

**United States Court of Appeals
FOR THE SECOND CIRCUIT**

August Term, 2017

(Argued: October 31, 2017 Decided: August 14, 2018)

Docket No. 17-1162-cv

VIRGINIA A. D'ADDARIO, individually, and on behalf of the F. Francis D'Addario Testamentary Trust and the Virginia D'Addario Trust; and VIRGINIA A. D'ADDARIO, EXECUTRIX, as Executrix of the Probate Estate of Ann. T. D'Addario, Deceased, and on behalf of the F. Francis D'Addario Testamentary Trust and the Ann T. D'Addario Marital Trust,

Plaintiffs-Appellants,

–v.–

DAVID D'ADDARIO, MARY LOU D'ADDARIO KENNEDY, GREGORY S. GARVEY,
RED KNOT ACQUISITIONS, LLC, SILVER KNOT, LLC, NICHOLAS VITTI,

*Defendants-Appellants.**

B e f o r e :

LYNCH and CARNEY, *Circuit Judges*, and HELLERSTEIN, *District Judge*.[†]

1

* The Clerk of Court is directed to amend the caption to conform to the above.

[†] Judge Alvin K. Hellerstein, of the United States District Court for the Southern District of New York, sitting by designation.

1 Virginia D'Addario appeals the dismissal of her claim brought under the
2 Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961 *et seq.*,
3 against her brother, David D'Addario; her sister, Mary Lou D'Addario Kennedy;
4 Gregory Garvey; Nicholas Vitti; Red Knot Acquisitions, LLC; and Silver Knot, LLC.
5 Virginia's claim, which she asserts both individually and as Executrix of her mother's
6 estate, arises out of the management of her father's probate estate (the "Estate") over
7 several decades by her brother David.

8 Virginia's father, Connecticut resident and entrepreneur F. Francis D'Addario,
9 died unexpectedly in 1986 and bequeathed his fortune—once estimated to have a net
10 value above \$111 million—to his wife and their five children. Virginia's youngest
11 brother, David, has been an Executor of the Estate since their father's death. Since then,
12 she alleges, he has systematically looted the assets of the Estate, with the active
13 assistance of their sister Mary Lou and David's friends Nicholas Vitti and Gregory
14 Garvey, and by means of two corporate entities formed by David and Garvey. Virginia
15 contends that the Estate—which has remained open in Connecticut Probate Court for
16 more than thirty years—is now insolvent and that, because of Defendants' actions,
17 neither she nor her mother's estate will receive any portion of the multi-million-dollar
18 inheritance to which they were entitled. Virginia seeks damages based on two types of
19 injury: the loss of the inheritance they would have received if not for David's fraudulent
20 schemes and the approximately \$200,000 in legal expenses that she has incurred in the
21 course of Connecticut state court proceedings in which she sought to remove David as
22 Executor. The United States District Court for the District of Connecticut (Arterton, J.)
23 dismissed her complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to
24 state a claim, and declined to exercise supplemental jurisdiction over related state law
25 claims.

26 We conclude that: (1) Virginia's claim for distribution of her inheritance and that
27 of her mother's estate is not ripe under RICO because the Estate is not closed and the
28 amount of the lost inheritance is too speculative; (2) her claim under RICO for legal
29 expenses incurred in pursuing her grievances against David and other defendants is
30 ripe; (3) she has plausibly alleged that her legal expense injuries were proximately
31 caused by Defendants' RICO violations; (4) she has adequately pleaded that David,
32 Garvey, and Red Knot violated 18 U.S.C. § 1962(b); and (5) she has adequately pleaded
33 that all six defendants violated 18 U.S.C. § 1962(c). Accordingly, we VACATE the
34 District Court's judgment dismissing in full Virginia's RICO claim and related state law

1 claims both as brought on her own behalf and as Executrix, and we REMAND the cause
2 for further proceedings in accordance with this opinion.

VACATED AND REMANDED.

3
4 F. DEAN ARMSTRONG (Edward C. Taiman, Jr., Sabia Taiman,
5 LLC, Hartford, CT, *on the brief*), Armstrong Law Firm
6 PC, Frankfort, IL, *for Plaintiffs-Appellants*.

7
8 ALFRED U. PAVLIS (Tony Miodonka, *on the brief*), Finn Dixon
9 & Herling LLP, Stamford, CT, *for Defendants-Appellees*
10 *David D'Addario, Mary Lou D'Addario Kennedy, Silver*
11 *Knot, LLC, and Nicholas Vitti*.

12
13 NATHAN BUCHOK (Brian E. Spears, *on the brief*), Spears
14 Manning LLC, Southport, CT, *for Defendants-Appellees*
15 *Gregory S. Garvey and Red Knot Acquisitions, LLC*.

SUSAN L. CARNEY, *Circuit Judge*:

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17 Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961 *et seq.*,
18 against her brother, David D'Addario; her sister, Mary Lou D'Addario Kennedy;
19 Gregory Garvey; Nicholas Vitti; Red Knot Acquisitions, LLC; and Silver Knot, LLC.
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21 estate, arises out of the management of her father's probate estate (the "Estate") over
22 several decades by her brother David.

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24 died unexpectedly in 1986 and bequeathed his fortune—once estimated to have a net

1 value above \$111 million—to his wife and their five children. Virginia’s youngest
2 brother, David, has been an Executor of the Estate since their father’s death. Since then,
3 she alleges, David has systematically looted the assets of the Estate, with the active
4 assistance of her sister Mary Lou, David’s friends Nicholas Vitti and Gregory Garvey,
5 and by means of two corporate entities formed by David and Garvey. Virginia contends
6 that the Estate—which has remained open in Connecticut Probate Court for more than
7 thirty years—is now insolvent and that, because of Defendants’ actions, neither she nor
8 her mother’s estate will receive any portion of the multi-million-dollar inheritance to
9 which they were entitled. Virginia seeks damages based on two types of injury: the loss
10 of the inheritance they would have received if not for David’s fraudulent schemes and
11 the approximately \$200,000 in legal expenses that she has incurred in the course of
12 Connecticut state court proceedings in which she sought to remove David as Executor.
13 The United States District Court for the District of Connecticut (Arterton, J.) dismissed
14 her complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim,
15 and declined to exercise supplemental jurisdiction over related state law claims.

16 We conclude that: (1) Virginia’s claim for distribution of her inheritance and that
17 of her mother’s estate is not ripe under RICO because the Estate is not closed and the
18 amount of the lost inheritance is too speculative; (2) her claim under RICO for legal
19 expenses incurred in pursuing her grievances against David and other defendants is
20 ripe; (3) she has plausibly alleged that her legal expense injuries were proximately
21 caused by Defendants’ RICO violations; (4) she has adequately pleaded that David,
22 Garvey, and Red Knot violated 18 U.S.C. § 1962(b); and (5) she has adequately pleaded
23 that all six defendants violated 18 U.S.C. § 1962(c). Accordingly, we VACATE the

1 District Court’s judgment dismissing in full Virginia’s RICO claim and related state law
2 claims both as brought on her own behalf and as Executrix, and we REMAND the cause
3 for further proceedings in accordance with this opinion.

4 BACKGROUND¹

5 I. Francis’s death and David’s management of the Estate

6 F. Francis “Hi Ho” D’Addario (“Francis”), a successful Connecticut businessman
7 and the head of D’Addario Industries, died unexpectedly in early 1986, the victim of an
8 airplane crash. At the time of his death, his net worth was estimated to exceed \$111
9 million. He was survived by his wife, Ann, and their five children: in order of birth,
10 Virginia, Larry, Mary Lou, Lisa, and David.

11 Shortly after the accident, Francis’s will (the “Will”) was filed for probate in the
12 Probate Court of Trumbull, Connecticut. That court appointed Francis’s two sons,
13 David and Larry, to serve with three non-family members as Executors of the Estate.²
14 At the time of his appointment, David, the youngest of the five D’Addario siblings, was
15 24 years old and had been working for his father’s business. As an Executor, David was
16 suddenly able to exert significant control over the entirety of the business empire

¹ In reviewing the District Court’s grant of a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), “we accept as true all facts alleged in the Complaint, drawing all reasonable inferences in favor of the plaintiff.” *Koch v. Christie’s Int’l PLC*, 699 F.3d 141, 145 (2d Cir. 2012). We therefore state the facts here as pleaded in the First Amended Complaint (“Complaint”). We express no view as to their accuracy.

² The appointments of the three non-family members ended over time. David and Larry have been the Estate’s sole executors for roughly the last 15 years.

1 known as D'Addario Industries: substantially all of his father's business assets lay
2 within the Estate.

3 The Will provided that one-half of Francis's assets would be placed into a marital
4 trust for the benefit of his wife, Ann D'Addario ("Ann"); the other half would be
5 divided equally among their five children. The anticipated distributions, however, have
6 never been made. When the District Court dismissed Virginia's Complaint in March
7 2017, more than thirty years after Francis's death, his Estate remained open in the
8 Connecticut Probate Court, and the record before us reflects no change since then.

