NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	) BAP Nos. NV-09-1343-PaDH
	) NV-09-1380-PaDH
MEGA-C POWER CORPORATION,	) (Cross-Appeals)
	)
Debtor.	) Bk. No. 04-50962-GWZ
	)
	) Adv. No. 07-05017-GWZ
LEWIS CHIP TAYLOR; CHIP TAYLOR, in Trust; JARED TAYLOR; ELGIN INVESTMENTS, INC.; SHARON TAYLOR; NICOLE TAYLOR PIGNATELLI; PAUL PIGNATELLI; COLIN TAYLOR; LEWIS SKIP TAYLOR; LOUISE TAYLOR; 1407580 ONTARIO LIMITED; 1248136 ONTARIO LIMITED; MEGA C TECHNOLOGIES, LTD.,	)
Appellants/Cross-Appellees,	)
v.	) **M E M O R A N D U M**[1]
AXION POWER INTERNATIONAL, INC; AXION POWER CORPORATION; ROBERT AVERILL; GLENN PATTERSON; HAP INVESTMENTS, LLC; IGOR FILIPENKO; THOMAS GRANVILLE,	)
Appellees/Cross-Apellants.	)

Argued and Submitted on June 16, 2010
at Reno, Nevada

Filed - June 29, 2010

Appeal from the United States Bankruptcy Court
for the District of Nevada

Hon. Gregg W. Zive, Bankruptcy Judge, Presiding.

Before: PAPPAS, DUNN and HOLLOWELL, Bankruptcy Judges.

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[1] This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

These appeals arise from a complex Chapter 11[2] case and the resulting adversary proceeding concerning ownership of the rights to a lead-acid-carbon battery device. Appellants, referred to in this decision as the Taylor Family Group, appeal the bankruptcy court's grant of summary judgment to Appellees on four claims in their complaint. Appellees cross-appeal the denial of Appellees' claim for contempt damages, and denial of their motion for sanctions. We AFFIRM the judgment of the bankruptcy court in all respects.

FACTS

C&T Co., Inc. ("C&T") was the original developer of a lead-acid-carbon battery device (the "Technology"), for which it obtained three United States patents.

On December 23, 1999, C&T entered into a joint venture agreement (the "Joint Venture Agreement") with Chip Taylor in Trust to license a limited class of stationary applications[3] of the Technology to a new corporation organized in Ontario, Canada, to hold that license, Mega-C Technologies, Inc. ("MCT"). Chip Taylor in Trust held 80 percent of the stock of MCT, and C&T the

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[2] Unless otherwise indicated, all "Code," "chapter" and "section" references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330 prior to its amendment by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23 (2005). "Rule" references are to the Federal Rules of Bankruptcy Procedure and "Civil Rule" references are to the Federal Rules of Civil Procedure.

[3] The stationary applications included use of the Technology in uninterruptible power supplies and backup power systems, grid buffers in traditional power systems, and other applications, but did not include any applications in the automotive or consumer electronics markets.

remaining 20 percent. The Joint Venture Agreement provided that Chip Taylor in Trust's percentage of stock would be reduced to 50 percent if he did not obtain a commercial contract for the use of the Technology within 18 months.

In November 2000, the Joint Venture Agreement was amended to allow C&T to license the Technology to a party other than MCT. C&T never entered into a third party agreement so this amendment never took effect.

Net Capital Ventures, Inc. was incorporated in Nevada on February 26, 2001. It later changed its name to Mega-C Power Corp. (the Debtor herein). Debtor was formed to commercialize the license.

The Taylor Family Group alleges an oral agreement (the "Oral Agreement") was reached in August 2001 among Lewis Chip Taylor ("Chip Taylor"), Chip Taylor in Trust and Elgin Investments, Inc., an entity included in the Taylor Family Group ("Elgin"), on the one hand, and C&T on the other hand, by which C&T agreed to transfer to Elgin all assets of C&T, including all rights in the Technology except the limited license in the stationary applications which was licensed to Debtor. C&T denied that there ever was such an oral agreement.

On September 11, 2001, Debtor and MCT signed a letter agreement (the "Letter Agreement"). The Letter Agreement states: "[MCT] hereby grants to [Debtor] exclusive worldwide unlimited rights for the commercialization, business development, licensing, sublicensing, marketing and distribution rights of the technologies owned, controlled, licensed and/or developed — currently in place or in the future — by [MCT]." The Letter

Agreement was signed by Debtor's president, Rene K. Pardo, and MCT's president, Lewis "Skip" Taylor (Chip's son).

C&T was not a party to the Letter Agreement, and never ratified it. When C&T became aware of the existence of the Letter Agreement, it demanded that MCT and Debtor negotiate a new agreement with C&T that defined the license rights granted to MCT and Debtor.

