I. STATEMENT OF BASIS OF APPELLATE JURISDICTION

The Order dated March 4, 2010 (Bankr. D.I. 838) disallowing much of the proof of claim filed by Yaakov Spritzer ("Spritzer") constitutes a final order. Accordingly, this Court has jurisdiction of this appeal pursuant to 28 U.S.C. § 158(a)(1).

II. STATEMENT OF THE ISSUES PRESENTED AND THE APPLICABLE STANDARD OF REVIEW

The Order should be reviewed *de novo* because it involves the selection, interpretation and application of legal precepts." See Rolick v. Collins Pine Co., 975 F.2d 1009, 1014 (3d Cir. 1992) ("We exercise plenary review over the district court's order because it involves the selection, interpretation and application of legal precepts."). Legal issues are reviewed *de novo*. Findings of fact are reviewed for clear error. Fed.R.Bankr.P. 8013.

The bankruptcy court's interpretation of a Permanent Injunction (as defined below), which was issued by a District Court, should be reviewed *de novo*. See In re Stone & Webster, Inc., 558 F.3d 234, 240 (3d Cir. 2009) ("As different District Judges were involved in approving the Purchase Agreement by the Sale Order and in interpreting that Order, this is not a case where the District Judge is afforded special deference in interpreting her own order."); see also Youakim v. McDonald, 71 F.3d 1274, 1282-83 (7th Cir. 1995) ("To the extent [the district court judge] interpreted the terms of the 1976 judgment, which was entered by a different district judge, we accord his interpretation no deference and review the requirements of that judgment de novo."); Alley v. U.S. Dept. of Health and Human Servs., 590 F.3d 1195, 1202 (11th Cir. 2009) (following Youakim); U.S. v. Spallone, 399 F.3d 415, 423 (2d Cir., 2005) (holding that when the trial judge did not draft the order at issue, the appellate court "appl[ies] traditional *de novo* review to his interpretation"); In re Duplan Corp., 212 F.3d 144, 151 (2d Cir. 2000) (reviewing bankruptcy court's interpretation of district court order *de novo*).

III. STATEMENT OF THE CASE

On December 6, 2001 (the "Petition Date"), Machne Menachem, Inc. (the "Debtor") filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. On January 9, 2002, the Debtor filed its Schedule F, which listed A-One Merchandising, Inc. ("A-One") as holding an undisputed, noncontingent, liquidated unsecured claim in the amount of $5,999.53. See Bankr. D.I. 8.

On or about September 5, 2003, Spritzer timely filed a proof of claim in the amount of One Million Twelve Thousand Four Hundred Fifty Four Dollars ($1,012,454) for the moneys loaned by Spritzer to or for the benefit of the Debtor prior to the Petition Date.[1] The 124 pages of documentation attached to the Spritzer claim includes, *inter alia*, canceled checks, ledgers, and substantial other papers evidencing the amount of the Spritzer claim.

Almost five (5) years ago, on or about July 19, 2004, the Debtor filed objections to the Spritzer and A-One claims (the "Objections"). See Bankr. D.I. 365 and 366. At best, the Objections are terse. They contain nothing more than conclusory, baseless assertions (unsupported by any documents) that Debtor "is not justly and truly indebted" to the Movants and that Debtor lacks "documentation which sufficiently proves any indebtedness" (although such documentation is attached to the Spritzer Claim). See Objections at ¶¶ 1-2. The Objections also state (unsupported by any documents) that the "Debtor has paid for any services provided." See Objections at ¶ 4. None of the Objections contains any documents (whether canceled checks or otherwise) to rebut the Claims. See also Bankr. D.I. 382 (Objection to A-One's claim).

[1] Spritzer waived the collateral for his claim pursuant the Modified Second Amended Plan dated December 19, 2005 (the "Plan"). See Bankr. D.I. 448. Thus, Spritzer's claim is a nonpriority, prepetition unsecured claim.

On August 27, 2008, Spritzer filed a motion for summary judgment or an order dismissing with prejudice the Objections for failure to prosecute them. See Bankr. D.I. 808. After further briefing (see Bankr. D.I. 812, 813, 818, 820, and 821), the bankruptcy court denied the motion and scheduled an evidentiary hearing for May 12, 2009. See Bankr. D.I. 825.