9 The extensive passage of time has had a significant impact on the siblings'
10 respective expectations regarding their inheritances, both because of the extensive
11 transactions undertaken by David, as described in the Complaint, but also because,
12 under the terms of the Will, if any of the five children predeceases the others while the
13 Estate is still open, the deceased child's interests return to the Estate for pro rata
14 distribution to the remaining siblings. Thus, in 1990, when Lisa D'Addario died, her
15 interest as legatee passed back to the Estate in accordance with the Will's provisions.³

³ Francis's wife, Ann, also died in the interim between Francis's death and the filing of this suit, but her interest by way of the marital trust has not devolved to the Estate; rather, Ann's own estate remains entitled to one-half of Francis's Estate. Virginia is Executrix of her mother's estate. In this suit, Virginia asserted identical RICO and state law claims on behalf of Ann's estate as well as on her own behalf as a legatee under Francis's Will and on behalf of several trusts. Thus, in its opinion dismissing the First Amended Complaint, the District Court uses "Plaintiffs," in the plural, to describe the parties seeking relief. In this opinion, we refer simply to "Virginia" when discussing the proponent of the claims at issue on appeal, as no party has asserted any material difference between Virginia individually, and Virginia as Executrix, as claimants and legatees.

1 In late 1987, Virginia obtained an advance from the Estate toward her
2 distributional interest. The advance took the form of a non-recourse loan to her in the
3 amount of \$3.9 million, and was documented by a promissory note. In exchange for
4 permitting the advance, David extracted a promise from Virginia (as Virginia
5 acknowledges) that she would no longer “participate in or take part in Estate
6 deliberations or decisions as regards the Estate or its property,” and that she would
7 waive “all rights . . . in her favor against the Executors as regards their administration of
8 the Estate and the validity of their decisions, . . . except for willful fraud, malfeasance or
9 dishonesty.” App. 62 (Am. Compl. ¶ 17). David also vowed at the same time, Virginia
10 charges, that Virginia “would never receive another penny from the Estate” —by which
11 he meant that he did not intend for the Estate ever to pay out her distributional share.
12 *Id.* at 63 (Am. Compl. ¶ 18). Because of the Will’s provision with regard to the
13 consequences of the death of a sibling, all understood that David would benefit
14 financially if Virginia (but not David) died before the Estate closed. He told her, she
15 says, on several occasions, “I’m 15 years younger than you, I’ll outlive you, and I can
16 keep the Estate open until after you die.” *Id.* (emphasis omitted).

17 In keeping with that threat, Virginia alleges, the Estate remains open. No
18 distributions had been made as of 2016, when she filed suit (or, indeed, has been made
19 to date). The Connecticut Probate Court has effected no meaningful oversight of
20 David’s activities, she charges. Rather, David and the Estate have successfully side-
21 stepped enforcement of court orders requiring production of discovery related to the
22 Estate’s financial management. David has filed interim accountings of the Estate’s assets
23 with the Probate Court only infrequently, and, in any event, the accountings that he has

1 filed have been both vague and inaccurate because they omitted “numerous” property
2 transactions. *Id.* at 65 (Am. Compl. ¶ 24). Virginia also alleges that from 1986 until 2010
3 David made “substantial (but undisclosed)” contributions to the reelection campaigns
4 of the Connecticut Probate Court judge who presided over the Estate. *Id.* at 93 (Am.
5 Compl. ¶ 99). When these contributions came to light in 2010, she asserts, the probate
6 judge recused himself from further supervision of the Estate. *Id.*

7 **II. David’s schemes for enrichment**

8 The Complaint alleges that David “plunder[ed], pillage[d,] and loot[ed] the
9 assets of the Estate to the extent that the Estate is now insolvent” App. 66 (Am.
10 Compl. ¶ 27). David “ran the Estate as his personal piggy bank,” conducting its affairs
11 for his own financial benefit, both to the detriment of his sister Virginia and his
12 mother’s estate and in violation of his fiduciary duties and RICO. *Id.* at 64 (Am. Compl.
13 ¶ 21). In the Complaint, Virginia identifies and details several specific “schemes”
14 through which David allegedly siphoned value from the Estate to himself. Virginia
15 alleges that defendant Nicholas Vitti, David’s “personal financial advisor and confidant
16 for matters pertaining to the Estate,” assisted and advised David in all matters related
17 to the Estate, including many of the identified schemes. App. 60 (Am. Compl. ¶ 8.6).
18 The remaining defendants (Mary Lou, David’s friend Gregory Garvey, and the entities
19 Red Knot Acquisitions, LLC and Silver Knot, LLC) were involved in only certain of the
20 questionable transactions, as set forth below.⁴ We describe these ventures in

⁴ Although Larry remains an Executor and was involved in (and would have benefited from) many of the schemes the Complaint describes, Virginia does not allege that he committed fraud or “willful misconduct,” and does not name him as a defendant. App’x 100 (Am. Compl. ¶ 115).

1 approximately the order of their inception, including here much of the narrative
2 provided in the Complaint, as its detail bears on the sufficiency of the Complaint in
3 fending off Defendants' Rule 12(b)(6) challenges.

4 A. The Honeyspot Road scheme

5 In 1986, the Estate owned a 16-acre undeveloped plot of real estate on Honeyspot
6 Road in Stratford, Connecticut. The property was leased by Pace Motor Lines, Inc., a
7 trucking company owned by the Pacelli brothers, friends of the D'Addario family.
8 Shortly after Francis's death, the property was appraised and valued at \$3.8 million. In
9 January 1989, the Estate accepted an offer to purchase the land for \$3.2 million. This
10 sale, however, never closed.

11 Instead, "[s]ometime after 1990," David stopped having the Estate pay real estate
12 taxes on the property. App. 67 (Am. Compl. ¶ 32). In 1996, after the Estate had accrued
13 a real estate tax delinquency of more than \$149,000, the Town scheduled the property for
14 a tax foreclosure sale. Rather than pay the overdue taxes—although the Estate was
15 legally and financially able to do so—David allowed the foreclosure sale to occur. At
16 that sale, in June 1996, the property was purchased by Dennis and William Miko,
17 friends of Mary Lou, for just over \$179,000.

18 Although the Estate could have redeemed the property by paying its tax bill and
19 a penalty within one year of the sale, David elected not to do so. Instead, he set up a
20 limited liability company, Honeyspot Ventures, LLC ("HSV"), co-owned by himself,
21 Mary Lou, and Larry, and, in September 1997, HSV purchased the property from the
22 Miko brothers for \$250,000. Approximately one year after purchasing the parcel, HSV
23 sold it for \$1.1 million to an entity owned by the Pacelli brothers. David, Larry, and

1 Mary Lou divided the \$850,000 profit evenly, and David proceeded to partner with the
2 Pacellis in a separate “very profitable” business venture. App. 69 (Am. Compl. ¶¶ 35-
3 36).

4 B. The Red Knot forbearance scheme

5 When the Estate opened in March 1986, it reported liabilities totaling \$41,363,977
6 and assets totaling \$162,636,000. Of the Estate’s roughly \$41 million in debt, more than
7 half (\$25,218,084) was owed to three banks: Connecticut National Bank, Connecticut
8 Bank and Trust Company, and People’s Bank (collectively, the “Bank Group”). In
9 December 1990, the Bank Group, acting as one, loaned an additional \$14 million to the
10 Estate. As a condition of the 1990 loan, the Executors agreed to abide by a “stringent
11 budget and strict reporting requirements,” with the goal of selling assets to pay off the
12 Estate’s creditors, including the Bank Group, and timely closing the Estate. App. 73
13 (Am. Compl. ¶ 49).

14 The Executors breached these requirements and came nowhere near the stated
15 goal. Accordingly, in July 1992, the Bank Group turned to the Probate Court for relief,
16 filing a “Joint Application for Removal of Executors,” and expressing “extreme[]
17 concern[]” about the “negligent and improper manner in which the Executors have
18 administered this Estate.” App. 73-74 (Am. Compl. ¶¶ 50-51). They alleged that both
19 David and Larry had “serious conflicts of interest” in light of their concurrent status as
20 Executors and beneficiaries of the Estate. *Id.* For five years thereafter, the probate judge
21 who oversaw the Estate at that time issued no ruling on the removal motion.

22 By the end of December 1997, the Estate owed the Bank Group more than \$48
23 million on the loan, in principal, accrued interest, and penalties. Citing their own

1 “substantial financial difficulties,” the Bank Group offered to extinguish the entirety of
2 the Estate’s loan obligations to them, and release the liens it held on Estate assets, in
3 exchange for a one-time cash payment of \$4,750,000. App. 75 (Am. Compl. ¶ 53). David
4 declined the offer. Instead, at David’s instance, his friend, defendant Gregory Garvey,
5 created an entity called Red Knot Acquisitions, LLC (“Red Knot”), as a vehicle for
6 purchasing the entirety of the Estate’s debt to the Bank Group. It did so, paying the
7 \$4,750,000 amount proposed by the lenders.⁵

8 Red Knot and the Estate then also entered into a so-called Forbearance
9 Agreement, prepared by David’s attorney (who is not a defendant here). The
10 Forbearance Agreement gave Red Knot a lien on “virtually all” assets of the Estate, and
11 provided that, if David was ever removed as an Executor of the Estate, Red Knot would
12 have the “immediate right” to foreclose on those assets and collect on the Estate’s
13 accumulated debts. App. 77 (Am. Compl. ¶ 59). This agreement has made it practically
14 impossible to remove David as an Executor.