On April 2, 2002, C&T, MCT, and Debtor entered into an agreement of association ("Agreement of Association") by which C&T granted Debtor a license for stationary applications to the Technology, subject to royalty payments. In it, MCT "reserves onto [sic] itself the right to solicit and receive its own orders for the manufacturing and sale of the Technology pursuant to the terms of the license granted to it by C&T[.]"

In February 2003, Debtor made the initial payment of $400,000 to the shareholders of MCT required by the Agreement of Association. However, it then notified MCT and C&T that it would be unable to make the second payment of $400,000 due on April 1, 2003.

On June 10, 2003, MCT notified Debtor that due to its default on the April payment, MCT was terminating Debtor's license effective June 21, 2003, as well as terminating the Agreement of Association on that date. On June 24, 2003, C&T sent MCT a termination letter concerning both the Joint Venture Agreement and the Agreement of Association. In turn, on August 8, 2003, Debtor gave MCT 10 days' notice of its intent to terminate the Agreement of Association.

As a result of these defaults and other disputes, three

lawsuits were commenced in the courts in Canada. Jared Taylor v. Mega-C Power Corp., no. 03-CV-253159 (Ont. Sup. Ct., July 30, 2003); Chip Taylor in Trust v. Mega-C Power Corp., no. 03-CV-255175 (Ont. Sup. Ct., Sept. 11, 2003); and Taylor v. Tamboril, no. 04-CL-5317 (Ont. Sup. Ct., Feb. 10, 2004). The issues in these lawsuits included conflicting claims by various parties regarding ownership of Debtor's stock, and a contest over rights to the Technology.

Sometime in 2003, C&T and certain other parties formed Axion Power Corporation ("Axion Ontario"). Axion Ontario took over Debtor's operations, allegedly thereby misappropriating the Technology. Axion Ontario then entered into a Development and License Agreement with C&T.

Sometime in December 2003, Tamboril Cigar Company acquired Axion Ontario; in June 2004, Tamboril became Axion Power International, Inc. ("Axion"). On January 9, 2004, Tamboril/Axion, Axion Ontario (now a wholly owned subsidiary of Tamboril/Axion) and C&T entered into a First Addendum to the Development and License Agreement, which provided that Tamboril/Axion would purchase all remaining rights of C&T in the Technology.

On April 6, 2004, Axion Ontario and Tamboril/Axion filed an involuntary chapter 11 petition against Debtor. On April 9, 2004, Debtor consented to entry of an order for relief. The Taylor Family Group moved for appointment of a chapter 11 trustee on October 27, 2004, which motion was granted on February 11, 2005. William Noall was selected to serve as chapter 11 trustee ("Noall").

On February 1, 2006, the bankruptcy court approved a Settlement Agreement between Noall and Appellees. The Settlement Agreement resolved any claims held by Debtor against Appellees. The Settlement Agreement was incorporated in Debtor's Second Amended Plan, which in turn, was confirmed by the bankruptcy court on November 8, 2006.[4]

The Settlement Agreement and Second Amended Plan vested whatever rights Debtor had in the Technology, along with Debtor's physical assets, in Appellees. In exchange, Appellees transferred 5.7 million shares of its stock to a Liquidation Trust and a Second Amended Shareholders Trust.

The Settlement Agreement and Second Amended Plan contain detailed release and injunctive provisions which are the focus of these appeals. The injunction, found at ¶ 10.4 of the Second Amended Plan, provides:

> 10.4. Injunction. From and after the Effective Date, and except as provided in this Plan and the Confirmation Order, all entities that have held, currently hold or may hold a Claim, Equity Security or other right of an Equity Security Holder that is terminated, transferred

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[4] The Taylor Family Group appealed the order approving the settlement to the BAP. The Panel affirmed the effective provisions of the Settlement Order, and dismissed as interlocutory any appeals from the provisions of the order that would not become effective until the effective date of a confirmed plan. Taylor v. Mega-C Power, no. NV-06-1060/1078 BSJ (9th Cir. BAP, September 29, 2006). The BAP's decision was appealed to the Ninth Circuit. The court of appeals dismissed the appeal as equitably moot because no stay pending appeal had been entered, and by the time of its decision, the plan was confirmed and substantially consummated by the distribution of Debtor's assets. The court of appeals awarded costs to Appellees. Unaffiliated S'holders v. Mega-C Power Corp., no. 06-17402 (9th Cir., Aug. 14, 2008).

The Taylor Family Group also appealed the plan confirmation order on November 17, 2006, to the United States District Court for the District of Nevada. The District Court later dismissed that appeal on stipulation of the parties. Unaffiliated S'holders v. Noall, no. 06-CV-00660/00732 (D. Nev., September 19, 2008).

or conveyed pursuant to this Plan or disallowed or is not entitled to receive any distribution to this Plan, are permanently enjoined from taking any of the following actions on account of any such Claims or Equity Securities or rights (i) commencing or continuing in any manner any action or other Proceeding against Debtor, the Liquidation Trust, or the Second Amended Shareholders Trust, or their respective property; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Liquidation Trust or the Second Amended Shareholders Trust, or their respective property; (iii) creating, perfecting or enforcing any Lien or encumbrance against the Liquidation Trust, the Second Amended Shareholders Trust, or their respective property; (iv) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to the Liquidation Trust or the Second Amended Shareholders Trust, or their respective property; and (v) commencing or continuing any action, in any manner or any place, that does not comply with or is inconsistent with the provisions of this Plan or the Bankruptcy Code.

The release is found at ¶ 10.5:

10.5. Releases. On the Effective Date the following releases shall become effective; (i) by and between the Trustee, on the one hand, and Fonner on the other hand; and between the Trustee, on the one hand, and the remaining Counterparties to the Settlement Agreement on the other hand; and between Fonner and the remaining Counterparties to the Settlement Agreement, including, without limitation, the Disputes, any and all claims or causes of action, known or unknown, whether asserted or unasserted, and including all derivative claims held by the Trustee, Debtor and the Estate against any party to the Settlement Agreement; and (ii) from the holders of Claims and Equity Security Interests, that to the fullest extent permissible under applicable law, as such law may be extended or interpreted subsequent to the Effective Date; each such person that has held, holds or may hold a Claim or Equity Security, in consideration for the obligations of the Liquidation Trust and Second Amended Shareholders Trust and other contracts, instruments, releases, agreements or documents to be delivered in connection with this Plan, shall have conclusively, absolutely, unconditionally, irrevocably and forever, released and discharged the Co-proponents of this Plan, the remaining Counterparties to the Settlement Agreement, Fonner and the Shareholders Trust from any claim or cause of action existing as of the Effective Date arising from, based on or relating to, in whole or in part, the subject matter of, or the transaction or event giving rise to, the Disputes, Shareholder Trust, the Axion Adversary, the Trust

> Adversary and the Chapter 11 Case and in the act, omission, occurrence or event in any matter relating to such subject matter, transaction or obligation. Notwithstanding, the releases, which are intended to be as broad as possible, do not release the Estate for the deferred Allowed Axion/Axion Ontario Proofs of Claim as provided in Sections 2(a) and 6 of the Settlement Agreement and Section 6.8 of the Plan; the Allowed Lenders Scheduled Claims and the Allowed Lenders/Founders Proofs of Claim/Interest, as amended, as provided in Sections 6(p) and 10 of the Settlement Agreement; and any claims on the Scientists or the C&T Scientists not enumerated on Schedule A of the Settlement Agreement and that are otherwise allowed. The released parties under this subsection shall include each released party's officers, directors, attorneys, agents and employees, but in the case of Debtor, it shall specifically exclude its previous attorneys, Feeler, Rubinoff and Blake Cassels and previous officers and directors, Gary Usling, Rene Pardo and members of the Taylor Group. Notwithstanding, the releases provided for in this Section 10.5 are not intended to and shall not release any persons from claims or causes of action which have been or may be asserted by the Securities and Exchange Commission or the Ontario Securities Commission under applicable securities laws or regulations.

On January 25, 2007, Appellees commenced an adversary proceeding against the Taylor Family Group. Their May 15, 2007, amended complaint listed six claims for relief, including the five that are at issue in these appeals, as identified in the paragraphs of the complaint paraphrased below:

First Claim for Relief: Declaratory Judgment

> ¶ 63. Appellees contend that the remaining claims and allegations in the Canadian Litigation against them and other non-debtor parties are property of the Estate and have been released as against Appellees and other non-debtor parties to the Settlement Agreement, as incorporated by the Second Amended Plan.
>
> ¶ 64. Appellees contend that any attempt by the the Taylor Family Group to pursue the remaining claims and allegations in the Canadian Litigation against them and other non-debtor parties constitutes a violation of the permanent injunction of the Order Confirming Second Amended Plan.

Second Claim for Relief: Declaratory Judgment

> ¶ 70. Appellees allege that the Taylor Family Group are permanently enjoined from pursuing the Canadian Litigation against them and other non-debtor parties by operation of the permanent injunction of the Second Amended Plan as confirmed by the Order Confirming Second Amended Plan.

Third Claim for Relief: Enforcement of Permanent Injunction

> ¶ 76. Appellees seek judgment against the Taylor Family Group enforcing the permanent injunction against them, so as to enjoin any attempts to pursue the Canadian Litigation against Appellees and other non-debtor parties to the Canadian Litigation.

Fourth Claim for Relief: Mandatory Injunction

> ¶ 79. As a result and in conformity with the permanent injunction of the Second Amended Plan, the Taylor Family Group should be mandated by the bankruptcy court to dismiss any and all portions of the Canadian Litigation that have been released.

Sixth Claim for Relief: Sanctions for Violation of Plan Injunction

> ¶ 80. Appellees allege that Appellants willfully, knowingly and intentionally violated the permanent injunction of the Second Amended Plan by refusing to dismiss the Canadian Litigation that has been released.[5]

The Taylor Family Group responded to the amended complaint with a motion to dismiss filed on July 13, 2007. The motion detailed the history of the litigation involving the parties, and argued that the claims they were asserting in the Canadian litigations were personal, rather than derivative, and thus outside the bankruptcy court's jurisdiction. Appellees' August 6, 2007, opposition to the motion to dismiss, insisted that the bankruptcy court had jurisdiction to grant the relief requested. The parties exchanged two more responses in the record.

The bankruptcy court conducted a hearing on the dismissal

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[5] The amended complaint stated a Fifth Claim for Relief seeking a preliminary injunction, which was mooted by substantial consummation of the confirmed plan with its permanent injunction.

motion on October 1, 2007. On October 15, 2007, the court denied the motion to dismiss, determining that it indeed had proper subject matter jurisdiction. The Taylor Family Group then filed their answer, generally denying Appellees' allegations, and asserting nine affirmative defenses.

The bankruptcy court entered its scheduling order on December 13, 2007. Appellees filed their first motion for summary judgment, seeking relief under the first and second claims, asserting that the Taylor Family Group's claims against them were released by the Second Amended Plan, and that the litigation was barred by the plan injunction. The Taylor Family Group responded with an opposition and their own summary judgment motion on October 15, 2007. The Taylor Family Group argued that the Appellees' summary judgment motion was inappropriate because facts were in dispute. The Taylor Family Group argued that their summary judgment motion should be granted, however, by dismissing the action, and determining which claims they were barred from pursuing in the Canadian litigation.

The bankruptcy court heard Appellees's first summary judgment motion, and the Taylor Family Group's summary judgment motion on February 1, 2008. The parties, along with Noall, were represented by counsel, and after hearing argument, the bankruptcy court announced its tentative rulings.

First, the court decided that the Taylor Family Group's claims against Appellees must be derivative, because no evidence had been presented to establish that an oral agreement ever existed that created the Taylor Family Group' alleged personal rights and interests in the Technology. Hr'g Tr. 82:6-12

(February 1, 2008). And second, the court held that the plan releases did not violate Ninth Circuit law because they did not include third-party releases, releasing only claims related to Debtor. Hr'g Tr. 82:13-16. On February 11, 2008, the court entered detailed Findings of Fact and Conclusions of Law, an order granting Appellees' first summary judgment motion (the "First Summary Judgment Order"), and an order denying the Taylor Family Group's summary judgment motion.

On February 20, 2008, the Taylor Family Group filed three motions to alter, amend or set aside the first Summary Judgement Order. Then, on March 28, 2008, Appellees filed their second Motion for Summary Judgment concerning the Third, Fourth and Sixth Claims. On March 31, 2008, Appellees filed their motion for an order to show cause why the Taylor Family Group should not be held in contempt of court for violating the permanent injunction. And on April 16, 2008, Appellees filed a motion for sanctions against the Taylor Family Group under Rule 9011 and the bankruptcy court's inherent powers (the "Sanctions Motion").

The bankruptcy court entered the order to show cause, and set a hearing for May 12, 2008, at which time it would also consider the Taylor Family Group's three motions to alter, amend or set aside the first Summary Judgment Order, Appellees' motion for summary judgment on its remaining claims, and the Sanctions Motion.

At the May 12 hearing, after listening to the parties, the bankruptcy court concluded there was no basis for it to reconsider its prior ruling under Civil Rules 52(b), 59(e) or 60(b). Tr. Hr'g 76:8-10 (May 12, 2008). Instead, the court determined that

the Taylor Family Group's motions were merely an attempt to restate and amplify their arguments against the first summary judgment motion, create new issues, argue new theories, and attempt to introduce new evidence so as to augment the record on appeal. Tr. Hr'g 16:18-22. The bankruptcy court therefore denied these motions.

As to Appellees' second motion for summary judgment on the third and fourth claims, the bankruptcy court ruled that the motion should be granted as a logical consequence of the First Summary Judgment Order. Tr. Hr'g 123:13-15.

However, regarding Appellee's motion for summary judgment as to the sixth claim, and as to the Sanctions Motion, the bankruptcy court found that Appellees had not met their burden of proof of showing the Taylor Family Group was in contempt by clear and convincing evidence. In particular, the court declined to exercise its contempt powers because Appellees had not shown that the Taylor Family Group acted with subjective intent to engage in vexatious or reckless conduct. Hr'g Tr. 211:22-25.

As to Appellees' request for Rule 9011 sanctions, the bankruptcy court was not persuaded that the Taylor Family Group's actions, or those of their attorneys, rose to the level of frivolous and improper conduct that is necessary to award sanctions. Tr. Hr'g 213:1-3. The court therefore declined to award Appellees sanctions. Again, the bankruptcy court entered detailed Findings of Fact and Conclusions of Law in support of its

decisions.[6]

On February 10, 2009, the Taylor Family Group filed a fourth motion to set aside the First Summary Judgment Order, this time styled as a motion to vacate the summary judgment under Civil Rule 60(b)(3). In it, the Taylor Family Group accused Appellees of submitting fraudulent evidence to the bankruptcy court, specifically the declaration of Michael Kishinevsky, the attorney for C&T. The bankruptcy court considered this motion at a hearing on April 23, 2009. The court determined that there was no evidence that any misrepresentation had occurred. Tr. Hr'g 202:17-18 (April 23, 2009). The bankruptcy court entered Findings of Fact and Conclusions of Law regarding the motion to vacate on November 10, 2009. The same day, the court entered a Judgment in favor of Appellees on claims one, two, three and four, and dismissing claims five and six.

Anticipating entry of the Judgment, the Taylor Family Group filed a notice of appeal on October 23, 2009; Appellees filed a timely notice of cross-appeal on November 20, 2009.

JURISDICTION

As discussed more fully below, the bankruptcy court had jurisdiction in the adversary proceeding under 28 U.S.C. §§ 1334

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[6] The Taylor Family Group filed an appeal of the Second Summary Judgment Order granting summary judgment on Appellees' first through fourth claims. Appellees cross-appealed the dismissal of its claim six for contempt and denial of the Sanctions Motion. However, the Panel dismissed the appeal as interlocutory, and the cross-appeal as untimely. In doing so, however, the Panel indicated that either appeal could be resubmitted following entry of a final judgment in the adversary proceeding. Taylor v. Axion Power Int'l nos. 08-1159/1171 (9th Cir. BAP, September 17, 2008).

and 157(b)(2)(A). The Panel has appellate jurisdiction under 28 U.S.C. § 158.

ISSUES

1. Whether the bankruptcy court erred in granting summary judgment to Appellees on claims one, two, three and four.
2. Whether the bankruptcy court abused its discretion in denying summary judgment to Appellees on claim six, and by not awarding sanctions against the Taylor Family Group.

STANDARDS OF REVIEW

We review de novo the bankruptcy court's decision to grant summary judgment. Huppert v. City of Pittsburg, 574 F.3d 696, 701 (9th Cir. 2009).

An order granting or denying a motion for civil contempt is reviewed for abuse of discretion. Hilao v. Est. of Marcos, 103 F.3d 762, 764 (9th Cir. 1996). A bankruptcy court's decision declining to impose sanctions pursuant to Rule 9011 or the court's inherent powers is also reviewed for abuse of discretion. Trulis v. Barton, 107 F.3d 685, 691 (9th Cir. 1995). In applying an abuse of discretion test, we first "determine de novo whether the [bankruptcy] court identified the correct legal rule to apply to the relief requested." United States v. Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009). If the bankruptcy court identified the correct legal rule, we then determine whether its "application of the correct legal standard [to the facts] was (1) illogical, (2)implausible, or (3) without support in inferences that may be drawn from the facts in the record." Id. (internal quotation

marks omitted). If the bankruptcy court did not identify the correct legal rule, or its application of the correct legal standard to the facts was illogical, implausible, or without support in inferences that may be drawn from the facts in the record, then the bankruptcy court has abused its discretion. Id.

DISCUSSION

I.

The bankruptcy court had jurisdiction.

As a preliminary matter, we address two persistent, yet fallacious, arguments made by the Taylor Family Group.

First, the Taylor Family Group in its opening brief frames one issue on appeal as whether "bankruptcy court jurisdiction [should] be extended to compel a sovereign court in a foreign nation to dismiss an action between citizens of that country?" In its reply brief, the Taylor Family Group takes this contention even further, asserting that "[t]his appeal is on a simple but important issue[:] Does the Bankruptcy Court have the authority to enjoin litigation in Canada, by third parties who have direct claims against Mega-C because of its confirmed Chapter 11 plan?" The suggestion that the bankruptcy court lacked either personal or subject matter jurisdiction to grant relief to Appellees in the adversary proceeding is misguided.

It is indisputable that the bankruptcy court had personal jurisdiction over the members of the Taylor Family Group. Indeed, the bankruptcy court found that they had been properly served with process in the adversary proceeding, and that they had appeared and vigorously participated in both that contest, and in the

underlying bankruptcy case. The principal members of the Taylor Family Group had also submitted proofs of claim in that bankruptcy case. As a result, the bankruptcy court certainly had personal jurisdiction over the Taylor Family Group.

As to subject matter jurisdiction, the Taylor Family Group provides no legal authority suggesting that federal courts lack subject matter jurisdiction to enjoin parties over whom they have jurisdiction from engaging in foreign proceedings. The lack of citations on this point is understandable since it is the law of this circuit that "federal courts in the United States with jurisdiction over the parties have the power to enjoin them from proceeding with an action in the courts of a foreign country[.]" Seattle Totems Hockey Club v. Nat'l Hockey League, 652 F.2d 852, 855 (9th Cir. 1981); accord Laker Airways Ltd. v. Sabena, 731 F.2d 909 (D.C. Cir. 1984); Canadian Filters (Harwich) Ltd. v. Lear-Siegler, Inc., 412 F.2d 577 (1st Cir. 1969).[7]

Indeed, at one point in the proceedings, the Taylor Family Group conceded that the bankruptcy court had jurisdiction.[8] They were correct to do so. This action is a core proceeding over

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[7] Perhaps ironically, all three of these circuit decisions approved injunctions against Canadian proceedings.

[8] [COUNSEL FOR THE TAYLOR FAMILY GROUP]: I just want to make it clear that we agree to the jurisdiction of this court . . . to interpret its own rules, to determine the Ninth Circuit law as in Lowenschuss decision as to the effect of the confirmed plan and the releases as it applies to third parties. We agree that the Court is here to tell us what is a derivative claim and what isn't, what we can take to Canada and what we can't.

Hr'g Tr. 68:12-21 (February 1, 2008).

which the bankruptcy court had subject matter jurisdiction under 28 U.S.C. §§ 1334(b) (i.e., an action "arising in or related to" a case under title 11), and 157(b)(2)(A) and (L) (i.e., a matter concerning administration of a bankruptcy estate, confirmation of a plan, or another proceeding affecting the parties' legal relationships).

Moreover, a bankruptcy court has subject matter jurisdiction to interpret its own orders. Beneficial Trust Deeds v. Franklin (In re Franklin), 802 F.2d 324, 326 (9th Cir. 1986). The specific orders interpreted here were the injunction and release clauses of the Second Amended Plan, as implemented by the bankruptcy court's order confirming that plan. In particular, the bankruptcy court has exclusive jurisdiction to definitively interpret the provisions of the Second Amended Plan and Confirmation Order. Huse v. Huse-Sporsem, A.S. (In re Birting Fisheries, Inc.), 300 B.R. 489 (9th Cir. BAP 2003). Once a plan that contains injunctions and releases has been confirmed and becomes a final judgment (which occurred here when the appeal of the confirmation order was dismissed), the injunction and releases cannot be attacked on subject matter jurisdiction grounds. Travelers Indem. Co. v. Bailey, 129 S. Ct. 2195, 2203 (2009); Trulis, 107 F.3d at 691.

A second misdirected argument made by the Taylor Family Group is that the release and injunction provisions in the confirmed Second Amended Plan, and the two summary judgment orders issued by the bankruptcy court in the adversary proceeding, apply to all three Canadian proceedings. This argument misperceives the bankruptcy court's decision. The bankruptcy court ruled that they

applied only to one of the Canadian actions, Taylor v. Tamboril, because only that lawsuit involved Appellees. See Hr'g Tr. 30:24-25 (May 12, 2008) (stating that the first summary judgment only applies to Taylor v. Tamboril); Hr'g Tr. 98:8-10 (May 12, 2008) (stating that the second summary judgment only applies to that one case). Appellees did not cross-appeal the bankruptcy court's limitation of the reach of its ruling, and so the Taylor Family Group's argument misses the mark.[9]

II.

The bankruptcy court did not err in granting summary judgment to Appellees on the First through Fourth Claims.

Summary judgment shall be granted "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Civil Rule 56(c)(2), as incorporated by Rule 7056; Barboza v. New Form, Inc. (In re Barboza), 545 F.3d 702, 707 (9th Cir. 2008). The trial court does not weigh evidence in resolving such motions, but rather determines only whether a material factual dispute remains for trial. Covey v. Hollydale Mobilehome Estates, 116

[9] At the hearing before the Panel, the Taylor Family Group' counsel suggested that the Taylor Family Group was concerned that the court's ruling could require them and other parties to dismiss the other two Canadian proceedings. The bankruptcy court repeatedly stated that its decisions only related to Taylor v. Tamboril, and specifically stated that it was not ruling on the other two proceedings. It is not the bankruptcy court's or our role to speculate on the consequences of our decisions on independent litigation. St. of Ark. Teacher Retirement Sys. v. Merrill Lynch & Co. (In re LJM2 Co-Investment, L.P.), 319 B.R. 495, 501 (Bankr. N.D. Tex. 2005).

F.3d 830, 834 (9th Cir. 1997).

A dispute is genuine if there is sufficient evidence for a reasonable fact finder to hold in favor of the non-moving party, and a fact is "material" if it might affect the outcome of the case. Far Out Prods., Inc. v. Oskar, 247 F.3d 986, 992 (9th Cir. 2001) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986)). The initial burden of showing there is no genuine issue of material fact rests on the moving party. Margolis v. Ryan, 140 F.3d 850, 852 (9th Cir. 1998). If the non-moving party bears the ultimate burden of proof on an element at trial, that party must make a showing sufficient to establish the existence of that element in order to survive a motion for summary judgment. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

In this action, the bankruptcy court twice granted summary judgment to Appellees, based on its interpretation of its own plan confirmation order, which in turn incorporated the injunction and releases from the Second Amended Plan. In reviewing these decisions, the Ninth Circuit instructs us that we must "give deference to the [bankruptcy] court's interpretation of its own order, based on the court's extensive oversight of the decree from the commencement of the litigation to the current appeal." Hallett v. Morgan, 296 F.3d 732, 739-40 (9th Cir. 2002); accord United States v. Alshabkhoun, 277 F.3d 930, 933-34 (7th Cir. 2002); Brown v. Neeb, 644 F.2d 551, 558 n.12 (6th Cir. 1981).

At bottom, the Taylor Family Group's appeal is premised on the argument that the injunction in the Second Amended Plan does not apply to Taylor v. Tamboril because, in the Oral Agreement, C&T agreed to transfer to the Taylor Family Group (Elgin) all

assets of C&T. Consequently, because Debtor never came into possession of those assets, it could not transfer them to Axion under the plan, and the plan injunction does not shield Axion from the Taylor Family Group's claims.

The bankruptcy court addressed this argument repeatedly throughout the course of the adversary proceeding. It concluded that it had not been given sufficient evidence to prove the existence of an oral agreement transferring C&T assets to the Taylor Family Group. Instead, the court observed, the Taylor Family Group's evidence consisted of declarations from Chip Taylor attesting to the Oral Agreement, which, because of his inconsistent statements, the bankruptcy court declined to accept.

Moreover, the bankruptcy court also decided that, even if there was some evidence by the Taylor Family Group of the Oral Agreement, such an agreement would be inconsistent with the terms of the Joint Venture Agreement; and, in any case, the Taylor Family Group's interests would have passed to Debtor through the Letter Agreement. The bankruptcy court also observed that there were numerous inconsistent statements from Chip Taylor in the adversary proceeding and bankruptcy case that cast serious doubts on the financial reports underlying the Taylor Family Group's arguments. Consequently, whatever claims the Taylor Family Group had in the Taylor v. Tamboril case were derivative claims, and were barred by the Injunction and Releases of the Second Amended Plan:

> THE COURT: The only claims that the defendants can have are derivative. Because the basis on which they are saying that they have some type of other claim to the technology is only supported by a claim of an alleged oral agreement for which there is absolutely no evidence

> and Mr. [Chip] Taylor's declaration, for which there is absolutely no basis and, as I said, I found to be implausible.

Hr'g Tr. 82: 6-11 (February 1, 2008).

Whether a claim is derivative or direct is determined by state law. Lapidus v. Hecht, 232 F.3d 679, 682 (9th Cir. 2000). A derivative suit is brought on behalf of the corporation by individual shareholders to enforce the corporation's rights. Shoen v. SAC Holding Corp., 137 P.3d 1171, 1179 (Nev. 2006). Nevada looks to the law of Delaware as persuasive on the question of direct versus derivative claims. Shoen, 137 P.3d at 1179-84. To assert a direct claim, a party must show that it was harmed, and that the harm is separate and distinct from other shareholders. Tooley v. Donaldson, Lufkin & Jenrette, Inc., 845 A.2d 1031, 1038-39 (Del. 2004).

In seeking summary judgment on the first two claims, Appellees presented the declaration of Kishinevsky; four written agreements relating to the Technology; and the deposition testimony of Chip Taylor and Lewis Skip Taylor. These were sufficient to meet their burden on summary judgment to show that no oral agreement existed between the parties that would establish the Taylor Family Group's ownership interest in the Technology and, consequently, that there was no material question of fact in dispute.

The burden then shifted to the Taylor Family Group to show that a material question of fact remained:

> When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must — by affidavits or as otherwise provided in this rule — set out specific facts showing a genuine

> issue for trial. If the opposing party does not so respond, summary judgment should, if appropriate, be entered against the party.

Civil Rule 56(e)(2), incorporated by Rule 7056; see also Margolis, 140 F.3d at 852 ("[T]o defeat a summary judgment motion, the non-moving party must demonstrate that the evidence is such that a reasonable [trier of fact] could return a verdict in his or her favor.")(emphasis added); Anderson, 477 U.S. at 249 ("If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. . . . [T]here is no issue for trial unless there is sufficient evidence favoring the non-moving party for a jury to return a verdict for that party.") (emphasis added). The only evidence presented to the bankruptcy court by the Taylor Family Group in response to the testimony and documentary evidence presented by Appellees was the declaration of Chip Taylor. The bankruptcy court properly found that the declaration was made without personal knowledge of the facts, and thus failed to meet the requirements of Civil Rule 56(e)(1). Further, the bankruptcy court concluded that Taylor's testimony was inconsistent and implausible.[10]

Even if we were to assume, for the sake of argument, that the Chip Taylor declaration was somehow probative, to the extent that the declaration may have asserted direct claims, the declaration failed to meet the Nevada/Delaware requirements that it show harm to the Taylor Family Group and that the harm was not shared by

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[10] The bankruptcy court also found that the deposition testimony of Chip Taylor and Lewis Skip Taylor, presented as evidence by Appellees, contained numerous inconsistencies with representations made by the Taylor Family Group in proceedings in the bankruptcy court, as well as to the Canadian court.

other parties. The bankruptcy court could therefore properly conclude that the only claims that the Taylor Family Group could assert against Appellees were derivative, and that the Chip Taylor declaration did not "set out specific facts showing a genuine issue for trial."

At the hearing on the second summary judgment motion, the bankruptcy court reminded the Taylor Family Group's counsel that he had been offered additional time and opportunities to supplement the evidence:

> THE COURT: Did I or did I not, for a considerable period of time at the commencement of the hearing on February 1st, indicate that I would provide the parties with additional time? And wasn't I told that the parties would like [an immediate ruling on the first summary judgment motion]?
>
> COUNSEL FOR THE TAYLOR GROUP: That is absolutely correct. That's exac —
>
> THE COURT: And that's exactly what I did.
>
> COUNSEL FOR THE TAYLOR GROUP: That's exactly what [the transcript of February 1] says. But additional time as to discuss deriv—
>
> THE COURT: To discuss exactly — go ahead, finish your sentence. You're right.
>
> COUNSEL FOR THE TAYLOR GROUP: I believe additional time with respect to determining what's derivative or not or a derivative analysis . . . .
>
> THE COURT: I would have been, I think its pretty clear, glad to provide the parties with an opportunity to reevaluate their position and submit additional authority or perhaps other relief if they had asked for it. But I was told that the parties would appreciate an answer [ruling on summary judgment] at that time.

Tr. Hr'g 45:17-46:20 (May 12, 2008).

As we interpret the record, the bankruptcy court found that the declaration of Chip Taylor, the only evidence submitted in response to Appellees' evidence in the first summary judgment

motion, was inconsistent and implausible. The bankruptcy court was given no persuasive evidence that the Taylor Family Group was harmed, or that any harm they might have had suffered was not shared by other shareholders of the Debtor. Thus, the Taylor Family Group did not meet the requirement for showing they held any direct claims under Nevada law. Moreover, before entering the summary judgment, the bankruptcy court offered the parties additional time to reevaluate their positions and submit additional materials. Instead, all parties sought an immediate ruling by the bankruptcy court, which it rendered in favor of Appellees.

Challenging the bankruptcy court's findings and order granting the First Summary Judgment Order, the Taylor Family Group filed a whirlwind of motions under Civil Rules 52(b), 59(e) and 60(b). The thrust of the three motions was that the bankruptcy court should reexamine its decision that the Taylor Family Group only had derivative claims. At the hearing in conjunction with Appellees' second summary judgment motion, the court found that the Taylor Family Group blurred the distinctions among the three motions in an attempt to restate and amplify their arguments against the First Summary Judgment Order, create new issues, argue new theories, and introduce new evidence so as to augment the record on appeal. As to the Civil Rule 52(b) motion, the bankruptcy court found that the Taylor Family Group was not seeking to clarify the court's findings and conclusions, but was instead attempting to challenge the premises upon which those findings were based by submitting new evidence and arguments that were available, but not raised, in response to the first summary

judgment motion.

The bankruptcy court properly determined that its findings and conclusions could not be challenged on that basis and thus stand. Far Out Prods., 247 F.3d at 998 ("A party seeking to amend a judgment under Rule 52(b) cannot raise arguments that could have been raised prior to the issuance of the judgment."); Wallis v. J.R. Simplot Co., 26 F.3d 885, 892 n.6 (9th Cir. 1994) (noting that a trial court is under no obligation to consider evidence that was either in the parties' possession at the time of summary judgment or could have been discovered with reasonable diligence).

Regarding Civil Rule 59(e), made applicable in bankruptcy proceedings by Rule 9023, a bankruptcy court may, of course, alter or amend, or in other words reconsider, an order. Even so, the Ninth Circuit has held that motions for reconsideration should not be granted unless the trial court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in controlling law. Kona Enterprises, