UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RUTIE PENG and MACY YEUNG *aka* MACY MEI KUM YEUNG, Appellants, - against - KENNETH P. SILVERMAN and 133 SECOND AVENUE LLC, Appellees.	26-CV-4686 (AT) (RWL) **REPORT AND RECOMMENDATION TO HON. ANALISA TORRES: MOTION FOR LEAVE TO APPEAL (Dkt. 3)**

ROBERT W. LEHRBURGER, United States Magistrate Judge.

On June 3, 2026, Rutie Peng ("Debtor") and Macy Yeung ("Yeung") (collectively, "Appellants"), represented by counsel, filed this action seeking leave to appeal several interlocutory orders entered in ongoing proceedings before the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court"). Both 133 Second Avenue LLC ("133 Second Avenue" or "Creditor"), and Kenneth P. Silverman ("Silverman" or "Trustee"), have submitted briefing in opposition, asking the Court to deny Appellants leave to appeal. For the reasons set forth below, Appellants' motion for leave to appeal should be DENIED.

FACTUAL BACKGROUND[1]

On September 6, 2024, the Debtor commenced a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code ("Bankruptcy Code") in the Southern

[1] Unless otherwise noted, facts specific to the instant motion are drawn from the parties' declarations and exhibits. The declarations include the Declaration of Alex E. Tsionis dated June 5, 2026, at Dkt. 4-2 ("Tsionis Decl."); and the Declaration of Meghan Lavine dated June 5, 2026, at Dkt. 6 ("Lavine Decl.").

District of New York, No. 24-BK-11542 (DSJ) (the "Bankruptcy Proceeding"). (B. Dkt. 1.[2]) 133 Second Avenue is a creditor of the Debtor and a party of interest in the Bankruptcy Proceeding. (*See, e.g.*, B. Dkt. 15.) On September 10, 2024, Silverman was appointed as the Chapter 7 Trustee of the Debtor's estate. (B. Dkt. 5 at 1.)

A. Order Compelling Yeung To Produce Documents

On January 6, 2025, the Creditor filed an ex parte motion under Rule 2004 of the Bankruptcy Rules ("Rule 2004 Motion"), seeking entry of an order compelling Yeung to produce certain documents and appear for deposition. (B. Dkt. 41.) On January 7, 2025, the Bankruptcy Court entered an order granting the Creditor's Rule 2004 Motion, and authorizing the Creditor to serve subpoenas on Yeung ("Rule 2004 Order"). (Tsionis Decl. Ex. A; B. Dkt. 51.)

On July 18, 2025, the Creditor filed a motion for contempt pursuant to Section 105 of the Bankruptcy Code and Bankruptcy Rules 2004 and 9020, seeking to compel Yeung to produce documents demanded under the Rule 2004 Order; hold Yeung in contempt for failure to comply with the Rule 2004 Order; award sanctions in favor of the Creditor and against Yeung for attorneys' fees incurred in bringing the motion; and award per diem sanctions and/or direct the U.S. Marshal to take Yeung into custody if Yeung failed to comply with the Rule 2004 Order. (B. Dkt. 99.) On August 15, 2025, Yeung filed opposition to the Creditor's motion. (B. Dkt. 109.) Following a hearing held on August 21, 2025, the Bankruptcy Court entered an order directing Yeung to produce all the documents requested in the subpoenas, and holding Yeung in civil contempt for failing to comply with the Rule 2004 Order. (Tsionis Decl. Ex. B; B. Dkt. 112.) The order stated

[2] All docket numbers designated as "(B. Dkt. #)" are from the Bankruptcy Proceeding.

that all documents in Yeung's possession, custody, or control should be produced by September 9, 2025, and that if Yeung failed to comply with the order, the Creditor would be entitled to "seek further relief against Yeung, including but not limited to reasonable attorney's fees and costs, imposition of escalating monetary sanctions, and a request for the United States Marshal to take Yeung into custody until she fully purges her contempt." (Tsionis Decl. Ex. B at 2.)

B. Order Compelling Debtor To Produce Documents

On April 24, 2025, the Bankruptcy Court issued an order authorizing the Trustee to issue subpoenas on the Debtor pursuant to Rule 2004. (Lavine Decl. Ex. F; B. Dkt. 85.) That same day, the Trustee served the order and the subpoena on the Debtor. (Lavine Decl. Ex. G; B. Dkt. 87.) On July 2, 2025, Judge Jones issued an order requiring the Debtor to produce "all documents and information demanded in the Rule 2004 Order and the associated subpoena," but denying the Trustee's motion to hold the Debtor in contempt. (Lavine Decl. Ex. H; B. Dkt. 96.) On October 9, 2025, following a letter motion by the Trustee and a virtual conference with the parties, Judge Jones issued an order compelling the Debtor to comply with the subpoenas, and holding the Debtor in civil contempt for failure to comply with the Rule 2004 Order. (Lavine Decl. Ex. J; B. Dkt. 127.)

C. Order Compelling Production In The Adversary Proceeding

On April 4, 2025, the Trustee commenced a fraudulent conveyance action against Yeung, seeking to "recover certain transfers of real property and money made by the Debtor, to the Defendant [Yeung], within the applicable reach-back periods." (Ad. Dkt. 1.[3]) On November 7, 2025, the Trustee served Yeung with a request to "produce …

[3] All docket numbers designated as "(Ad. Dkt. #)" are from case No. 25-AP-1082 (DSJ) (the "Adversary Proceeding")

designated documents for inspection and copying no later than thirty … days" after service (the "Document Request"). (Lavine Decl. Ex. A at 1.) On February 9, 2026, the Trustee wrote to the Bankruptcy Court in the Adversary Proceeding, informing Judge Jones that Yeung had yet to produce any documents. (Lavine Decl. Ex. B; Ad. Dkt. 15.) On February 18, 2026, Judge Jones issued an order instructing Yeung to "produce all materials requested in the Document Request on or before February 27, 2026." (Lavine Decl. Ex. C at 2; Ad. Dkt. 18.) The order noted "that should Defendant fail to ***timely comply with document production requirements she may be subject to sanctions or other relief***." (Lavine Decl. Ex. C at 2 (emphasis in original).)

D. The Contempt Order And Additional Orders To Compel

On May 7, 2026, the Bankruptcy Court held a Status Conference to discuss Appellants' ongoing non-compliance with the Bankruptcy Court's orders in both the Bankruptcy Proceeding and the Adversary Proceeding. (*See* B. Dkt. 160; Ad. Dkt. 24.) Attorney Victor Tsai ("Tsai") appeared on behalf of both the Debtor and Yeung. Later that day, the Bankruptcy Court entered an order: "(I) Further Compelling Document Production of Macy Mei Kum Yeung; (II) Holding Macy Mei Kum Yeung In Civil Contempt and (III) Imposing Monetary Sanctions Against Macy Mei Kum Yeung" (hereafter, "Contempt Order"). (Tsionis Decl. Ex. D; B. Dkt. 166.) Both Tsai and Yeung were served with the Contempt Order on May 7, 2026. (B. Dkts. 167-168.) On May 8, 2026, the bankruptcy court issued two orders compelling document production to the Trustee – one concerning Yeung (hereafter, "Yeung Compel Order"[4]) and one concerning the Debtor

[4] The same order was entered in both the Bankruptcy Proceeding and the Adversary Proceeding. (*See* B. Dkt. 169 and Ad. Dkt. 25.) Accordingly, the Court's analysis pertaining to the Yeung Compel Order extends to both orders.

(hereafter, "Debtor Compel Order") (collectively, the "Compel Orders"). (*See* Lavine Decl. Exs. E and L.)

E. The Instant Appeal

On May 22, 2026, the Appellants filed a joint Notice of Appeal and a motion for leave to appeal the Contempt Order, the Yeung Compel Order, and the Debtor Compel Order ("Motion"). (Dkts. 1, 3; B. Dkt. 172.) On June 5, 2026, the Creditor filed its opposition to the Motion, as well as a supporting memorandum and declaration. (Dkt. 4.) On June 7, 2026, the Trustee filed a memorandum in opposition to the Motion ("Mem."), as well as a supporting declaration. (Dkts. 6, 7.) On August 25, 2026, the Motion was referred to the undersigned for Report and Recommendation. (Dkt. 11.)

LEGAL STANDARD

The Court's "jurisdiction to hear appeals from the Bankruptcy Court is established by 28 U.S.C. § 158(a) … which provides for jurisdiction over appeals from final judgments, orders, and decrees, and, with leave of the court, from interlocutory orders and decrees." *Rosenberg v. Educational Credit Management Corp.*, No. 22-CV-8954, 2023 WL 6162940, at *2 (S.D.N.Y. Sep. 20, 2023) (internal quotation marks and citations omitted). District courts have "discretionary appellate jurisdiction over an interlocutory order of a bankruptcy court." *In re Kassover*, 343 F.3d 91, 94 (2d Cir. 2003). "While neither [28 U.S.C. § 158(a)] nor the Federal Rules of Bankruptcy Procedure provide criteria for granting leave to appeal, 'most district courts in the Second Circuit have applied the analogous standard for certifying an interlocutory appeal from a district court order, set forth in 28 U.S.C. § 1292(b).'" *Hongkong & Shanghai Banking Corp. Ltd. v. Brandt for CFG Peru Investments Pte. Ltd. (Singapore)*, No. 17-CV-6672, 2017 WL 6729191, at *4

(S.D.N.Y. Dec. 29, 2017) (quoting *In re Olympic Property Partners, LLC*, 566 B.R. 334, 339 (S.D.N.Y. 2017)).

Under this standard, the Court may grant leave to appeal an interlocutory order if the order "involves [1] a controlling question of law [2] as to which there is substantial ground for difference of opinion and [3] that an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b). "The 'would-be appellant' has the burden of establishing all three elements." *In re Reifler*, No. 18-CV-2559, 2018 WL 3212464, at *4 (S.D.N.Y. June 28, 2018) (quoting *Casey v. Long Island Railroad Co.*, 406 F.3d 142, 146 (2d Cir. 2005)). Additionally, "a party seeking leave to appeal a non-final order must demonstrate exceptional circumstances to overcome the general aversion to piecemeal litigation and to justify a departure from the basic policy of postponing appellate review until after the entry of a final judgment." *In re Coudert Brothers LLP Law Firm Adversary Proceedings*, 447 B.R. 706, 711 (S.D.N.Y. 2011) (internal quotation marks omitted). "The standard for obtaining permission to take an interlocutory appeal from a non-final Bankruptcy Court order is stringent, as such appeals, like almost all interlocutory appeals, contribute to piecemeal litigation and so are disfavored." *In re Genger*, No. 19-13895, 2025 WL 1720145, at *1 (S.D.N.Y. June 20, 2025).

DISCUSSION

None of the three orders challenged by Appellants provide a viable avenue of appeal. First, the Court lacks jurisdiction over appeal of the Contempt Order because the appeal is untimely. Second, the Motion fails to meet the significant requirements of 28 U.S.C. § 1292(b) with respect to either Compel Order.

A. Appellants' Response To The Contempt Order Is Jurisdictionally Barred

"To appeal under 28 U.S.C. § 158(a)(3) from a bankruptcy court's interlocutory order or decree, a party must file with the bankruptcy clerk a notice of appeal," and "[t]he notice must … be filed within the time allowed by Rule 8002." Fed. R. Bankr. P. 8004(a)(1); *see also In re Abraham*, No. 21-CV-1628, 2021 WL 5597939, at *3 (S.D.N.Y. Nov. 30, 2021) ("Appeals from final judgments and orders of bankruptcy judges shall be taken ... in the time provided by Rule 8002 of the Bankruptcy Rules" (internal quotation marks omitted)). A notice of appeal "must be filed with the bankruptcy clerk within 14 days after the judgment, order, or decree to be appealed is entered." Fed. R. Bankr. P. 8002(a)(1); *see also In re Sterling*, 690 F. App'x 747, 747 (2d Cir. 2017) ("An appeal to the district court from an order of the bankruptcy court must be made within 14 days").

