

memorialized by a promissory note executed by the Morgan Fund. *Id.* When Guthrie’s loan to the Morgan Fund matured in 2009, Guthrie agreed to extend the loan’s maturity date; in exchange, the Bobker family agreed to cause 11 East 36th to issue a pledge to secure Guthrie’s loan. *Id.* The pledge agreement grants Guthrie a security interest in all of 11 East 36th’s “right, title and interest . . . in and to its membership interest in Morgan Lofts, LLC.” *Id.* The pledge agreement does not purport to grant Guthrie a security interest in any of the real property owned by Morgan Lofts. *Id.* In October 2009, Guthrie filed a UCC-1 Financing Statement with the New York Secretary of State in connection with the pledge agreement. *Id.* at 4. The UCC-1 filing describes the pledged collateral as real property owned by Morgan Lofts rather than a security interest in 11 East 36th’s membership interest in Morgan Lofts. *Id.*

In August 2013, Guthrie filed proofs of claim in the Bankruptcy Court against Appellees, based on the Morgan Fund’s promissory note. *Id.* Appellees objected, and the Bankruptcy Court issued a decision on January 29, 2015 expunging the proofs of claim on the basis that: (1) the pledge agreement did not give Guthrie a lien on the real property owned by Morgan Lofts; and (2) Guthrie’s lien on 11 East 36th Street’s interest in Morgan Lofts was unperfected due to Guthrie’s defective UCC-1 filing and therefore subject to avoidance under 11 U.S.C. 544(a). *Id.* at 4-7, 9. The Bankruptcy Court also rejected Guthrie’s veil piercing claim. *Id.* at 7-9. This appeal ensued.

DISCUSSION

I. Standard of Review

When reviewing judgments rendered by bankruptcy courts, district courts act as appellate courts. *See In re Sanshoe Worldwide Grp.*, 993 F.3d 300, 305 (2d Cir. 1993). Findings of fact are reviewed for clear error, and conclusions of law are reviewed de novo. *In re Bennett*

Fundings Grp., Inc., 146 F.3d 136, 138 (2d Cir. 1998).

II. Analysis

On appeal, Guthrie argues that the Bankruptcy Court based its decision to expunge her claim against 11 East 36th on the erroneous legal conclusion that a claim against the property of a debtor's bankruptcy estate does not constitute a claim against the debtor, despite statutory language and case law to the contrary, *see, e.g., Johnson v. Home State Bank*, 501 U.S. 78, 84-87 (1991); 11 U.S.C. § 102(2). Appellant Br. 6, ECF No. 8. Guthrie misconstrues the Bankruptcy Court's opinion. The Bankruptcy Court did not, as Guthrie contends, conclude that Guthrie's proof of claim should be expunged on the basis that Guthrie's lien on 11 East 36th's interest in Morgan Lofts did not constitute a claim against 11 East 36th's bankruptcy estate. Rather, it expunged the claim on the basis of its findings that: (1) Guthrie's lien on 11 East 36th's interest in Morgan Lofts was unperfected due to Guthrie's defective UCC-1 filing; and (2) her lien was therefore subordinate to the rights of the Debtors and subject to avoidance under 11 U.S.C. § 544(a). Bankr. Dkt. 203 at 6-7. Guthrie's arguments regarding the *Johnson* line of cases are, therefore, irrelevant.

Guthrie's second argument on appeal is that avoidance under 11 U.S.C. § 544(a) is improper because the defective UCC-1 filing was prepared by Appellees' principals or agents on Guthrie's behalf, and that any error in the filing was therefore caused by Appellees' misconduct. Appellant Br. 11. As such, Guthrie seeks the imposition of a constructive trust which would render her claim unavoidable. *See In re Howard's Appliance Corp.*, 874 F.2d 88, 93 (2d Cir. 1989). Guthrie acknowledges that she did not raise this argument before the Bankruptcy Court, Appellant Reply Br. 6-7, ECF No. 10, and this Court declines to consider it on appeal, *see Bogle-Assegai v. Connecticut*, 470 F.3d 498, 504 (2d Cir. 2006) ("It is a well-established general rule that an appellate court will not consider an issue raised for the first time on appeal."). Although

appellate courts have the discretion to consider an issue raised for the first time on appeal, they do so only “where necessary to avoid a manifest injustice or where the argument presents a question of law and there is no need for additional fact-finding.” *Bogle-Assegai*, 470 F.3d at 504. Determining whether to impose a constructive trust would require an examination of issues not addressed by the Bankruptcy Court’s factual findings, including Appellees’ specific roles and intent in preparing Guthrie’s UCC-1 filing. Nor has Guthrie established that manifest injustice would result if this Court declined to exercise its discretion to consider her waived arguments. Accordingly, the Bankruptcy Court’s decision is AFFIRMED.

CONCLUSION

For the reasons stated above, the Bankruptcy Court’s decision is AFFIRMED. The Clerk of Court is directed to close the case.

SO ORDERED.

Dated: March 21, 2016
New York, New York



ANALISA TORRES
United States District Judge