On May 12, 2009, the Debtor presented the testimony of Mendel Hershkop and Yosef Goldman. Spritzer testified in support of his claim and admitted into evidence substantial documentation in support of his claim, including copies of the front and back of canceled checks, deposit slips, bank account statements, invoices, and other documents establishing his claim. On May 13, 2009, the bankruptcy court entered on the docket a Proceeding Memo/Order of Court, which overruled the objection to A-One's claim. See Bankr. D.I. 832.

After the evidentiary hearing, the Debtor filed on May 27, 2009, its Supplemental Brief in Support of Objection to Claim of Yaakov Spritzer. See Bankr. D.I. 835. On that same date, Spritzer filed his Post-Hearing Memorandum Regarding Allowance of His Proof of Claims See Bankr. D.I. 836.

On March 4, 2010, the bankruptcy court issued its Opinion [on Debtor's Objection to Allowance of Claim of Yaakov Spritzer]. See Bankr. D.I. 837. In the Order, the bankruptcy court allowed $76,000 of Spritzer's claim and disallowed the remainder. On March 15, 2010, Spritzer and A-One timely filed their Notice of Appeal. See Bankr. D.I. 841.

On March 29, 2010, Spritzer filed his designation of record and statement of issues for the appeal. See Bankr. D.I. 849. On April 9, 2010, the Debtor filed its counter designation of items to be included in the record for this Appeal. See Bankr. D.I. 851. On April 12, 2010, this appeal was docketed in the District Court at 3:10-cv-00765-ARC.

IV. STATEMENT OF THE RELEVANT FACTS[2]

A. Spritzer's Claim

On July 21, 1995, the Debtor was formed as a not-for-profit corporation under the laws of the State of New York. See Machne Menachem, 2010 WL 831003, at *1. The Debtor was formed to operate a summer camp for Hasidic children in a rural location away from the distractions of New York City. Id. The initial members of the Debtor's board of directors were Yaakov Spritzer ("Spritzer"), Shmuel Heber ("Heber"), Yosef Goldman ("Goldman"), and Mendel Hershkop ("Hershkop"). See id.. The Debtor suffered from significant economic problems. Id. From its inception until late in 2002, Spritzer (directly or indirectly through A-One)[3] advanced over $1.0 million to fund the Debtor's camp operations.

For example, in 1995, Spritzer lent (a) $11,000 to the Debtor for a deposit for the rental of campgrounds, see 5/12/09 Tr. at 107:12-110:1, and (b) $3,305 to the Debtor for its utility deposit with NY State Electric & Gas, see 5/12/09 Tr. at 110:2-111:21. In 1996, when the

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2 Pursuant to Federal Rule of Evidence 201, Spritzer requests that this Court take judicial notice of the relevant docket items, see Maritime Elec. Co., Inc. v. United Jersey Bank, 959 F.2d 1194, 1200 n.3 (3d Cir. 1992) (judicial notice of docket entrics), and the filing of certain documents and statements made therein by the parties, see Nantucket Investors II v. California Fed. Bank (In re Indian Palms Assocs., Ltd.), 61 F.3d 197, 205 (3d Cir. 1995) ("it is not seriously questioned that the filing of documents in the case record provides competent evidence of certain facts – that a specific document was filed, that a party took a certain position, that certain judicial findings, allegations, or admissions were made"). This Court has broad discretion to take judicial notice of the entire file as to what has or has not been filed and the outcome of previous proceedings brought before the court. In re U.S. Mineral Prods. Co., 2004 WL 1758499, at *2 (3d Cir. Aug 06, 2004); see In re Federal Mogul-Global, Inc., 348 F.3d 390, 407 n.11 (3d Cir. 2003) ("Court may take judicial notice of facts that are not subject to reasonable dispute").

3 A-One is an S Corporation so loans from A-One's account are treated as advances to Spritzer, which he then loaned to the Debtor. See 5/12/09 Tr. at 123:11-25. Of course, as an S Corporation, A-One is a flow through entity. Spritzer is the sole shareholder and director of A-One. See 5/12/09 Tr. at 88:17-89:3. In any event, based on the Court's suggestion at the hearing, A-One and Rochel Spritzer (Yaakov's wife) have executed assignments of their claims to Spritzer. See Bankr. D.I. Nos. 833 and 834; 5/12/09 Tr. at 167:21-169:15.