The Contempt Order was docketed May 7, 2026 (*see* B. Dkt. 166), and both Yeung and Tsai were served the same day. (*See* B. Dkts. 167-168.) Pursuant to Rule 8002(a)(1), the deadline to appeal the Contempt Order was May 21, 2026. Appellants, however, filed the Notice of Appeal on May 22, 2026, one day ***after*** the 14-day deadline expired. "A failure to file a notice of appeal within the time specified by Rule 8002 is an absolute jurisdictional bar to appeal," *In re MarketXT Holdings Corp.*, 455 F. App'x 41, 44 (2d Cir. 2012), and "in the absence of a timely notice of appeal in the district court, the district court is without jurisdiction to consider the appeal, regardless of whether the appellant can demonstrate 'excusable neglect.'" *In re Siemon*, 421 F.3d 167, 169 (2d Cir. 2005). As Appellants did not timely file a notice of appeal of the Contempt Order, the Court has no jurisdiction to consider it.

Accordingly, the Court should deny the Appellants' motion for leave to appeal the Contempt Order.

B. The Compel Orders Do Not Meet The Requirements Of 28 U.S.C. § 1292(b)

Arguing in support of leave to appeal the Yeung Compel Order, Appellants argue that the Bankruptcy Court overrode its own scheduling order in the Adversary Proceeding, and that the "the threat of holding [Yeung] in contempt and threat of striking her answer demonstrates imminent prejudice to … Yeung. (Motion at 3-4.) In support of leave to appeal the Debtor Compel Order, Appellants argue that the Bankruptcy Court "compelling the Debtor to produce documents … or be compelled to deposit $201,000 into the Debtor's estate which monies Debtor do not have, is not only extremely prejudicial but delaying an appeal until final judgment would turn Debtor's petition for bankruptcy relief on its head." (Motion at 5.) In opposition, the Trustee argues that Appellants have failed to satisfy any of the required elements of 28 U.S.C. § 1292(b) with respect to either of the Compel Orders. (Mem. at 5.) The Trustee is correct.

As noted above, the Appellants "ha[ve] the burden of establishing all three elements" of 28 U.S.C. § 1292(b). *In re Reifler*, 2018 WL 3212464, at *4. "To satisfy prong one of § 1292(b), Petitioner must demonstrate that the question is both controlling and a question of law." *Tantaros v. Fox News Network, LLC.*, 465 F. Supp.3d 385, 389 (S.D.N.Y. 2020). "[A] question of law is 'controlling' if reversal of the district court's order would terminate the action." *Klinghoffer v. S.N.C. Achille Lauro Ed Altri-Gestione Motonave Achille Lauro in Amministrazione Straordinaria*, 921 F.2d 21, 24 (2d Cir. 1990); *see also In re Enron Corp.*, No. 01-CV-16034, 2007 WL 2780394, at *1 (S.D.N.Y. Sept. 24, 2007) (same). For example, "the question of subject matter jurisdiction represents a controlling question of law." *In re Joe's Friendly Service & Son, Inc.*, 628 B.R. 181, 186 (E.D.N.Y. 2021). Additionally, a "question of law must refer to a pure question of law that the reviewing court could decide quickly and cleanly without having to study the record."

Capitol Records, LLC v. Vimeo, LLC, 972 F. Supp.2d 537, 551 (S.D.N.Y. 2013) (internal quotation marks omitted).

Having reviewed both of the Compel Orders and the Appellants' briefing, the Court finds that neither of the Compel Orders implicates a controlling question of law.

As a threshold matter, Yeung's assertion that the Yeung Compel Order "over-ride[s] the scheduling order" misunderstands the role of the scheduling order, which states "that the parties will complete all forms of discovery … on or before July 31, 2026." (A. Dkt. 21.) The Yeung Compel Order only requires Yeung to comply with previous orders and discovery demands; it does not override the Adversary Proceeding's close-of-discovery date. Rather, the Yeung Compel Order provides guardrails to ensure the parties meet their discovery obligations by the close-of-discovery date.

Far from raising a controlling question of law, the appeal of the Compel Orders concerns Appellants' discovery obligations and their failure to comply with the Bankruptcy Court's orders. Reversal of either or both orders would do nothing to terminate either the Bankruptcy Proceeding or Adversary Proceeding. The conclusion might be otherwise if the Bankruptcy Court had imposed case-dispositive sanctions rather than monetary sanctions, but it did not do so here. Nor are the issues raised pure questions of law. Rather, they entail considerable review of the record. The Court would need to assess, for example, whether the Appellants were properly served, whether Appellants failed to properly respond to the document requests, and whether the Debtor "failed to comply with the Contempt Order directing production of documents demanded in the Rule 2004 Order." (Compel Order at 1.) The issues on appeal thus are neither controlling nor purely

questions of law, and Appellants have failed to meet their burden to satisfy the first element of § 1292(b).

"The second prong, requiring a substantial ground for difference of opinion, is satisfied where (1) there is conflicting authority on the issue, or (2) the issue is particularly difficult and of first impression for the Second Circuit." *Barcelona Capital, LLC v. Neno Cab Corp.*, 648 B.R. 578, 586 (E.D.N.Y. 2023) (quoting *Osuji v. U.S. Bank, N.A.*, 285 F. Supp.3d 554, 558 (E.D.N.Y. 2018)). "A mere claim that a district court's decision was incorrect does not suffice to establish substantial ground for a difference of opinion." *Aristocrat Leisure Ltd. v. Deutsche Bank Trust Co. Americas*, 426 F. Supp.2d 125, 129 (S.D.N.Y. 2005) (collecting cases). The latter is an apt description of the instant appeal: Appellants challenge the correctness of the Court's discovery rulings. Appellants have not identified any conflicting authority on a controlling issue of law; nor have they demonstrated that any issue raised on the appeal is particularly difficult or a matter of first impression in the Second Circuit. Accordingly, Appellants have failed to satisfy the second prong of 28 U.S.C. § 1292(b).

As to the third prong, "[a]n appeal materially advances the termination of the litigation if it 'promises to advance the time for trial or to shorten the time required for trial' or has 'the potential for substantially accelerating the disposition of the litigation.'" *In re Kossoff PLLC*, No. 21-CV-7122, 2021 WL 4523484, at *1 (S.D.N.Y. Sep. 30, 2021) (quoting *Primavera Familienstifung v. Askin*, 139 F. Supp.2d 567, 570 (S.D.N.Y. 2001)). Appellants have not shown how reversing the Bankruptcy Court's Compel Orders would materially advance the end of litigation. For instance, they have not shown, or even suggested, that the discovery sought is irrelevant such that pursuing it is a dilatory

distraction. Indeed, the Compel Orders are designed to accelerate the litigation by compelling Appellants to comply with their discovery obligations. Reversing the Compel Orders would only draw out and impede the underlying proceedings. Accordingly, Appellants have failed to satisfy the third prong of 28 U.S.C. § 1292(b).

In short, Appellants have not demonstrated that any, let alone all three of the criteria required for interlocutory appeal are satisfied here. Nor have they shown any "exceptional circumstances" that would justify leave to appeal any of the three interlocutory, discovery-related orders.

CONCLUSION

For the foregoing reasons, Appellants' motion for leave to appeal the Bankruptcy Court's interlocutory orders should be DENIED. To the extent not addressed above, the Court has considered the parties' arguments and finds them to be either moot or without merit.

PROCEDURES FOR FILING OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1) and Rules 72, 6(a), and 6(d) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days to file written objections to this Report and Recommendation. Any party shall have fourteen (14) days to file a written response to the other party's objections. Any such objections and responses shall be filed with the Clerk of the Court, with courtesy copies delivered to the Chambers of the Honorable Analisa Torres, United States Courthouse, 500 Pearl Street, New York, New York 10007, and to the Chambers of the undersigned, at United States Courthouse, 500 Pearl Street, New York, New York 10007. Any request for an extension of time for filing

objections must be addressed to Judge Torres. Failure to file timely objections will result in a waiver of the right to object and will preclude appellate review.

SO ORDERED.



ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: October 22, 2026
New York, New York

Copies transmitted this date to all counsel of record.