15 Unsurprisingly, although it succeeded to the Bank Group’s rights in other
16 respects, Red Knot did not pursue the Bank Group’s pending motion to remove David
17 and Larry as Executors. Red Knot also later opposed a Motion to Remove the Executors
18 filed by another Estate creditor, The Cadle Company, citing Red Knot’s position as “the
19 Estate’s largest secured creditor.” In 2002, Vitti represented to the Connecticut Superior
20 Court in related proceedings that, if David was removed as Executor, Red Knot would

⁵ Virginia alleges that the Red Knot entity is David’s “alter-ego,” although it is ostensibly owned by Garvey. App. 75 (Am. Compl. ¶ 54).

1 promptly foreclose on the Estate's assets, and thereby "destroy" the Estate. App. 82
2 (Am. Compl. ¶ 70).

3 With his position as an Executor secured, David flagrantly mismanaged the
4 Estate, failing to pay its debts (which would have allowed him to close the Estate) and,
5 instead, continuing to loot its assets and usurp its business opportunities. Egregiously,
6 David failed to take advantage of a contractual provision in the Forbearance Agreement
7 (the "Estate Purchase Option") that would have allowed the Estate to repurchase the
8 Bank Group's loan position from Red Knot at a "steep discount," eliminating the largest
9 portion of the Estate's overall debt, as long as the purchase was made by January 7,
10 2003. App. 78 (Am. Compl. ¶ 60). On August 31, 2000, for example, the Estate could
11 have bought out Red Knot's position under the Estate Purchase Option for a mere
12 \$828,383, an amount that the Estate then had available in cash. Instead, David let the
13 option lapse, and Red Knot's hold on the Estate grew in tandem with the size of the
14 debt. By February 27, 2012, the Estate owed Red Knot (standing, in essence, in the Bank
15 Group's stead) more than \$100 million.

16 C. Wrongful transfers of residential properties

17 The Estate held title to several residential properties. These included furnished
18 condominiums in New York City; San Francisco; Fort Lauderdale, Florida; and Quechee
19 Lake, Vermont (along with a two-acre lot in that state). For approximately the first
20 decade of the Estate's pendency—that is, until the late 1990s—siblings David, Mary
21 Lou, and Larry had "free and unfettered use" of these properties, while the Estate paid
22 related expenses. App. 83-84 (Am. Compl. ¶ 73). In 1997, the New York City and
23 Vermont condominiums were deeded to David, and the Vermont lot was deeded to

1 Mary Lou. Neither David nor Mary Lou paid the Estate for these properties. In 1999, the
2 San Francisco condominium was sold to an unrelated third party, and the proceeds of
3 that sale were deposited—not into the Estate—but into a trust established in Larry’s
4 name.

5 D. The Frenchtown Road scheme

6 The Estate owned a 50% interest in a 34.4-acre parcel of undeveloped land in
7 Trumbull, Connecticut, on Frenchtown Road. In a financial statement completed shortly
8 before Francis’s death, that interest was valued at \$1.25 million. In the spring of 1998,
9 David discovered that the Town of Trumbull was interested in purchasing the property
10 to use as a location for a new elementary school. He proceeded to form a limited
11 liability company, Sunny Spot Associates, LLC (“SSA”), and at summer’s end that year,
12 acting through SSA, David purchased the remaining 50% interest in the property from
13 the then-owners, paying \$450,000. In October 1999, the Town of Trumbull then
14 purchased the entire parcel from SSA and the Estate for \$6 million. Completing the
15 transaction, it seems, the Estate then contributed \$750,000 to the Town of Trumbull in
16 exchange for the right to have the school that would be built on the land named after
17 Ann D’Addario, the siblings’ mother.

18 Virginia contends that, in this transaction, David breached his fiduciary duty by
19 usurping a business opportunity that rightfully belonged to the Estate. If the Estate had
20 purchased the remaining 50% interest in the Frenchtown Road property in August 1998
21 on the same terms as SSA obtained, it would have earned a \$2.55 million profit. Instead,
22 David pocketed that profit himself.

1 E. The Silver Knot scheme

2 In early 1999, David and his friend Gregory Garvey created Silver Knot, LLC,
3 ostensibly to acquire a controlling interest in a particular producer of aluminum can
4 stock. Over several years, Silver Knot did just that. In 2014, fifteen years later, an
5 international aluminum company, Constellium N.V., purchased Silver Knot for \$1.4
6 billion, \$455 million of which was in cash. Virginia asserts that David funded the
7 venture with moneys misappropriated from the Estate, and accordingly, she argues, the
8 Estate is entitled to an equitable interest in the proceeds of the sale.

9 F. The Cadle suit settlement scheme

10 On May 31, 2012, The Cadle Company (“Cadle”)—a creditor of the Estate that
11 tried unsuccessfully for decades to obtain payment on the \$1 million promissory note it
12 held—filed suit in the District of Connecticut against David, Garvey, Red Knot, and
13 others, alleging a civil RICO conspiracy similar to that asserted here by Virginia. (Cadle
14 had earlier pursued legal action against the Estate in state court, including, in 1997, by
15 filing an unsuccessful motion to remove Larry and David as Executors of the Estate.)

16 The district court (Young, J.) “administratively closed” Cadle’s suit in June 2013
17 for a period of nine months, expressing a desire to allow David the opportunity to close
18 the Estate, App. 132, and ruling at the same time that either party would be free to
19 move to reopen the case at the end of the nine-month period. When that time arrived,
20 Cadle sought to reopen the case. *See The Cadle Co. v. D’Addario*, No. 3:12-cv-00816-WGY,
21 Dkt. No. 154, (D. Conn. Mar. 17, 2014). That motion was granted, *id.* at Dkt. No. 155 (D.
22 Conn. Apr. 2, 2014), but, citing concerns about the ripeness of Cadle’s claim in light of
23 the pendency of the Estate, the district court once again administratively closed the case

1 without ruling on the defendants' pending motions to dismiss, *see The Cadle Co. v.*
2 *D'Addario*, No. 12-00816-WGY, 2014 WL 12760747, at *4 (D. Conn. July 22, 2014).

3 Following these fruitless legal efforts, Cadle entered into a settlement agreement
4 with Red Knot and Garvey in February 2015. In exchange for the assignment of its
5 rights against the Estate to Red Knot and dismissal with prejudice of its RICO claims
6 against David and others, Cadle accepted a payment of approximately \$5.1 million, a
7 sum significantly larger than the approximately \$3.17 million it was then owed by the
8 Estate. Red Knot, however, did not directly fund the settlement. Instead, the Estate
9 transferred one of its assets (the Hi Ho Motel, in Fairfield, Connecticut) to Red Knot in
10 exchange for a \$4.5 million "credit" on the Estate's loan obligations. Red Knot then sold
11 the motel to third parties for \$3.7 million and used that money toward the Cadle
12 settlement. David personally contributed the additional \$1.5 million in settlement
13 funds.

14 **III. Procedural history**

15 In January 2016, after fruitless efforts in the Connecticut state courts, Virginia
16 filed this suit in the United States District Court for the District of Connecticut
17 (Arterton, J.) against her brother, David; her sister, Mary Lou; Gregory Garvey;
18 Nicholas Vitti; Red Knot; and Silver Knot (together, "Defendants"). Her primary claim
19 against Defendants rested on provisions of the Racketeer Influenced and Corrupt
20 Organizations Act ("RICO"), 18 U.S.C. §§ 1961 *et seq.* Asserting a right to treble damages

1 under section 1964(c), she alleged violations of RICO sections 1962(b), (c), and (d).⁶
2 Virginia also alleged several Connecticut law claims related to David’s alleged breach of
3 his fiduciary duty to the Estate. In May 2016, Virginia filed an Amended Complaint—
4 the 144-paragraph pleading at issue here. In it, she again alleged a RICO-based claim;
5 she also asserted new state law claims.

6 From the start, Virginia has sought RICO treble damages based on two types of
7 injuries: first, loss of the inheritance she contends that she (and her mother’s estate)
8 would have received from the Estate had David not rendered it insolvent (the parties
9 refer to these as “lost debt” damages); and, second, the more than \$200,000 in legal
10 expenses that she incurred in the four years before filing this suit, in her efforts to
11 oppose David’s mismanagement of the Estate and unseat him as Executor (the parties
12 refer to these as “collection expenses”) through various actions pursued in the courts of
13 Connecticut. (David appears to have blocked Virginia’s attempted legal interference on
14 at least one earlier occasion by invoking the promise she made in exchange for the 1987
15 loan. *See D’Addario v. D’Addario*, No. 27 86 23, 1991 WL 59744, at *4 (Conn. Super. Ct.
16 Mar. 14, 1991).)

⁶ *Section 1962(b)* of title 18 prohibits “any person through a pattern of racketeering activity . . . [from] acquir[ing] or maintain[ing], directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.”