Debtor purchased its own real estate (the "Property") to use as its campgrounds, Spritzer lent $35,000 to the Debtor to pay a portion of the down payment. See 5/12/09 Tr. at 125:11-129:1. When the Debtor defaulted on its mortgage and was facing an imminent foreclosure sale of the Property, Spritzer lent $36,162.11 to the Debtor to fund the forbearance payment. See 5/12/09 Tr. at 134:17-136:10. Later on, when that debt was refinanced, Spritzer was the only director that agreed to guaranty that debt. See 5/12/09 Tr. at 130:5-25.

After the 1996 summer camp, Spritzer lent $103,624 to the Debtor to cover camp staff members' payroll checks. See Spritzer Ex. 1 (Proof of Claim) at Bates YS000054-62, YS000063-75 and YS000002-8; 5/12/09 Tr. at 131:1-134:16.

In the first quarter of 1997, a dispute arose between Spritzer and the other directors (Heber, Goldman, and Hershkop). The other directors started a competing camp. See Permanent Injunction (Spritzer Ex. 26) at ¶ 3 and p. 3. In addition, in March 1997 when Spritzer was in the process of registering campers for the summer, the other directors froze the funds in the Debtor's bank account. See 5/12/09 at 136:11-137:17. Without access to the Debtor's account, Spritzer was still able to lend $135,000 to the Debtor to fund the expenses necessary to prepare the summer camp by depositing the funds into a Shreiber Foundation account, which then used the entire $135,000 to pay the Debtor's camp expenses. See 5/12/09 at 138:8-139:23.

In short, as the bankruptcy court acknowledged, "[a] review of [Spritzer's] claim, together with Spritzer's testimony, leaves little doubt that a significant amount of Spritzer or Spritzer controlled funds went into Machne" and were "meticulously itemized." See Machne Menachem, 2010 WL 831003, at *2. In total, Spritzer lent the sum of $1,003,000 to the Debtor. See 5/12/09 Tr. at 146:12-149:19.

B. The Directors' Dispute and the District Court's Permanent Injunction

As indicated above, the other directors froze the Debtor's bank account at the time Spritzer was arranging for the Debtor's 1997 summer camp. At that time, the other directors were actually running a competing camp.

The dispute between Spritzer and the other directors continued. On March 17, 1997, the other directors agreed to a resolution (the "Resolution") providing that "no further activities of the Corporation are to be undertaken by Yaakov Spritzer." See Machne Menachem, 2010 WL 831003, at *4.

As a result of physically threatening conduct and the freezing of the Debtor's bank account, Spritzer commenced litigation against the other directors in the United States District Court for the Eastern District of New York, captioned Machne Menachem, Inc. v. Hershkop *et al.*, CV-97-2550 (E.D.N.Y.). *Notwithstanding the Resolution*, District Judge Glasser permanently enjoined directors Goldman, Heber and Hershkop on July 1, 1997, as follows:

> (2) from entering upon the grounds of the . . . camp without authorization; [and]
>
> (3) *from interfering, in any way, with the administration of the affairs of the . . . camp*, including the maintenance of bank accounts . . . . In this regard, they are directed to free the account of the . . . camp . . . which they caused to be frozen.

See Permanent Injunction (Spritzer Ex. 26), CV-97-2550, Findings of Fact and Conclusions of Law (E.D.N.Y. July 1, 1997) (emphasis added).

The Permanent Injunction remained in full force and effect from its issuance on July 1, 1997 though October 21, 2002 (the "Injunction Period"). On October 21, 2002, Judge Glasser issued an opinion in which he concluded that "Joseph Goldman, Mendel Hershkop and Shmuel Heber are still, as a matter of law, directors of Machne Menachem, Inc." Machne Menachem, Inc. v. Hershkop, 237 F.Supp.2d 227, 240 (E.D.N.Y. 2002). Shortly thereafter, and in spite of

Judge Glasser's admonition that the directors should try to work together, the other directors issued a resolution removing Spritzer from the Debtor's board of directors.

C. The Bankruptcy Proceedings

On December 6, 2001 (the "Petition Date"), Debtor filed a voluntary petition for relief under chapter 11 of title 11 to the United States Code (the "Bankruptcy Code").

