appears to reflect a balance of \$10,406,839.28, down \$1,611,156.58 from the opening balance. (Tr. Ex. 30-a.)

50. As of January 5, 2024, JNFX has transferred \$10,218,843.38 (USD) into the attorney trust account (the “Attorney Trust Account”) of Chiesa Shahinian & Giantomasi PC (“CSG”), Ms. Guo’s counsel, at Santander Bank pursuant to the preliminary injunction issued in this adversary proceeding. (ECF Nos. 81, 105.)

2016–2022:
Individual Debtor’s Use of Bombardier after Transfers

51. Between June 2016 and June 2019, flight manifests from ACASS Canada establish that the Individual Debtor was a passenger on the Bombardier for no fewer than forty (40) flights requested by Anton Development. (Tr. Ex. 17; Supp. Tr. Ex. 69 ¶ 7.)

52. Between June 2019 and January 2022, flight manifests from ACASS Canada establish that the Individual Debtor was a passenger on the Bombardier for no fewer than seventeen (17) flights requested by Whitecroft. (Tr. Ex. 37; Supp. Tr. Ex. 69 ¶ 9.)

Individual Debtor’s Prior Statements Regarding Ownership and Control of Private Planes

53. In 2017, the Individual Debtor stated that he owned “two private jets” in a Vice News interview. *See* VICE News, “Exiled Chinese Billionaire Uses YouTube to Wage a War on Corruption,” YouTube (original air date on HBO, Nov. 15, 2017), <https://www.youtube.com/watch?v=LkOsgH5kcgQ>.

54. On August 29, 2023, the @20minfocus Gettr account posted a video created on an unknown date, in which the Individual Debtor pointed to the furnishings on an aircraft and bragged that he had ordered them from Hermès and from Van Cleef & Arpels. Specifically, he stated:

a. “This, all this leather, all leather is specially ordered by me from Hermès, including this one.”

b. “This is Van Cleef, Van Cleef jewelry. I use its jewelry box exclusively.”

(Tr. Ex. 33; Supp. Tr. Exs. 71 ¶¶ 13–18, 72.)

55. On January 8, 2020, a YouTube account with a name written in what appear to be Chinese characters posted a video created on an unknown date, wherein the Individual Debtor dines on an airplane while talking directly into the camera. In this video, the Individual Debtor discusses his ownership of the aircraft and makes several jokes about his financial status:

c. “We’re eating here. We’re poor. No money.” (Tr. Ex. 34, at 3.)

d. “Dear Comrades, look, how stable this airplane is.” (Tr. Ex. 34, at 8.)

e. “This feeling, this is my office desk. This is my office desk.” (Tr. Ex. 34, at 8.)

f. “A simple life. We’re living a simple life.” (Tr. Ex. 34, at 18.)

g. “We are not extravagant.” (Tr. Ex. 34, at 18.)

h. “It’s a life very similar to common people. Ah, I’m wearing shorts today, I am wearing shorts. There’s no money left. Can’t afford pants either. I can only sit in a private plane like this.” (Tr. Ex. 34, at 19.)

i. “I am reporting back to comrades on this simple life. The simple life.” (Tr. Ex. 34, at 19.)

j. “It’s all horse hair. Horse hair, ah, soundproof, ah. It’s Hermès leather.” (Tr. Ex. 34, at 20.)

k. “Brothers and sisters, we can’t afford a 787, right? Then let’s just buy a small one.” (Tr. Ex. 34, at 21.)

l. “The leather. It’s all my design.” (Tr. Ex. 34, at 21.)

m. “Ah, it’s all Hermès leather back here, it’s all Hermès leather. So to speak, this is Wengui, this is at . . . Guo doesn’t have any money, Guo has no money, Guo is cheating.” (Tr. Ex. 34, at 22.)

n. “Uh-huh. I can only lead such a life, I can’t lead a very good life, there’s nothing I can do.” (Tr. Ex. 34, at 22.)

(Tr. Ex. 34; Supp. Tr. Exs. 71, 74)

**2009–2022:
Ms. Guo’s Use of Bombardier**

56. Ms. Guo testified at a deposition taken in the Individual Debtor’s Chapter 11 case that, among other things, “[w]hen I was a kid back in China, I traveled with my family on” the Bombardier. Ms. Guo further testified she does not remember when she last flew on the Bombardier. (Tr. Ex. 18, at *73:17–74:24.)

57. Between 2007 and 2012, Ms. Guo first lived in New York City while attending film school. Between 2014 and 2017, Ms. Guo lived in Beijing. In 2017, Ms. Guo left the People’s Republic of China and came to New York City. (Tr. Ex. 18, at *43:22–45:6.)

BVI Entities

58. On January 20, 2023, at her deposition in the Individual Debtor’s Chapter 11 case, Ms. Guo testified she was transferred the entities she owns, including the BVI Entities, in 2017 by “people managing the family fund,” these entities were not operating and had no assets, and she did “[n]othing” to manage them. (Tr. Ex. 18, at *60:16–65:3.)

59. As with Whitecroft, Rosy Acme Ventures Limited, another BVI Entity was previously owned by Mr. Han. (Tr. Ex. 62.)

60. On July 4, 2017, each BVI Entity other than Whitecroft completed a BVI due diligence form (each a “Diligence Form” and together, collectively, the “Diligence Forms”) identifying Ms. Guo as its sole owner and with Ms. Guo signing each Diligence Form, attesting to the truth and accuracy of its content. (Tr. Exs. 42–50.)

61. Each Diligence Form lists Ms. Guo's address as 22 South Bay Road, Hong Kong. (Tr. Exs. 42–50.)

62. On January 20, 2023, at her deposition in the Individual Debtor's Chapter 11 case, Ms. Guo testified she has never resided at 20 or 22 South Bay Road, Hong Kong, and her family had a residence at 20 South Bay Road, Hong Kong, but she had only lived in Hong Kong with friends at some point prior to 2014. (Tr. Ex. 18, at *44:2–12, 46:21–24, 48:13–17, 129:6–130:9.)

63. Each Diligence Form lists 2160 0888 as one of the respective BVI Entity's phone number. (Tr. Exs. 42–50.)

64. On February 26, 2015, the Individual Debtor submitted an application to purchase an apartment at the Sherry-Netherland Hotel, listing his phone number as +852 2160 0888. (Tr. Ex. 41; Supp. Tr. Exs. 76 ¶ 4, 77 ¶ 5.)

65. The country code for Hong Kong phone numbers is +852.

Instant Adversary Proceeding

66. On May 16, 2023, the Trustee filed the Complaint. (ECF No. 1.)

67. On July 31, 2023, the Trustee served Ms. Guo with his First Set of Interrogatories (the "Interrogatories"), First Set of Requests for Production (the "RFPs"), and First Set of Requests for Admission (the "RFAs" and, together with the Interrogatories and RFPs, collectively, the "Written Discovery Requests") in this adversary proceeding. The Interrogatories requested Ms. Guo disclose, among other things:

- a. facts related to the acquisition and purported sale of the Bombardier;
- b. the basis for any contention that she has ownership or control over the Bombardier, Anton Development, and/or Whitecroft;
- c. Anton Development's and Whitecroft's assets; and
- d. all facts related to the Bombardier Proceeds.

The RFAs requested Ms. Guo admit, among other things:

- e. she did not control Anton Development at any time;
- f. the Individual Debtor controlled the Bombardier and the Bombardier Proceeds;
- g. she did not control the Bombardier or negotiate its sale; and
- h. the Individual Debtor controlled and is the equitable owner of Whitecroft, Head Win, and Anton Development.

(Tr. Exs. 26–28, 65–67.)

68. Ms. Guo invoked her Fifth Amendment rights against self-incrimination, including pursuant to the act of production doctrine, in response to all Written Discovery Requests, thereby providing no substantive answers and producing no responsive documents to the Trustee. (Tr. Exs. 26–28.)

69. Ms. Guo also invoked her Fifth Amendment rights against self-incrimination during her deposition in this adversary proceeding, declining to answer almost every substantive question. (Tr. Ex. 29.)

70. Ms. Guo, testifying as Whitecroft’s designated Rule 30(b)(6) corporate representative, invoked her Fifth Amendment rights against self-incrimination during Whitecroft’s deposition in this adversary proceeding, declining to answer almost every substantive question, including about the JNFX Statement. (Tr. Ex. 31.)

VI. DISCUSSION

The Motion for Summary Judgment seeks summary judgment on the Trustee’s First and Fourth Claims, sounding in beneficial ownership, or, in the alternative, on the Trustee’s Third Claim, sounding in fraudulent transfer.

A. First and Fourth Claims – Beneficial Ownership

Regarding beneficial ownership, the Trustee seeks a declaratory judgment that the Individual Debtor (i) beneficially owned the Bombardier and, hence, beneficially owns the Bombardier Proceeds and (ii) beneficially owns the BVI Entities. On this basis, he seeks turnover of the Bombardier Proceeds and the BVI Entities to the Estate.

Section 541(a)(1) and (6) of the Bankruptcy Code provide that a bankruptcy estate is comprised of, respectively, “all legal or equitable interests of the debtor in property as of the commencement of the case” and “proceeds, product, offspring, rents, or profits of or from property of the estate”, “wherever located and by whomever held . . .” Section 542(a) provides for turnover of property of the estate via delivery to the trustee. Applicable non-bankruptcy law governs whether a debtor has legal or equitable interests in property, such as the Trustee’s beneficial ownership claims. *Butner v. United States*, 440 U.S. 48, 55 (1979) (holding state law governs property rights) (case determined under the former Bankruptcy Act); *see Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 450–51 (2007) (citing *Butner* and holding state law governed substance of claims relating to state law property rights); *Cohen v. de la Cruz*, 523 U.S. 213, 221 (1998) (holding law under the former Bankruptcy Act remains vital under the Bankruptcy Code absent indication of contrary congressional intent). The applicable non-bankruptcy law is determined by Connecticut’s choice of law rules. *Geron ex rel. Thelen LLP v. Seyfarth Shaw LLP (In re Thelen LLP)*, 736 F.3d 213, 219 (2d Cir. 2013).

1. First Claim

Turning to the Trustee’s First Claim, the Court concludes that Connecticut courts would likely apply the Restatement (Second) of Conflict of Laws in actions sounding in property. Connecticut applies the Restatement (Second) of Conflict of Laws in actions sounding in

contract and tort. *W. Dermatology Consultants, P.C. v. VitalWorks, Inc.*, 153 A.3d 574, 584 (Conn. 2016); *Macomber v. Travelers Prop. & Cas. Corp.*, 894 A.2d 240, 256–57 (Conn. 2006). Section 222 of the Restatement (Second) of Conflict of Laws provides that the law of the state with the most significant relation to the asset applies. RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 6, 222 (2023).

The Trustee asserts New York law applies to the First Claim. Ms. Guo does not argue otherwise. The Court agrees with the parties. The Bombardier Proceeds are moveable property, not immoveable real property with a local jurisdiction. Ms. Guo appears to reside in New York. The Individual Debtor maintained a residence in New York from 2015 at least until his arrest in 2023. New York bears the most significant relation to the Bombardier Proceeds.

i. Legal Standard

Under New York law, the core inquiry regarding whether the Individual Debtor beneficially owned the Bombardier as of the date he filed his voluntary Chapter 11 petition is whether “the property benefitted him as if he had received the property directly.” *Exp.-Imp. Bank of United States v. Asia Pulp & Paper Co., Ltd.*, 609 F.3d 111, 120 (2d Cir. 2010) (applying New York law) (citing *United States v. Coluccio*, 51 F.3d 337, 341 (2d Cir. 1995) (applying New York law)). Federal common law is in keeping with New York law. In determining whether a legal owner is a mere nominee for a beneficial owner, federal courts consider, among other things, whether “(1) there is a close personal relationship between the nominee and the transferor; (2) the nominee paid little or no consideration for the property; (3) the parties placed the property in the name of the nominee in anticipation of collection activity; (4) the parties did not record the conveyance; and, (5) the transferor continues to exercise dominion and control over the property.” *Paloian ex rel. Dordevic v. Dordevic (In re Dordevic)*,

67 F.4th 372, 381 n. 1, 382 (7th Cir. 2023) (applying federal common law where state law did not provide a test for determining whether a person held property as a mere nominee of a beneficial owner); *see LiButti v. United States*, 968 F. Supp. 71, 75 n. 1, 76 (N.D.N.Y. 1997) (same), *aff'd in part, rev'd in part on other grounds*, 178 F.3d 114 (2d Cir. 1999); *see also In re Gliklad v. Chernoi*, 12 N.Y.S.3d 65 (N.Y. App. Div. 2015) (affirming turnover order requiring turnover of asset allegedly held by daughter); *Pac. All. Asia Opportunity Fund, L.P. v. Kwok Ho Wan*, Index No. 652077/2017 (N.Y. Sup. Ct. Feb. 9, 2022), NYCEF No. 1181 (performing analysis substantially of factors substantially similar to federal common law factors) (holding the Individual Debtor in contempt based in pertinent part on his beneficial ownership of a yacht he alleged Ms. Guo owned).

ii. Conclusions of Law

The Trustee argues that the undisputed facts establish the Individual Debtor beneficially owned the Bombardier as of the filing of his voluntary Chapter 11 petition. In particular, the Trustee asserts that (i) the Individual Debtor's initial purchase of the Bombardier; (ii) the subsequent transfer of the Bombardier – without consideration – to entities owned by his personal chef and later his daughter; (iii) the Individual Debtor's continued control and use of the Bombardier after these transfers; (iv) the Individual Debtor's continued funding of the maintenance and operation of the Bombardier after these transfers; and (v) Ms. Guo's inability to present evidence of her use and control of the Bombardier establish the Individual Debtor's beneficial ownership of the Bombardier. On this basis, the Trustee argues the Bombardier Proceeds are property of the Estate.

Ms. Guo largely relies on the evidentiary objections overruled above. Beyond those arguments, Ms. Guo argues there is a genuine dispute of material fact because she signed documents on behalf of Whitecroft and Anton Development.

The Court concludes there is no genuine dispute of material fact. First, there is no genuine dispute of material fact regarding the Individual Debtor's initial purchase of the Bombardier. (Undisputed Facts 4–18.) The Individual Debtor personally guaranteed a loan advanced by UBS to Head Win on the basis that Head Win was a holding company whose purpose was to hold the Bombardier, which was intended for private use by the Individual Debtor. (Tr. Exs. 2, 3.) This information was repeated to UBS for the duration of Head Win's ownership of the Bombardier. (Tr. Exs. 4-a, 4-b.) The Individual Debtor's adjudged *alter ego* Golden Spring and another entity Head Win's accountants understood to be owned by the Individual Debtor provided funding for the operation and maintenance of the Bombardier. (Golden Spring Judgment; Tr. Exs. 35, 54.)

Second, there is no genuine dispute of material fact that the Bombardier was transferred to entities owned by persons with close personal relationships to the Individual Debtor, namely, first his personal chef – Mr. Han – and, subsequently, his daughter, Ms. Guo. (Undisputed Facts 3, 19–33.) Ms. Ngok, the Individual Debtor's wife³ and Ms. Guo's mother, testified at her deposition in the Individual Debtor's Chapter 11 case that Mr. Han is the family's personal chef. (Tr. Ex. 32, at *142:12–143:14.) Ms. Guo does not contest that she is the Individual Debtor's daughter. Similarly, there is no genuine dispute of material fact that the transfer of Anton

³ Based on statements made in the Individual Debtor's Chapter 11 case and related adversary proceedings, the Trustee appears to dispute whether Ms. Ngok and the Individual Debtor are legally married. No conclusion of law relating to the legal nature of the relationship between Ms. Ngok and the Individual Debtor is made in this decision.

Development from Mr. Han to Ms. Guo was without consideration. (*Compare* Undisputed Fact 17 *with* Undisputed Fact 26.) The Bombardier, Anton Development's asset at the time of the transfer, was valued roughly eighteen (18) months prior to the transfer at more than \$25,000,000.00 (USD) and sold in 2022 for more than \$13,000,000.00 (USD). (Tr. Exs. 7, 19.) One (1) Hong Kong Dollar was not sufficient consideration. (Tr. Ex. 11, at *0136.)

Third, there is no genuine dispute of material fact that the Individual Debtor continued to control and use the Bombardier after its transfers. (Undisputed Facts 23–25, 33–40, 51–52.) Flight records demonstrate that the Individual Debtor continued to use the Bombardier from its initial transfer in 2016 from Head Win to Anton Development until after the filing of his voluntary Chapter 11 petition. (Tr. Exs. 17, 37.) Similarly, funds from Golden Spring, the Individual Debtor's *alter ego*, continued to fund the operation of the Bombardier after the transfers to Anton Development and Whitecroft. (Tr. Exs. 36, 64.) Golden Spring also controlled the post-petition sale process. (Tr. Exs. 19–22, 23, at *17:8–16, 21:10–24, 58:2–21, 63:9–18, 36, 40.)

Fourth, there is no genuine dispute of material fact regarding Ms. Guo's lack of use and control of the Bombardier. (Undisputed Facts 56, 57.) Ms. Guo testified at her deposition in the Individual Debtor's Chapter 11 case that other than recalling traveling on the Bombardier as a child, she does not remember the last time she used it. (Tr. Ex. 18, at *73:17–74:24.) Ms. Guo further testified she graduated from college several years before acquiring Anton Development in 2017. (*Id.* at *43:22–45:6.) There is no factual material supporting her control of the Bombardier and the only factual material regarding her use of the Bombardier relates to years when the Individual Debtor indisputably owned it.

In sum, each of the Trustee's contentions is supported by the evidence he submitted with the Motion. Despite the Trustee providing sufficient evidence to support the First Claim, Ms. Guo has failed to provide evidence tending to negate the First Claim – such as by showing her use and control of the Bombardier – so as to create something more than a metaphysical doubt regarding the Individual Debtor's beneficial ownership of the Bombardier and the Bombardier Proceeds. *See Matsushita Elec. Indus.*, 475 U.S. at 586; *Celotex*, 477 U.S. at 323. Indeed, Ms. Guo has presented no contrary evidence. Guo Exhibits A, B, and C, which this Court has above precluded, would not change this analysis: the Trustee does not dispute that Ms. Guo is the nominal owner of Whitecroft – Ms. Guo's nominal ownership is central to the First Claim. There is no genuine dispute of material fact.

Based on the undisputed facts, the Trustee is entitled to judgment as a matter of law that the Bombardier was property of the Estate as of the filing of the Individual Debtor's petition and, hence, the Bombardier Proceeds are property of the Estate. On the record before the Court, the undisputed facts discussed above demonstrate that the Bombardier "benefitted him as if he had received the property directly." *Exp.-Imp. Bank*, 609 F.3d at 120. At least three of the federal common law factors support the conclusion that Ms. Guo is a mere nominee for the Individual Debtor: (i) Ms. Guo, and Mr. Han before her, have a close personal relationship to the Individual Debtor; (ii) Ms. Guo paid Mr. Han only nominal consideration of \$1.00 (HKD) for Anton Development and the Bombardier; and (iii) the Individual Debtor continued to exercise dominion and control over the Bombardier after its transfers. *See Dordevic*, 67 F.4th at 382. Hence, the Individual Debtor had an equitable interest in the Bombardier as of the petition date and it was property of the Estate. 11 U.S.C. § 541(a)(1). Therefore, the Bombardier Proceeds are property of the Estate. 11 U.S.C. § 541(a)(6).

Because there is no genuine dispute of material fact and the Trustee is entitled to judgment as a matter of law, the Motion for Summary Judgment is granted with respect to the First Claim. *See Anderson*, 477 U.S. at 250–251.

2. Fourth Claim

Turning next to the Trustee’s Fourth Claim, the Trustee asserts BVI law applies. Ms. Guo does not contest this assertion. The Court agrees. Connecticut courts would apply the law of the place of formation as to the internal affairs of a corporate entity, such as its ownership. *See Weber v. U.S. Sterling Securities, Inc.*, 924 A.2d 816, 822–23 (Conn. 2007) (applying local law of state of formation to *alter ego* action and other internal affairs regarding an LLC); RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 6, 303, 304. Here, the BVI Entities were formed in the BVI. Hence, BVI law governs whether the Individual Debtor beneficially owns the BVI Entities.

i. Legal Standard

Except as supplemented and supplanted by local legislation, English common law and equity applies in the BVI. Eastern Caribbean Supreme Court (Virgin Islands) Ordinance 1969, c. 80, §§ 14, 15 (V.I.); Common Law (Declaration of Application) Act 1705, 3 Ann. c. 13 (V.I.). English common law recognizes that a legal owner may be a “bare trustee”, holding an asset for the benefit and at the discretion of a beneficial owner who has complete control over the asset. *Inland Revenue Commissioners v. Silverts Ltd.* [1951] 1 Ch 521 (EWCA) at 526 (Eng.); *Jenkins v. Walker (In re Blandy Jenkins’ Estate)* [1917] 1 Ch 46; *Christie v. Ovington* (1875) 1 Ch. D. 279; *Meaning of ‘bare trustee’*, 92 HALSBURY’S LAWS OF ENGLAND ¶ 194 (5th ed. 2019). The relationship between bare trustee and beneficial owner need not be formalized in writing and may be determined based on the facts and circumstances of the case. *Pleshakov v. Sky Stream*

Corporation [2021] UKPC 15 [¶¶ 47–48]; Tang v. Revenue and Customs Commissioners [2019] UKFTT 81 (TC); Purba v. Purba [2000] 1 FLR 444 (EWCA) (Eng.).

ii. Conclusions of Law

The parties largely raise separate arguments about Whitecroft, on the one hand, and the other BVI Entities, on the other hand, with reference to different undisputed facts. However, other than her evidentiary objections, which were overruled above, Ms. Guo raises one additional argument that applies to all the BVI Entities. She argues that the Trustee should be estopped from arguing the Individual Debtor beneficially owns and controls the BVI Entities because the Trustee has sought discovery from the BVI Entities through Ms. Guo.

Ms. Guo's estoppel argument is not persuasive. No party, including the Trustee, disputes she is the legal owner of the BVI Entities. She is also the defendant in this adversary proceeding. She is contesting the Trustee's allegations that the Individual Debtor beneficially owns and controls the BVI Entities. Moreover, at its deposition, Whitecroft itself put Ms. Guo forward as its Fed. R. Civ. P. 30(b)(6) corporate representative. The Trustee is not precluded from arguing that the Individual Debtor beneficially owns and controls the BVI Entities because he sought discovery to support his claim from them through Ms. Guo.

a. Whitecroft

Turning to the arguments regarding Whitecroft in particular, the Trustee argues that because, (i) its only purpose is holding the Bombardier and the Bombardier was beneficially owned and controlled by the Individual Debtor until its sale to ACASS USA and (ii) its funding comes from the Individual Debtor, the Individual Debtor beneficially owns Whitecroft.

In addition to the arguments regarding all BVI Entities, Ms. Guo argues there is a genuine dispute of material fact as to whether Whitecroft is beneficially owned by the Individual Debtor because she signed documents on behalf of Whitecroft.

There is no genuine dispute of material fact. For the reasons stated above, the Court concludes there is no genuine dispute of material fact that the Individual Debtor used and controlled the Bombardier while it was owned by Whitecroft. Importantly, those reasons included the undisputed facts that Whitecroft was funded, in part, by the Individual Debtor's *alter ego* Golden Spring; the same *alter ego*, Golden Spring, controlled the sale of the Bombardier; the Individual Debtor controlled and used the Bombardier while it was owned by Whitecroft; and Ms. Guo has no recollection of using the Bombardier while it was owned by Whitecroft or Anton Development. (Undisputed Facts 33–50, 52, 56, 57.) Each of these undisputed facts demonstrates the Individual Debtor's control over Whitecroft in addition to the Bombardier. As discussed above, Ms. Guo presents no evidence to controvert the Trustee's evidence that the Individual Debtor's beneficial ownership and control of the Bombardier. *See Matsushita Elec. Indus.*, 475 U.S. at 586; *Celotex*, 477 U.S. at 323.

Moreover, it is undisputed that (i) Whitecroft had no business purpose other than holding the Bombardier and (ii) it is undisputed that Whitecroft's legal address has been listed in care of Golden Spring. (Undisputed Facts 30, 32.) Faced with the Trustee's evidence, Ms. Guo raises (i) no genuine dispute of material fact about whether Whitecroft has any additional business other than being the legal owner of the Individual Debtor's property and (ii) no genuine dispute of material fact about whether the Whitecroft's legal address is that of the Individual Debtor's *alter ego*, Golden Spring. *See Matsushita Elec. Indus.*, 475 U.S. at 586; *Celotex*, 477 U.S. at 323.

Based on the undisputed facts, the Trustee is entitled to judgment as a matter of law that Whitecroft is beneficially owned and controlled by the Individual Debtor. The undisputed facts establish that Ms. Guo holds Whitecroft as a “bare trustee” for the Individual Debtor who controls Whitecroft and its former sole asset, the Bombardier, including its use, its funding, and its ultimate disposition to the exclusion of Ms. Guo. *See Pleshakov v. Sky Stream Corporation* [2021] UKPC 15 [¶¶ 47–48]; *Inland Revenue Commissioners v. Silverts Ltd.* [1951] 1 Ch 521 (EWCA) at 526 (Eng.); 92 HALSBURY’S LAWS OF ENGLAND ¶ 194. The Court concludes the Individual Debtor beneficially owns and controls Whitecroft.

Therefore, because there is no genuine dispute of material fact and the Trustee is entitled to judgment as a matter of law, the Motion for Summary Judgment is granted with respect to the Fourth Claim as it relates to Whitecroft. *See Anderson*, 477 U.S. at 250–251.

b. Other BVI Entities

Regarding the other BVI Entities, the Trustee argues the Individual Debtor’s ownership and control of these entities is established by (i) the Individual Debtor’s pattern of placing entities he controls under the nominal ownership of his relatives, including Ms. Guo, and close associates; (ii) the Individual Debtor’s phone number being used as the contact phone number for the other BVI Entities; (iii) the Individual Debtor’s residence in Hong Kong – at which Ms. Guo testified she has never lived – being used as the contact address for the other BVI Entities; (iv) Ms. Guo’s testimony that she does nothing to manage the entities she owns; and (v) Ms. Guo’s testimony that she was transferred the entities she owns by the family fund.

Beyond her evidentiary objections and her estoppel argument, which the Court has overruled above, Ms. Guo argues the Trustee has presented no evidence of the Individual

Debtor's control of the other BVI Entities and cannot rely on Ms. Guo and the Individual Debtor's invocation of their Fifth Amendment rights against self-incrimination.

Presently, there is significantly less of a record regarding the other BVI Entities. The undisputed facts are (i) the other BVI Entities used an address in Hong Kong, at which address Ms. Guo never lived but which appears to be close to an address at which her family had a home; and (ii) the other BVI Entities used a phone number that the Individual Debtor also used in his application to purchase his apartment at the Sherry-Netherland. (Undisputed Facts 58–65.) The Trustee also introduces certain tax documents, but the Court cannot discern what precisely they are meant to indicate. There is no record as to what business or assets, if any, the other BVI Entities have or had and regarding the Individual Debtor's involvement in such business. Moreover, the Court cannot at summary judgment – and the Trustee does not request the Court do so – draw an adverse inference based upon Ms. Guo's or the Individual Debtor's invocation of their Fifth Amendment rights against self-incrimination. *Stichting ter Behartiging van de Belangen van Oudaandeelhouders in het Kapitaal van Saybolt International B.V. v. Schreiber*, 407 F.3d 34, 55 (2d Cir. 2005).

Therefore, on this factual record, the Court concludes the Trustee is not entitled to judgment as a matter of law that Ms. Guo holds the other BVI Entities as a bare trustee for the Individual Debtor. *See Anderson*, 477 U.S. at 250–51. The Motion for Summary judgment is denied with regard to the Fourth Claim as it relates to the other BVI Entities. For the purposes of any future trial, however, it is established that Ms. Guo never lived at 20 or 22 South Bay Road, Hong Kong and that the phone number used by the other BVI Entities has also been used by the Individual Debtor.

B. Third Claim – Fraudulent Transfer

The Motion seeks, in the alternative to relief on the First Claim, summary judgment on the Third Claim. The Third Claim seeks to avoid the transfer (the “Transfer”) on June 27, 2017 of Anton Development from Mr. Han to Ms. Guo. Pursuant to section 544(b) of the Bankruptcy Code, the Trustee seeks to avoid the Transfer as an actual fraudulent transfer under former section 276 of the New York Debtor and Creditor Law, which former section was applicable at the time of the Transfer. On this basis, the Trustee seeks, pursuant to section 550 of the Bankruptcy Code, to recover the value of Anton Development, which, at the time, owned the Bombardier, from Ms. Guo. The Court concludes that Connecticut courts would apply New York law because, at the time of the Transfer, Ms. Guo resided in New York and Ms. Guo does not object to the application of New York law. RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 6, 244.

i. Legal Standard

Former section 276 of the New York Debtor and Creditor Law provides: “Every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors, is fraudulent as to both present and future creditors.” N.Y. DEBT. & CRED. § 276 (repealed effective April 4, 2020). The *transferor’s* intent is at issue rather than the transferee’s intent. *MFS/Sun Life Trust-High Yield Series v. Van Dusen Airport Servs. Co.*, 910 F. Supp. 913, at 935–36 (S.D.N.Y. 1995) (applying New York law).

Under former section 276, actual intent to hinder, delay, or defraud can be established by so-called “badges of fraud,” namely, “circumstances so commonly associated with fraudulent transfers ‘that their presence gives rise to an inference of intent’.” *Wall St. Assocs. v. Brodsky*,

684 N.Y.S.2d 244, 247 (N.Y. App. Div. 1999); *see Sharp Int'l Corp. v. State St. Bank & Trust Co. (In re Sharp Int'l Corp.)*, 403 F.3d 43, 56–57 (2d Cir. 2005) (applying New York law).

Badges of fraud include: “a close relationship between the parties to the alleged fraudulent transaction; a questionable transfer not in the usual course of business; inadequacy of the consideration; the transferor’s knowledge of the creditor’s claim and the inability to pay it; and retention of control of the property by the transferor after the conveyance.” *Wall St.*, 684 N.Y.S.2d at 248.

The proof required to establish an actual fraudulent transfer under former section 276 of the New York Debtor and Creditor Law is “substantially the same” as that required under section 548(a)(1)(A) of the Bankruptcy Code. *Secs. Inv. Prot. Corp. v. Bernard L. Madoff Inv. Secs. LLC*, 631 B.R. 1, 12 (Bankr. S.D.N.Y. 2021) (citing *Ehrlich ex rel. Hoffmans Trade Grp. LLC v. Com. Factors of Atlanta*, 567 B.R. 684, 692–93 (N.D.N.Y. 2017) and *In re Combes*, 382 B.R. 186, 193 (Bankr. E.D.N.Y. 2008)); *compare Salomon v. Kaiser (In re Kaiser)*, 722 F.2d 1574, 1582–84 (2d Cir. 1983) (listing examples of badges of fraud) *with Wall St.*, 684 N.Y.S.2d at 248 (same).

ii. Conclusions of Law

The Trustee argues that the Individual Debtor’s intent to hinder, delay, or defraud is established by (i) the Individual Debtor’s and Ms. Guo’s concealment of facts relating to the Bombardier and Anton Development; (ii) the Individual Debtor’s, Ms. Guo’s, and Whitecroft’s failure to comply with discovery obligations and orders; (iii) the discrepancy between the \$1.00 (HKD) consideration paid and the value of Anton Development, which, at the time of the Transfer, had an asset valued in 2015 at over \$25,000,000.00 (USD) that sold in 2022 for over \$13,000,000.00 (USD); (iv) Ms. Guo’s close familial relationship with the Individual Debtor; (v)

the Individual Debtor's continuing use and control of the Bombardier after the Transfer; and (vi) the Individual Debtor's *modus operandi* of creating entities to hold assets and placing those entities under the nominal ownership of close associates, employees, and relatives.

In addition to her evidentiary objections, which the Court has overruled, Ms. Guo argues the Trustee has failed to establish that the Individual Debtor beneficially owned the Bombardier and Anton Development at the time of the Transfer. Ms. Guo also argues, because the Trustee cannot rely on the Individual Debtor's and Ms. Guo's invocation of their Fifth Amendment rights against self-incrimination at summary judgment, the Trustee cannot establish that the Individual Debtor and Ms. Guo have concealed facts.

Ms. Guo is correct that the record regarding Anton Development – *e.g.*, its assets other than the Bombardier, if any, or its business other than holding the Bombardier, if any – is not presently before the Court. The Complaint does not seek a determination that Anton Development was beneficially owned by the Individual Debtor as of the petition date, yet it seeks the recovery of the value of Anton Development at the time of the Transfer. The Court notes that there is pending litigation in this adversary proceeding regarding Anton Development's failure to comply with discovery requests and orders entered by this Court.

However, as discussed above, there is no genuine dispute of material fact that (i) the Individual Debtor beneficially owned the Bombardier before its transfer to Anton Development and (ii) the Individual Debtor continued to use, control, and finance the maintenance and operation of the Bombardier after its transfer from Head Win to Anton Development and Ms. Guo's commensurate lack of use and control. (Undisputed Facts 4–18, 23–25, 51, 56, 57.) Furthermore, as discussed above, there is no genuine dispute of material fact that (iii) the Transfer was for inadequate consideration; and (iv) Ms. Guo shares a close familial relationship

with the Individual Debtor. (Undisputed Facts 3, 17, 26, 36.) Each of these undisputed material facts is a badge of fraud. *See Wall St.*, 684 N.Y.S.2d at 248; *Kaiser*, 722 F.2d at 1582–84.

There is also no genuine dispute of material fact that on the same day Anton Development was transferred to Ms. Guo, HK International and Eastern Profit were also transferred to Ms. Guo. HK International was the nominal owner of the yacht, the Lady May, at the time of the transfer, which yacht was beneficially owned by the Individual Debtor. (*See* Memo. of Decision & Order, *HK Int’l Funds Invs. (USA) Ltd. v. Despins ex rel. Kwok (In re Kwok)*, Case No. 22-50073 (JAM), Adv. P. No. 22-05003 (JAM) (Bankr. D. Conn. May 18, 2023), ECF No. 221.) Eastern Profit has been determined to be “a shell corporation for [the Individual Debtor].” *E. Profit Corp. Ltd. v. Strategic Vision US LLC*, No. 18-cv-2185 (LJL), 2021 WL 2554631, at *1, 7–8 (S.D.N.Y. June 22, 2021). The Individual Debtor has an established pattern of transferring “shell” companies holding assets he beneficially owns to Ms. Guo. Ms. Guo puts forward no evidence to the contrary.

The Court concludes that, should a reviewing court disagree with the determination above that the Trustee is entitled to summary judgment on the First Claim, partial summary judgment should enter on the Third Claim. The only issues that would remain for trial of the Third Claim would be (i) whether the Individual Debtor beneficially owned Anton Development at the time of the Transfer; (ii) what the value of Anton Development was at the time of the Transfer, and (iii) whether any further badges of fraud exist. The badges of fraud set forth above as well as the Individual Debtor’s repeated practice of transferring assets to Ms. Guo through transfers of holding companies while retaining use and control of those assets have been established for trial.

VII. CONCLUSION AND ORDER

For the reasons set forth above, pursuant to Fed. R. Civ. P. 56, made applicable in this adversary proceeding by Fed. R. Bankr. P. 7056, it is hereby

ORDERED: The Motion for Summary Judgment (ECF No. 88) is **GRANTED IN PART** as set forth herein; and it is further

ORDERED: The Motion is **GRANTED** with respect to the Trustee's First Claim (Complaint ¶¶ 48–52) and with respect to the Trustee's Fourth Claim (Complaint ¶¶ 69–74), insofar as it alleges the Trustee beneficially owns Whitecroft; and it is further

ORDERED: Any trial on the remainder of the Trustee's Fourth Claim or on the Trustee's Third Claim (Complaint ¶¶ 57–66) is narrowed as set forth in the discussion above; and it is further

ORDERED: On or before May 3, 2024, Ms. Guo is to turnover to the Estate the Bombardier Proceeds, including, but not limited to, the funds in escrow with CSG, and her ownership interest in Whitecroft by delivery of the said Bombardier Proceeds and ownership to the Trustee; and it is further

ORDERED: Upon particularized review of documents submitted in support of and in opposition to the Motion for Summary Judgment, pursuant to the balancing test propounded by the United States Court of Appeals for the Second Circuit in *Brown v. Maxwell*, 929 F.3d 41 (2d Cir. 2019), the Court determines, to the extent necessary to publish this unredacted Opinion, (i) the performance of the judicial function requires the unsealing of the material previously sealed by orders (the “Sealing Orders”) of the Court (*see* ECF Nos. 101, 114, 122); and (ii) the strong presumption of public access to the material submitted at summary judgment is not rebutted by the privacy and commercial information interests in maintaining the sealing of the material,

Maxwell, 929 F.3d at 47; *see* 11 U.S.C. § 107; *United States v. Amodeo*, 71 F.3d 1044, 1050–51 (2d Cir. 1995); *In re Purdue Pharma*, 632 B.R. 34 (Bankr. S.D.N.Y. 2021). Otherwise, the Sealing Orders remain in full force and effect until further order of the Court.

Dated at Bridgeport, Connecticut this 3rd day of April, 2024.

Julie A. Manning
United States Bankruptcy Judge
District of Connecticut