Section 1962(c) prohibits “any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, [from] conduct[ing] or participat[ing], directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity”

Section 1962(d) prohibits conspiracy to violate the other subsections of section 1962.

1 The District Court granted Defendants' motion to dismiss the Amended
2 Complaint. *D'Addario v. D'Addario*, No. 3:16cv99 (JBA), 2017 WL 1086772 (D. Conn. Mar.
3 22, 2017) (Arterton, J.). In a detailed ruling, it determined that Virginia's claim for "lost
4 debt" damages was not ripe for adjudication under applicable RICO case law because it
5 remained uncertain whether Virginia would receive any distribution from the Estate to
6 offset her claimed damages. This uncertainty made the amount she would ultimately be
7 owed too speculative for recovery and trebling under RICO. The court ruled, in
8 contrast, that her claim for collection expenses already incurred was ripe.

9 As to those expenses, however, the District Court concluded that the Complaint's
10 allegations were insufficient to state a civil RICO claim. It explained that Virginia had
11 failed to identify a distinct "acquisition and maintenance" injury, as required to make
12 out a claim based on a violation of section 1962(b). And it explained further that
13 Virginia had failed sufficiently to identify an "enterprise" to support a theory for
14 recovery under section 1962(c). Because the Complaint laid an inadequate basis for
15 finding a violation of either of these subsections, the District Court also rejected
16 Virginia's claim under section 1962(d) for RICO conspiracy. Having dismissed the only
17 federal claim presented in the Complaint, the District Court declined to exercise
18 supplemental jurisdiction over Virginia's state law claims.

19 This appeal followed.

20 DISCUSSION

21 Virginia contends that several aspects of the District Court's ruling are flawed.
22 She identifies error in the court's determination that her lost debt damages were not yet

1 ripe. She also argues that, contrary to the District Court’s conclusion, the facts set forth
2 in the Complaint are sufficient to establish that she suffered an “acquisition or
3 maintenance injury” as required by section 1962(b), and that Defendants were
4 associated with an “enterprise” as required to pursue recovery under section 1962(c).
5 Defendants, for their part, defend the District Court’s ruling on ripeness as to the lost
6 debt injury, and, predictably, if cursorily, attack it as to collection expense damages.
7 They further adopt the District Court’s analysis of the Complaint’s insufficiency with
8 respect to claims based on sections 1962(b) and (c), and they maintain in addition, in a
9 ground rejected by the District Court, that Virginia’s asserted injuries were not
10 proximately caused by their actions, making dismissal correct in their view for several
11 independent reasons.

12 We review the District Court’s ruling de novo, construing the facts alleged in the
13 Complaint in the light most favorable to Virginia, and drawing all reasonable inferences
14 in her favor. *Cruz v. FXDirectDealer, LLC*, 720 F.3d 115, 118 (2d Cir. 2013). On such
15 review, we conclude that the District Court correctly determined that Virginia’s claim
16 for her share of the Estate’s assets is unripe and that her claim for collection expenses is
17 ripe. We also determine that Virginia has sufficiently alleged that her collection expense
18 injuries were proximately caused by the claimed RICO violations. In contrast to the
19 District Court, we rule that Virginia has sufficiently identified a distinct acquisition and
20 maintenance injury under section 1962(b) to support her collection expenses claim with
21 regard to David, Gregory Garvey, and Red Knot, but not with regard to the other
22 defendants. We further conclude that Virginia has also sufficiently alleged a section
23 1962(c) “enterprise” with regard to all six defendants, supporting her claim for

1 collection expenses on this theory of recovery as well. For these reasons, we vacate the
2 District Court’s dismissal as to Virginia’s RICO claim on her own behalf and on behalf
3 of her mother’s estate for collection expenses and remand that claim and her state law
4 claims for further proceedings consistent with this opinion.

5 **I. Ripeness of private actions brought under RICO**

6 Our Circuit’s statutory ripeness jurisprudence in the RICO context grows from
7 the Supreme Court’s decision in *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S.
8 321 (1971), in which the Court ruled—in the context of a private action for treble
9 damages recovery under the Sherman Act—that a cause of action has not accrued when
10 “the fact of [future damages] is speculative or their amount and nature unprovable.” *Id.*
11 at 339; *see also* David B. Smith & Terrance G. Reed, *Civil RICO*, ¶ 6.04[5][a] (Matthew
12 Bender 2017). We have concluded that no civil RICO cause of action treble damages
13 accrues “until the amount of damages becomes clear and definite.” *First Nationwide*
14 *Bank v. Gelt Funding Corp.*, 27 F.3d 763, 768 (2d Cir. 1994); *see also id.* at 767 (noting that
15 “injury to business or property” is one of three “conditions a plaintiff must meet to
16 satisfy RICO’s [statutory] standing requirements”).

17 A. Distribution of Estate assets: claim for “lost debt” injuries

18 We agree with the District Court that Virginia’s RICO claim for her rightful share
19 of the Estate is not yet ripe. Our Circuit has consistently ruled in the RICO context that
20 claims for “lost debt” injuries—that is, for damages in the form of an owed, but as-yet-
21 uncollected, amount—are unripe when parallel proceedings to collect the amount owed
22 are ongoing in another forum. We have reasoned that, since “RICO [treble] damages are
23 netted against recovery obtained from collateral and other sources,” the outcome of the

1 parallel proceedings could significantly affect the total amount owed in the case at bar,
2 and that this fundamental uncertainty renders the claim not ready for adjudication.
3 *Motorola Credit Corp. v. Uzan*, 322 F.3d 130, 135-36 (2d Cir. 2003) (finding unripe
4 plaintiffs' RICO claim for injury based on unpaid loans where plaintiffs had not yet
5 foreclosed on loan security and related arbitrations were pending). Although some
6 other courts have taken a different approach, *see, e.g., Grimmer v. Brown*, 75 F.3d 506
7 (9th Cir. 1996), our jurisprudence on this point is long- and well-established. *See, e.g.,*
8 *First Nationwide Bank*, 27 F.3d at 769 (finding unripe RICO claims for injury arising from
9 plaintiffs' loans to defendant where, though information from defendants provided as a
10 basis for the loans was alleged to be false, no default had yet occurred); *Stochastic*
11 *Decisions, Inc. v. DiDomenico*, 995 F.2d 1158, 1165-66 (2d Cir. 1993) (finding unripe a
12 RICO claim for injury in amount of two state court judgments entered against
13 defendant where (1) one judgment was satisfied after initiation of RICO suit, and (2)
14 second judgment was "likely to be fully satisfied"); *Bankers Trust Co. v. Rhoades*, 859 F.2d
15 1096, 1105-06 (2d Cir. 1988) (RICO claim for lost debt injury unripe because fraudulently
16 transferred assets might yet be recovered during bankruptcy proceedings).

17 Proceedings regarding the Estate are underway in Connecticut Probate Court, as
18 we have described. That they have been ongoing for more than thirty years, however,
19 and that the Forbearance Agreement is in place (*see* Background Part II.B, *supra*),
20 unavoidably raises the question whether they will ever end, and whether their
21 pendency can reasonably be treated as we have treated parallel proceedings in the cases
22 just cited: that is, as grounds to preclude the related RICO suit.

1 Nonetheless, the problem identified by the District Court and recognized in our
2 case law remains: the amount of Virginia’s ultimate distribution from the Estate—and,
3 thus, the amount of her damages, as measured by the difference between any
4 distribution she actually receives and the distribution she should have received—is
5 remarkably uncertain. The value of the Estate is not static: David and Larry are still
6 authorized, as co-executors, to conduct the Estate’s business, to buy and sell its real
7 estate and businesses, and thereby to control the Estate’s net value. In fact, many of the
8 “schemes” identified in the Complaint are examples of David’s misappropriating for
9 himself lucrative business opportunities that should have been treated as belonging to
10 the Estate and the legatees. We have held in the civil RICO setting that defendants are
11 “not liable for all losses that *may occur*, but only for those *actually suffered*.” *Motorola*
12 *Credit Corp.*, 322 F.3d at 136 (quoting *First Nationwide Bank*, 27 F.3d at 768) (emphasis in
13 *Motorola*). Applying this standard, we cannot escape the conclusion that Virginia’s lost
14 debt claim is not ripe because she cannot even estimate with reasonable certainty the
15 amount of her anticipated distributional share.

16 Virginia argues that there is no “realistic” possibility that the amount of her
17 damages will fluctuate in light of circumstances described in the Complaint,
18 Appellant’s Br. 67, because these have rendered the Estate “hopelessly insolvent,” App.
19 66 (Am. Compl. ¶ 27). In her view, the likelihood that she will receive *any* distributional
20 share when the Estate closes is nil, no matter what interim fluctuations in value the
21 Estate’s assets might experience.

22 The argument has some force, but we are skeptical that the law requires us to
23 accept at face value the claim that the Estate’s alleged insolvency is “hopeless[],” given

1 the variability of the Estate’s assets and liabilities and the unpredictability of the market
2 forces at play. For example, Virginia has pleaded that the Estate’s liabilities outstrip its
3 assets, but she also alleges that David himself—through Red Knot—holds \$100 million
4 of the Estate’s debt. That liability, accordingly, seems amenable to decrease or even
5 elimination. Moreover, Virginia asserts that the Estate has an equitable interest in Silver
6 Knot, because the latter was funded with moneys stolen from the Estate. A balance
7 sheet that takes into account the Estate’s entitlement to some portion of the \$455 million
8 cash payment that Silver Knot received in 2014 might reflect a more accurate
9 assessment of the Estate’s solvency.

10 Virginia’s assessment of the Estate’s condition also does not recognize that the
11 Connecticut Probate Court is empowered to alter the Estate’s balance of assets and
12 liabilities in at least two potentially effective ways. First, the Probate Court may assess a
13 significant surcharge against David for any fiduciary breaches that the court identifies.
14 *Gaynor v. Payne*, 261 Conn. 585, 596-97 (2002). Virginia’s allegations suggest that David
15 would have access to assets sufficient to satisfy such a surcharge. Second, that court is
16 authorized in certain circumstances to declare prior asset transfers null and void, and to
17 impose a constructive trust on assets wrongfully transferred from an estate. *See In the*
18 *Matter of Edwin A. Jarmoc*, 29 Quinnipiac Prob. L. J. 443, 451-52 (2016).⁷ These powers
19 raise the possibility that some of the asset transfers identified by Virginia as
20 “plundering” could be revoked and the assets returned to the Estate, increasing its net
21 value and Virginia’s proportionate share upon distribution. Accordingly, even those

⁷ Virginia suggests that a constructive trust claim would be time-barred, but points to no legal authority suggesting that such a bar would bind the Probate Court’s hands.

1 particular schemes for which a loss amount is theoretically calculable—such as the
2 Honeyspot Road scheme—do not yet give rise to clear and definite damages. Such acts
3 of rectification by the Connecticut Probate Court would doubtless not be easy to
4 accomplish, but because “[t]hese contingencies, and other conceivable contingencies,
5 remain,” our precedent teaches that Virginia’s RICO claim for triple the value of her
6 distributional share of the Estate is not ripe for adjudication. *Motorola Credit Corp.*, 322
7 F.3d at 136.

8 Virginia has also alleged that final assessments of the Estate’s value and
9 distributions to legatees will simply never come to pass. She asserts that David intends,
10 and is likely able, to keep the Estate open until her death (at 70, she is David’s elder by
11 15 years), and that the bona fides of his threat are evidenced by David’s undeniable
12 success in keeping the Estate open for more than thirty years so far. Abiding by our
13 RICO ripeness jurisprudence under these circumstances will, in effect, improperly
14 enable David to carry out his unlawful plan, she insists: that is, he will keep the Estate
15 unresolved until Virginia’s death, at which point her share will devolve to the Estate
16 and be divided equally among her surviving siblings.

17 We are not enabled by these pleas to depart from our precedent. Unfortunate as
18 Virginia’s situation might be, the RICO statute as construed in our Circuit simply does
19 not provide a remedy before a plaintiff has suffered reasonably ascertainable damages.
20 Nor may a RICO plaintiff, through predictions of a defendant’s future plans, artificially
21 ripen a claim that is unripe under our jurisprudence. *Cf. Kurtz v. Verizon New York, Inc.*,
22 758 F.3d 506, 516 (2d Cir. 2014) (endorsing application of ripeness inquiry that governs
23 Fifth Amendment takings claims to due process claims as well to “prevent[] evasion of

1 ripeness test by artful pleading”). Moreover, even accepting Virginia’s allegations as
2 true, we are not convinced that—barring something unexpected—the Estate is sure not
3 to close until after Virginia’s death. Although Virginia alleges that David has kept the
4 Estate open without significant interference by the Connecticut Probate Court, the
5 appointment of a new Probate Judge in 2010 and the Connecticut legislature’s
6 substantial reform of the Connecticut Probate Court system in 2011 raise the possibility
7 that closure will now in fact occur. *See generally* Margaret E. St. John, *The Connecticut*
8 *Probate Court System Reform: A Step in the Right Direction*, 24 *Quinnipiac Prob. L. J.* 290,
9 301-02 (2011). For instance, the new judge appears to have been more active in
10 managing the Estate than was his predecessor in earlier years, as demonstrated by his
11 2012 order directing the Executors to file quarterly updates reporting on their steps
12 toward finalizing the administration of the Estate.

13 For these reasons, we conclude that Virginia’s RICO claim for “lost debt”
14 damages based on the amount of her expected inheritance (and that of her mother’s
15 estate) is unripe.

16 B. RICO claim for collection expenses

17 Virginia’s claim for RICO damages based on the amount of collection expenses
18 that she has incurred to pursue a legal remedy to David’s alleged wrongdoing does not
19 suffer from the same infirmity. Virginia contends that she has incurred legal expenses in
20 excess of \$200,000 in connection with her state-court legal attempts, albeit unsuccessful,
21 to enforce her rights and halt David’s despoiling of the Estate. We have long recognized
22 that a plaintiff may recover legal fees, including expenses incurred in one or more
23 attempts to combat a defendant’s RICO violations through the legal system, as damages

1 in a civil RICO action. *See Bankers Trust Co.*, 859 F.2d at 1105. Virginia’s claimed legal
2 expenses fall squarely within that category of cognizable damages.

3 Defendants mount only a cursory challenge to that conclusion: they assert by
4 way of a footnote that the collection expenses claim is not ripe since the full extent of the
5 expenses that she will ultimately have incurred—including, presumably, from this
6 litigation—is yet unknown. The law of our Circuit does not support their contention.
7 Unlike her claims with respect to her future distributional interest, as to which collateral
8 proceedings are pending, Virginia has already suffered a “clear” and “definite” loss in
9 the form of her legal expenses. Although the amounts may increase over time, the past
10 expenses will not disappear when the Estate is closed. *See First Nationwide Bank*, 27 F.3d
11 at 768. The “collection expenses” damages Virginia claims in this litigation—that is, the
12 \$200,000 that she allegedly incurred over the four years before she filed the Complaint
13 (as allowed by the RICO statute of limitations)—are thus neither “speculative” nor
14 “unprovable.” *Bankers Trust Co.*, 859 F.2d at 1106. The possibility that Virginia will bear
15 additional related legal expenses has no bearing on this conclusion. Her RICO claim
16 based on the legal expenses she has incurred is therefore ripe.

17 **II. Proximate causation of Virginia’s legal expenses**

18 Section 1964(c) of title 18 authorizes a private cause of action for “[a]ny person
19 injured in his business or property by reason of a violation of section 1962” To
20 make out a claim under this section, Virginia must prove not only (1) that Defendants
21 violated section 1962 and (2) that she suffered an injury to her “business or property,”
22 but also (3) that her injury was caused “by reason of” the RICO violation—a standard
23 that we have equated to the familiar “proximate cause” standard. *See Sergeants*

1 *Benevolent Ass'n Health and Welfare Fund v. Sanofi-Aventis U.S. LLP*, 806 F.3d 71, 86 (2d
2 Cir. 2015).⁸ Defendants contend that the Complaint sets forth allegations suggesting at
3 best that their alleged RICO violations proximately caused injury to the *Estate*, not to
4 Virginia as a legatee. For this reason, they urge, Virginia has no viable civil RICO claim
5 even if some portion of her damages are ripe, as we have determined that they are.

6 As we have commented elsewhere, “proximate cause requires . . . some direct
7 relation between the injury asserted and the injurious conduct alleged, and excludes . . .
8 those links that are too remote, purely contingent, or indirect.” *Ideal Steel Supply Corp. v.*
9 *Anza*, 652 F.3d 310, 323 (2d Cir. 2011) (internal quotation marks and alterations omitted).
10 Here, the causal relationship between Defendants’ conduct and Virginia’s collection
11 expenses injury is easily identifiable: Defendants (chiefly David), through their
12 violations of 18 U.S.C. § 1962(b) and (c), are alleged to have destroyed the value of the
13 Estate, in which Virginia, as a beneficiary, has an identifiable interest under Connecticut
14 law. Virginia took steps and incurred related legal expenses to halt that wrongdoing.
15 *Gaynor*, 261 Conn. at 592 (“It is well settled that a person’s right of inheritance vests at
16 the moment of the decedent’s death . . .”). To the extent that an additional step may
17 separate the alleged RICO violations and Virginia’s claim for collection expenses
18 incurred, we are bound by Circuit precedent recognizing such expenses to be a valid

⁸ Although this causation requirement has sometimes been described as necessary to support “statutory standing,” we think it is better understood as an element essential to the viability of a plaintiff’s claim. See *Am. Psychiatric Ass’n v. Anthem Health Plans, Inc.*, 821 F.3d 352, 358-59 (2d Cir. 2016) (noting that “what has been called ‘statutory standing’ in fact is not a standing issue, but simply a question of whether the particular plaintiff ‘has a cause of action under the statute’” (quoting *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1387 (2014))).

1 basis for RICO damages. *See, e.g., Bankers Trust Co.*, 859 F.2d at 1105; *Stochastic Decisions,*
2 *Inc.*, 995 F.2d at 1166-67. These expenses were incurred in an attempt to protect both the
3 Estate and Virginia's share of that Estate, and, for purposes of our causation inquiry
4 here, the two are reasonably treated as indivisible.

5 Defendants cite primarily to the Sixth Circuit's decision in *Firestone v. Galbreath*,
6 976 F.2d 279 (6th Cir. 1992), in their effort to divorce these interests, but it is not to the
7 contrary. The *Firestone* court found that beneficiaries of an estate had not suffered a
8 "direct injury" cognizable under RICO from the defendants' alleged wrongdoing. *Id.* at
9 285. There, the testator's grandchildren, beneficiaries of her estate, brought various
10 fraud and RICO claims against certain relatives and former associates of the testator, *id.*
11 at 281-82, alleging that the defendants had "looted [the testator's] estate as she lay
12 dying," diminishing their inheritances when she later died. *Id.* at 282. Here, in contrast,
13 the alleged looting took place after Francis died, when the Estate already existed and
14 Virginia's interest in the Estate had vested, aligning her interest and that of the Estate
15 temporally and conceptually. *See Gaynor*, 261 Conn. at 592.

16 Accordingly, we conclude that Virginia's injuries are not so removed from
17 Defendants' misdeeds as to place them outside the reach of the proximate causation
18 chain as a matter of law. The expenses that she has incurred to stop the incursion are
19 sufficiently proximate to the identified RICO violations support a claim under section
20 1964(c).

1 **III. Section 1962(b) theory of recovery**

2 Section 1962(b) makes it unlawful for a person, “through a pattern of
3 racketeering activity[,] . . . to acquire or maintain, directly or indirectly, any interest in
4 or control of any enterprise which is engaged in, or the activities of which affect,
5 interstate or foreign commerce.” Our Circuit, like many others, requires a plaintiff who
6 brings a civil RICO claim for a 1962(b) violation to demonstrate an injury arising from
7 the defendants’ acquisition of an interest in, or maintenance of control over, an alleged
8 enterprise. *See* Jed S. Rakoff and Howard W. Goldstein, *RICO: Civil and Criminal Law and*
9 *Strategy*, § 3.03[2], 28-29 & n.23 (2011) (noting that, as of 2011, all circuits but the Fourth
10 and Eighth require plaintiffs alleging a section 1962(b) violation to identify an
11 “acquisition or maintenance” injury).

12 The “acquisition or maintenance” requirement in our Circuit stems from our
13 decision in *Discon, Inc. v. NYNEX Corp.*, 93 F.3d 1055 (2d Cir. 1996), *vacated on other*
14 *grounds by NYNEX Corp. v. Discon, Inc.*, 525 U.S. 128 (1998). In that case, plaintiff Discon,
15 a telephone equipment removal company, alleged that the defendants had committed
16 certain racketeering acts in connection with their control of NYTel, a local telephone
17 service provider. *Id.* at 1057-58. We ruled that Discon failed to state a RICO claim arising
18 out of a violation of section 1962(b), primarily because it did not allege that defendants’
19 acquisition or control over NYTel was obtained through a pattern of racketeering
20 activity. *Id.* at 1063. At the same time, we observed that the section 1962(b) claim was
21 also flawed because Discon had failed to allege that its injuries were caused by the
22 defendants’ acquisition or maintenance of NYTel, rather than by the defendants’

1 various racketeering acts. *Id.* This alternative holding has taken on significance over
2 time.

3 Virginia has certainly alleged in some detail that her collection expense injuries
4 are traceable to Defendants' control over the Estate, and that Defendants' control was
5 maintained through a pattern of racketeering activity. Although David is not alleged to
6 have "acquire[d]" his position as an Executor through racketeering acts, the facts as
7 stated in the Complaint provide a more than sufficient basis from which to infer that
8 David *maintained* his position (and its attendant control of the Estate) through the Red
9 Knot forbearance scheme.

10 When David and Garvey created Red Knot, the Estate's largest secured creditors
11 had sought to remove David as an Executor. By replacing those creditors with an entity
12 that he is alleged to control, David neutralized a threat that could have led to his
13 removal as an Executor and fortified his position through the Forbearance Agreement,
14 purportedly making his position impervious to attack. And, later, when Cadle sought a
15 court order removing him as an Executor, Red Knot opposed that motion, invoking its
16 status as the Estate's major secured creditor to give weight to its support of David.
17 Several of the schemes—including two sets in particular (the allegedly wrongful
18 transfers of residential property from the Estate to David, Larry, and Mary Lou, and the
19 Cadle suit settlement scheme, all of which directly removed assets from the Estate)—
20 occurred after the Red Knot forbearance scheme had cemented David's hold on the
21 Estate. The expense collection losses attributable to those alleged breaches can
22 reasonably be attributed to David's "maintenance" of control over the Estate.

1 Relying on *Discon*, however, the District Court concluded that the expense
2 injuries attributable to Defendants' alleged acquisition or maintenance of control over
3 the Estate were insufficiently "separate and distinct" from the injuries that resulted
4 from the predicate acts alleged in the Complaint. *D'Addario*, 2017 WL 1086772, at *18.
5 We disagree. To successfully plead a RICO claim, a plaintiff must indeed allege distinct
6 damages arising from the acquisition or maintenance of control of the enterprise. In
7 other words, those damages must be different from the damages that flow from the
8 predicate acts themselves. For example, a racketeer might use a pattern of physical
9 threats and violence, including an act of arson against the plaintiff's property, to extort
10 an interest in the plaintiff's business. The cost of replacing or repairing property
11 damaged in the fire is a loss caused by the predicate act, the arson, not by the ultimate
12 acquisition of an interest in the plaintiff's business. The "separate and distinct" damages
13 caused by the RICO violation, as opposed to by the predicate acts, is the value of the
14 share of the plaintiff's business that the owner turned over to the defendant.

15 Similarly, in this case, Virginia alleges losses specifically attributable to the
16 predicate acts of fraud, such as the loss of the estate assets that were turned over to Red
17 Knot. But that scheme also maintained David's control of the Estate, by making his
18 position as Executor impregnable. At a minimum, that entrenchment of control
19 contributed to Virginia's collection damages, because David's enhanced position
20 meaningfully complicated her efforts to unseat him. We conclude, therefore, that
21 Virginia sufficiently pleaded a separate and distinct "acquisition or maintenance"
22 injury.

1 The question remains, however, whether Virginia has adequately pleaded such
2 an injury as to *each* of the six defendants: David, Mary Lou, Garvey, Vitti, Red Knot, and
3 Silver Knot. Of these defendants, only David as an Executor had a formal position
4 through which he exerted control over the Estate. (Recall that Virginia did not name
5 Larry, her brother and now the other Executor, as a defendant in this suit.) We accept
6 Virginia’s argument that the Complaint plausibly asserts that, along with David, Red
7 Knot and Garvey also exerted significant control over the Estate, helping to perpetuate
8 David’s control and each contributing thereby to the requisite “acquisition or
9 maintenance” injury. For example, the Complaint alleges that by purchasing the
10 Estate’s loans from the Bank Group, Red Knot gained not only a standard secured
11 creditor’s interest in the Estate’s assets, but also the contractual right under the
12 Forbearance Agreement to initiate potentially disastrous wholesale foreclosure
13 proceedings upon David’s removal. Red Knot’s power to foreclose on “virtually all” of
14 the Estate’s assets in the event of a management change plausibly represents a
15 meaningful form of “control” over the Estate. App. 77 (Am. Compl. ¶ 59). And it would
16 be imprudent to conclude, at this early stage in the proceedings, that Gregory Garvey—
17 as Red Knot’s nominal owner—lacked any power or control over Red Knot, or, through
18 Red Knot, the Estate. Accordingly, Virginia has pleaded a viable claim under section
19 1962(b) against Red Knot and Garvey, as well as against David.

20 The remaining defendants, however, are not themselves alleged to have exerted
21 any direct control over the Estate’s management, much less control that was acquired or
22 maintained through any alleged racketeering acts. Virginia alleges generally that Mary
23 Lou, Silver Knot, and Vitti took part in (or, in Vitti’s case, advised David regarding) one

1 or more of the various schemes by which David looted the Estate. Without more,
2 however, participation as a third party in a business transaction with the Estate does
3 not constitute either maintenance of an “interest in” or exercise of “control over” the
4 Estate for purposes of section 1962(b). Accordingly, Virginia failed sufficiently to allege
5 that Mary Lou, Silver Knot, or Vitti violated section 1962(b).

6 **IV. Section 1962(c) theory of recovery**

7 Section 1962(c) of title 18 makes it unlawful “for any person employed by or
8 associated with any enterprise engaged in, or the activities of which affect, interstate or
9 foreign commerce, to conduct or participate, directly or indirectly, in the conduct of
10 such enterprise’s affairs through a pattern of racketeering activity.” The existence of an
11 “enterprise”—one existing “separate and apart from the pattern of activity in which it
12 engages”—is a necessary element of a section 1962(c) violation. *United States v. Turkette*,
13 452 U.S. 576, 583 (1981).

14 All six Defendants claim that, even accepting the Complaint’s allegations, they
15 were not associated with an “enterprise” within the meaning of the statute and, thus,
16 that Virginia has not adequately pleaded that they violated section 1962(c). Virginia
17 identifies two possible “enterprises” with which all Defendants purportedly associated:
18 (1) an “association-in-fact” consisting of all six Defendants, and (2) the Estate itself.⁹

⁹ We do not opine here on the question whether Virginia could plausibly allege a series of more limited associations-in-fact, consisting of the participants in particular schemes pursuing more limited purposes than David D’Addario’s wholesale looting of the Estate. Although our recitation of the narrative above might be read to suggest any number of such associations, we decline to construct associations-in-fact that Virginia has not identified. We agree with the Third

1 A. Association-in-fact of the six Defendants

2 The RICO statute defines “enterprise” as “any individual, partnership,
3 corporation, association, or other legal entity, and any union or group of individuals
4 associated in fact although not a legal entity.” 18 U.S.C. § 1961(4).¹⁰ The Supreme Court
5 has observed in this regard that “[t]he term ‘any’ ensures that the definition has a wide
6 reach, and the very concept of an association in fact is expansive.” *Boyle v. United States*,
7 556 U.S. 938, 944 (2009) (internal citations omitted). It has further instructed that, in
8 accordance with the law’s purposes, the RICO statute is to be “liberally construed,”
9 giving a broad and flexible reach to the term “association-in-fact.” *Id.*

10 In line with this general approach, the Supreme Court has rejected attempts to
11 graft onto the statute formal strictures that would tend to exclude amorphous or
12 disorganized groups of individuals from being treated as RICO “enterprises.”
13 Accordingly, it has explained, RICO associations-in-fact need exhibit only three
14 structural features: (1) a shared purpose; (2) relationships among the associates; and (3)
15 “longevity sufficient to permit these associates to pursue the enterprise’s purpose.” *Id.*
16 at 946.

17 Defendants do not meaningfully contest that the Complaint adequately alleges
18 longevity, inasmuch as Defendants’ charged association in connection with the Estate

Circuit that, where a plaintiff has “conspicuously refrained, throughout the district[] court proceedings and on appeal, from asserting alternative [multi-entity,] bilateral[,] or single-entity enterprises,” we should not endeavor to replace the enterprise identified by the plaintiff with an alternative, differently constituted enterprise with a different purpose. *See In re Insurance Brokerage Antitrust Litig.*, 618 F.3d 300, 375 (3d Cir. 2010).

¹⁰ This definition applies to the term “enterprise” as used in both sections 1962(b) and (c).

1 has persisted for decades (and indeed, several of the individual schemes were carried
2 out over a period of years). They argue, however, that Virginia has failed to allege
3 sufficiently the existence of relationships among the Defendants or a common purpose.
4 Rather, for example, they highlight David’s alleged purpose—to enrich himself—and
5 contrast it with each defendant’s self-regarding, and separate, individual purpose in
6 individual transactions: for example, Mary Lou’s desire to obtain a particular residential
7 property and Garvey’s profit-oriented investment in the aluminum can company
8 through Silver Knot. Although not in the end dispositive, *see infra* Discussion Part IV.B,
9 we find Defendants’ argument on this point persuasive.

10 The concept of an association-in-fact is protean, and, as such, variability is
11 invited by the statutory language and the Supreme Court’s construction of that
12 language. District Courts and Courts of Appeals have taken various paths towards
13 providing some predictable shape for the notion, often drawing on established
14 conspiracy law for analogy and contrast. A number of courts—although not our court—
15 have found that a group of individuals related by a structure that mimics so-called
16 “rimless hub-and-spoke” conspiracies cannot be considered a RICO association-in-fact.
17 *See, e.g., In re Insurance Brokerage Antitrust Litig.*, 618 F.3d 300, 374-75 (3d Cir. 2010); *Moss*
18 *v. BMO Harris Bank, N.A.*, 258 F. Supp. 3d 289, 302-03 (E.D.N.Y. 2017); *Cedar Swamp*
19 *Holdings, Inc. v. Zaman*, 487 F. Supp. 2d 444, 451-52 (S.D.N.Y. 2007). In other words,
20 when each defendant is alleged to have a relationship with a central figure, but the
21 defendants are not all alleged to be connected in some overarching way (such as by “an
22 agreement to further a single design or purpose”), these courts have found no RICO
23 association-in-fact. *See* Gregory P. Joseph, *Civil RICO: A Definitive Guide* 105-07 (3d ed.

1 2010). Without such a limitation, as commentators have observed, one malefactor's
2 series of independent frauds could be cast as a RICO conspiracy, sweeping numerous
3 other individuals into a net of heightened liability under RICO, and doing so even if
4 each fraud was perpetrated quite independently of the others. Such a sweep would
5 seem to run afoul of the principle adopted by the Supreme Court in *Boyle* that
6 individuals who act "independently and without coordination" may not be treated as
7 part of a RICO association-in-fact. *Boyle*, 556 U.S. at 947 n.4.

8 We agree further with Defendants that, if proven, the facts alleged in the
9 Complaint would establish that David engaged in a series of separate frauds involving
10 different sets of individuals. This, they say, is insufficient to make out relationships
11 among "the defendants as a whole" that would satisfy even *Boyle's* relaxed test for an
12 association-in-fact. *D'Addario*, 2017 WL 1086772, at *19. That each defendant agreed to
13 join forces with David to defraud the Estate in a particular way does not support an
14 inference that they all agreed to join forces with each other to pursue a goal of
15 defrauding the Estate over decades in a variety of ways. Rather, at most, it suggests that
16 Defendants (and in a few cases, perhaps, a small subgroup of Defendants) each agreed
17 with David to engage in individual schemes.

18 Proof that "several individuals, independently and without coordination,
19 engaged in a pattern of crimes listed as RICO predicates, . . . [is] not . . . enough to show
20 that the individuals were members of an enterprise." *Boyle*, 556 U.S. at 947 n.4; *see also In*
21 *re Insurance Brokerage*, 618 F.3d at 374 (rejecting allegations that defendants took similar
22 actions because they "do not plausibly imply concerted action—as opposed to merely
23 parallel conduct"); *Rao v. BP Products N. Am., Inc.*, 589 F.3d 389, 400 (7th Cir. 2009)

1 (finding complaint did not make out an “enterprise” where it alleged “different [groups
2 of] actors for each event” and “d[id] not indicate how the different actors are
3 associated” or “act[ed] together for a common purpose”); *cf. Crest Constr. II, Inc. v. Doe*,
4 660 F.3d 346, 355 (8th Cir. 2011) (explaining that RICO enterprise is not adequately
5 alleged where “the only common factor that linked the individually named defendants
6 and defined them as a distinct group was their direct or indirect participation in the
7 engineered investment scheme to defraud the plaintiff” (internal quotation marks and
8 alteration omitted)).

9 Nor does the allegation that the various Defendants and subgroups agreed at
10 different times to engage in various fraudulent schemes plausibly support the inference,
11 essential to a RICO association-in-fact enterprise, that they acted with a sufficiently
12 common purpose. The Complaint does not allege, for example, that Mary Lou was even
13 aware of the Red Knot forbearance scheme, or that Garvey knew of David’s residential
14 property transfers from the Estate to himself, Mary Lou, and Larry. And the schemes
15 themselves are not sufficiently similar in method or aim to suggest that Defendants
16 were acting in coordination: in some (the Honeyspot Road scheme and transfers of
17 residential property, for example), participants funneled assets directly out of the Estate
18 into their own pockets; in others (the Red Knot and Cadle suit settlement schemes, for
19 example), the participants protected David’s position as Executor, but did not directly
20 profit—at least, insofar as the Complaint alleges; and in still others (the Frenchtown
21 Road and Silver Knot schemes), David allegedly usurped business opportunities that,
22 under fiduciary principles, rightfully belonged to the Estate.

1 For these reasons, we conclude that the Complaint’s allegations do not plausibly
2 make out the association-in-fact enterprise proposed by Virginia, in which the six
3 Defendants together were “devoted to . . . allowing David. . . to acquire an interest in,
4 and then maintain control over, the affairs of the Estate,” App. 200 (Amended RICO
5 Case Statement), under her section 1962(c) theory of recovery.

6 B. The Estate as association-in-fact RICO enterprise

7 As adverted to above in our discussion of Virginia’s proposed enterprise among
8 the six defendants, however, another potential section 1962(c) enterprise emerges from
9 the facts alleged: that is, the Estate itself.¹¹ As explained above, section 1961(4) provides
10 that any “legal entity” may qualify as a RICO enterprise, whether it is an ‘individual,

¹¹ Defendants contend that Virginia forfeited the argument that the Estate is the actionable enterprise under section 1962(c) by failing to raise it in the District Court. In fact, Virginia’s attorney raised this argument in the District Court at oral argument regarding Defendants’ Motion to Dismiss the Amended Complaint. *See* App. 264 (“[T]here is enough evidence . . . alleged in the Complaint for us to prove the existence of an association [in] fact enterprise. But . . . also the probate estate, under *Gunther v.[.] Dinger* [547 F. Supp. 25 (S.D.N.Y. 1982)], the probate estate in and of itself . . . is a sufficient enterprise. So there’s two enterprises here.”). That mention was the first, however, and Virginia acknowledges that the issue was not briefed in that court and the District Court did not have an opportunity to rule on the theory. Although on appeal we rarely consider arguments so undeveloped at the district court level, they are not irretrievably forfeited, and, in view of the complexity of this matter and the purely legal nature of this argument, we elect to exercise our discretion on appeal to address this contention. *See United States v. Gomez*, 877 F.3d 76, 95 (2d Cir. 2017) (“[W]e have discretion to consider arguments waived or forfeited below because our waiver and forfeiture doctrine is entirely prudential.” (internal quotation marks and alterations omitted)). As explained above, Virginia’s claim will be remanded to the extent that it involves a violation of section 1962(b). In our court, her counsel has represented that, on remand, she will seek leave to amend her complaint further to identify the Estate as the actionable “enterprise” under section 1962(c). With efficiency goals in mind, we therefore address this argument now.

1 partnership, corporation, association,” and also that, in the alternative, “any union or
2 group of individuals associated in fact although not a legal entity” may qualify as well.

3 Connecticut law holds that an estate is “not a legal entity. It . . . is merely a name
4 to indicate the sum total of the assets and liabilities of the decedent or incompetent.”
5 *Freese v. Dep’t of Social Servs.*, 169 A.3d 237, 251 (Conn. App. Ct. 2017) (quoting *Isaac v.*
6 *Mount Sinai Hosp.*, 490 A.2d 1024, 1026 (Conn. App. Ct. 1985)). Unlike the somewhat
7 eclectic group of defendants Virginia attempts to join together with David as an
8 association-in-fact, however, the individuals who were formally associated with the
9 (inchoate) Estate—that is, David and Larry, the Executors—indisputably comprise an
10 “association-in-fact.” They have a shared purpose, in fact one prescribed by law:
11 settling the Estate by paying off its debts and distributing its assets among the heirs. As
12 co-Executors, they have a legal relationship with each another and a shared
13 responsibility of fulfilling that purpose. And, as the Estate is now in its fourth decade of
14 existence, this association of the Executors has the requisite longevity: it has certainly
15 existed long enough to allow its members to pursue their purpose.¹² We therefore

¹² We recognize that the import of this analysis is that probate estates, even those that are not recognized as legal entities under applicable law, may comprise associations-in-fact for RICO purposes. We have suggested as much with regard to bankruptcy estates. *See, e.g., First Capital Asset Mgmt., Inc. v. Satinwood, Inc.*, 385 F.3d 159, 175 (2d Cir. 2004) (“[U]nder certain circumstances, a bankruptcy estate may qualify as a RICO enterprise.”). This result should not be surprising. A probate estate, “although not a legal entity,” 18 U.S.C. § 1961(4), would appear to be exactly the kind of “enterprise” that Congress intended to protect from infiltration or exploitation by criminal elements. *See Gerard E. Lynch, Rico: The Crime of Being A Criminal, Parts I & II*, 87 Colum. L. Rev. 661, 669-89 (1987) (recounting legislative history).

1 conclude that the Estate—an association-in-fact of David and Larry—comprises an
2 “enterprise” under section 1961(4).¹³

3 A person violates section 1962(c), and may thus be liable in an action brought
4 under section 1964, only if he “conduct[ed]” the enterprise’s affairs or participated in
5 that conduct. 18 U.S.C. § 1962(c). In *Reves v. Ernst & Young*, the Supreme Court
6 interpreted the operative language to require a RICO defendant charged with violating
7 section 1962(c) to have had “some part in *directing* [the enterprise’s] affairs.” *Reves v.*
8 *Ernst & Young*, 507 U.S. 170, 179 (1993) (emphasis added). A RICO defendant will not be
9 liable for mere participation in a racketeering act, but will sustain liability under the
10 statute for participation in the “operation or management of an enterprise through a
11 pattern of racketeering activity.” *Id.* at 184; *see also First Capital Asset Mgmt. v. Satinwood,*
12 *Inc.*, 385 F.3d 159, 176 (2d Cir. 2004).

13 Virginia’s allegations as to David easily satisfy the *Reves* “operation or
14 management” test. Taking the facts alleged in the Complaint as true, David went far
15 beyond merely *participating* in the management of the Estate: he was a “dictatorial”
16 Executor of the Estate. App. 62 (Am. Compl. ¶ 15). Whether Defendants other than
17 David, however, may be said to satisfy the test by their alleged participation in the
18 Estate’s operation or management, despite not having an official position within it, is
19 less clear. *See Reves*, 507 U.S. at 184; *see also First Capital Asset Mgmt., Inc.*, 385 F.3d at 178
20 (“[O]utsiders, like all other people, will be liable under RICO . . . if their actions satisfy

¹³ We refer to the association-in-fact consisting of David and Larry as the “Estate,” to distinguish it from the purported association-in-fact consisting of the six defendants discussed above.

1 the operation or management test.”) (alteration omitted). While the “operation or
2 management” test presents a “relatively low hurdle for plaintiffs to clear, . . . especially
3 at the pleading stage,” RICO plaintiffs must plausibly allege that each defendant played
4 “some part in directing the enterprise’s affairs” if the RICO claim is to survive a motion
5 to dismiss. *First Capital Asset Mgmt.*, 385 F.3d at 176 (internal citations and alterations
6 omitted).

7 In *First Capital Asset Management*, we explained that a RICO plaintiff adequately
8 pleaded that a defendant parent had participated in the operation or management of
9 the defendant’s son’s bankruptcy estate, despite not having a formal position within
10 that estate. *Id.* at 178. The defendant had aided her debtor son in defrauding the
11 Bankruptcy Court in various material ways that adversely affected the administration
12 of the bankruptcy estate: for example, she accepted his transfer of assets to her (so that
13 the money would not be included in his bankruptcy estate), sent him monthly
14 payments from those fraudulently transferred assets, and made various false statements
15 and misrepresentations to the Bankruptcy Court. *Id.* at 177-78. Based on these actions,
16 we concluded that the defendant parent “participated in the conduct of the affairs” of
17 the enterprise sufficient to sustain section 1962(c) liability, *id.* at 178, treating the
18 bankruptcy estate as the enterprise. (That we ultimately affirmed dismissal of the claim
19 based on the plaintiff’s failure sufficiently to plead a pattern of racketeering acts lessens
20 the precedential force of this conclusion, it is true, but we nonetheless find the *First*
21 *Capital Asset Management* court’s detailed analysis persuasive for present purposes.)

22 The same analysis applies to the remaining defendants here. The individual
23 defendants (Mary Lou, Garvey, and Vitti) are alleged to have actively assisted David

1 when he operated the Estate to effectuate his schemes, which directly affected his
2 management of the Estate. Although the entity defendants (Silver Knot and Red Knot)
3 were used simply to effectuate David's schemes, they also can be understood to have
4 sufficiently assisted David in his conduct of the Estate's affairs simply by their
5 formation and existence: they were necessary tools for the schemes' operation. Such
6 assistance may fairly be considered "participation" in the operation or management of
7 an enterprise, at least in the circumstances alleged here.¹⁴

8 We bear in mind that the "operation or management" test is "essentially one of
9 fact." *Id.* at 176. Accordingly, at this early pleading stage in the suit, we conclude that
10 Virginia's allegations suffice to support her claim that each Defendant participated in
11 the operation or management of the Estate as enterprise, in violation of section 1962(c).
12 Thus, Virginia has sufficiently stated a civil RICO claim against all Defendants arising
13 out of their alleged violation of section 1962(c). Our legal conclusions as to the adequacy
14 of the Complaint's pleadings of the theories under sections 1962(b) and (c) reanimate
15 Virginia's RICO conspiracy theory under section 1962(d), as well.

¹⁴ Section 1962(c) prohibits *both* "conduct[ing]" an enterprise's affairs and "participat[ing]" in the conduct of an enterprise's affairs, while section 1962(b) prohibition centers on "acquir[ing] or maintain[ing] . . . control of any enterprise." Although Virginia has not pleaded that Mary Lou, Vitti, or Silver Knot "acquire[d] or maintain[ed]" control over the Estate for section 1962(b) purposes, *see* Part III, above, we conclude that her allegations are sufficient to make out a claim that those defendants "participate[d]" in the conduct of the Estate's affairs under section 1962(c). We identify an important difference between the two.

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CONCLUSION

For the reasons stated above, we conclude that Virginia has adequately pleaded a RICO claim under 18 U.S.C. § 1964(c), and that her claim is ripe insofar as she seeks damages in the amount of the collection expenses that she has incurred through the filing of the Complaint. Whether she will be entitled to collect those expenses from Defendants, of course, will depend on whether she is able to prove her claims. Because Virginia pleaded a cognizable federal RICO claim, we also conclude that the District Court on remand should revisit the question whether to exercise supplemental jurisdiction over Virginia's state law claims.

We therefore VACATE the District Court's judgment and REMAND the cause for further proceedings in the District Court.