1. The Appointment of a Trustee

Based on the fact that the Debtor (operated by the other directors) "just basically did what [it] wanted to do" without the required court approval, see 7/12/06 Tr. at 5:17-23 (Bankr. D.I. 560), the Debtor's chronic failure to file operating reports disclosing its receipts and disbursements, and its failure to account for the proceeds of the illicit lease, and a host of other wrongful conduct, Judge Thomas *sua sponte* scheduled a hearing for the appointment of a chapter 11 trustee to replace Debtor's current management (i.e., Goldman, Heber, and Hershkop). At the hearing, Judge Thomas concluded that the Debtor's bad acts including a "long history of insider dealing" by Goldman, Heber and Hershkop, "scream[ed] out" for the appointment of a chapter 11 trustee. See 7/20/06 Tr. at 80:1 to 82: (Bankr. D.I. 561). The United States Trustee selected Mark J. Conway, Esquire as the proposed chapter 11 trustee. On August 1, 2006, the bankruptcy court appointed Attorney Mark J. Conway as the chapter 11 trustee (the "Trustee"), thereby displacing Goldman, Heber and Hershkop as the Debtor's management. See Bankr. D.I. 564.[4]

[4] The Trustee has asserted, among other things, that the Debtor (then operated by the directors other than Spritzer) "severely hampered" his investigations and that the Debtor's record-keeping was "comical." See Tr. of 11/13/06 Hearing (Bankr. D.I. 669) at 72:16-17, 73:11-18, and 74:1-10.

2. Confirmation of Spritzer's Plan and the Payment in Full of All Creditors Other than Spritzer and A-One

On September 6, 2006, the bankruptcy court issued an opinion (the "Opinion"; Bankr. D.I. 594) and an Interim Order conditionally approving Spritzer's Modified Second Amended Plan (the "Plan") provided that Spritzer made a deposit in excess of $1.0 million. In the Opinion, the bankruptcy court noted that, under the Plan, the Debtor was receiving value of $1.9 million for $1.375 million in assets to be transferred to a new not-for-profit entity called Summer Recreation for Children, Inc. ("SRFC") under the Plan (see Opinion at p. 9).

On October 5, 2006, the bankruptcy court entered the Final Order confirming the Plan as modified in the Opinion, the Interim Order, and at the September 7, 2006, hearing. See Bankr. D.I. 617. Once again, Spritzer funded the Debtor's payment to creditors. This time, Spritzer did so by funding a Plan with over $1.0 million, and *all creditors* with allowed claims other than Spritzer and A-One have been paid in full. In addition, SRFC continues to use the real property for summer camps for Hasidic children from the Crown Heights Community.

The only issue remaining is the allowance of the claims of Spritzer and A-One. See Machne Menachem, 2010 WL 831003, at *2.

V. ARGUMENT

A. The Bankruptcy Court Nullified the Permanent Injunction Thereby Improperly Reducing the Allowed Amount of Spritzer's Claim By at Least $286,000.

The bankruptcy court's treatment of the Permanent Injunction is reversible error as a matter of law. The court failed to give the Permanent Injunction any effect even though the parties operated under it during the Injunction Period. .

1. The Bankruptcy Court Improperly Nullified the Permanent Injunction During the Time It Was in Full Force from July 1, 1997 through October 21, 2002.

The Permanent Injunction enjoined directors Goldman, Heber and Hershkop:

> (2) from entering upon the grounds of the . . . camp without authorization; [and]
>
> (3) *from interfering, in any way, with the administration of the affairs of the . . . camp*, including the maintenance of bank accounts . . . . In this regard, they are directed to free the account of the . . . camp . . . which they caused to be frozen.

See Permanent Injunction (Spritzer Ex. 26) (emphasis added).[5] As set forth in subparagraph (3) thereof, Goldman, Heber and Hershkop were permanently enjoined from interfering in any way with the "administration" of the camp's "affairs." See Permanent Injunction (Spritzer Ex. 26).

The plain meaning of "administration" is "the management or control of an organization." See Diana v. Oliphant, 2009 WL 385540, at *11 (M.D.Pa. Feb. 13, 2009) (quoting CAMBRIDGE AMERICAN ENGLISH DICTIONARY (2d ed. 2007)); see also AT&T Corp. v. Certain Underwriters at Lloyd's London, 2009 WL 2356545, at *8 (N.J. Super. Ct. Aug. 3, 2009) (defining "administration" as the "management or performance of the executive duties of a . . . business") (quoting BLACK'S LAW DICTIONARY 46 (8th ed. 2004)). The term "affairs" is defined as "commercial, professional, or public business." See WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 35 (Philip Babcock Gove *et al.* eds., 1986). Therefore, the plain language of the Permanent Injunction unambiguously enjoined directors Goldman, Heber, and Hershkop from interfering with the management or control of the Debtor's camp operations.

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[5] On September 15, 1997, Judge Glasser denied the enjoined directors' request to reconsider the Permanent Injunction.

It has long been well-established that directors of a corporation are charged with "administration" of a corporation's "affairs." See Twohy v. First Nat'l Bank of Chicago, 758 F.2d 1185, 1194 (7th Cir. 1985) ("*administration*" of corporation's "*affairs*" is "vested in the board of directors") (emphasis added); CRTF Corp. v. Federated Dept. Stores, 1988 WL 75226, at *5 (S.D.N.Y. March 18, 1988) ("Corporate directors" are fiduciaries "in the *administration* of corporate *affairs*") (emphasis added); Sincer v. Alverson, 25 So. 650, 650 (La. 1899) (corporation's board of directors "is charged with the *administration* of its *affairs*") (emphasis added). As a result of the Permanent Injunction, three of the Debtor's directors were barred from the management of the Debtor's business. Only *one* remaining director – Spritzer – had authority to manage the Debtor's business during the Injunction Period (from July 1, 1997 through October 21, 2002 when the District Court reinstated the other three directors). During the Injunction Period, Spritzer was the *only* one of the four directors (as found by Judge Glasser) who had the authority to manage the Debtor's business. As the sole director with exclusive authority to administer the Debtor's affairs during the Injunction Period, Spritzer's approval of his loans to the Debtor was the only approval that was necessary during the Injunction Period.

The bankruptcy court, however, failed to give effect to the Permanent Injunction. Specifically, the bankruptcy court erred as a matter of law when it held that "[t]he injunction may have barred the majority directors from camp administration, but it did not legitimize Spritzer's management of Machne Menachem." See Machne, 2010 WL 831003, at *7. The bankruptcy court further erred when it declared that, "despite the injunction," Spritzer advanced funds during the Injunction Period "at his peril." See Machne, 2010 WL 831003, at *7.

The bankruptcy court correctly concluded that the Permanent Injunction barred the other three directors from managing the Debtor's business. The bankruptcy court, however, erred as a

matter of law in concluding that the Permanent Injunction did not legitimize Spritzer's management of the business during the years the Permanent Injunction was in effect. As a matter of law, Spritzer – the only remaining board member – was authorized to manage the Debtor's business during the Injunction Period. If Spritzer was not authorized to manage the Debtor's business during the Injunction Period, then the Debtor would have been unable to operate because it would not have had any director with authority to manage the Debtor's business. From and after the Permanent Injunction, until Heber, Goldman and Hershkop were reinstated by Judge Glasser on October 21, 2002, Spritzer had the legal right to operate the Debtor as its only director free to manage the business.

During the 5 and 1/4 years that the Permanent Injunction was in force, Goldman, Heber, and Hershkop were not even allowed to be on camp property, let alone have any input in the camp's financial affairs. It is inconceivable that Judge Glasser would have required Spritzer to involve the enjoined directors in the camp administration during the period of the Permanent Injunction when the District Court found that (i) Hershkop's children "assaulted, harassed and threatened" Spritzer and other camp workers and "set fire to [a] vehicle", see Permanent Injunction (Spritzer Ex. 26) at ¶ 1, and (ii) Hershkop, Heber and Goldman established another camp "in direct competition" with the Debtor "in flagrant violation of [their] fiduciary duty" to the Debtor. See Permanent Injunction (Spritzer Ex. 26) at ¶ 3 and p. 3.

The bankruptcy court's conclusion that Spritzer lent money to the Debtor during the Injunction Period "at his peril" effectively – and retroactively – renders meaningless the Permanent Injunction. That is contrary to applicable law. An injunction binds the parties. See Fed. R.Civ.P. 65(d) (injunction "binds . . . the parties"). Indeed, "[i]t would be unfair to penalize" a party "for actions that it took in compliance with a District Court order [an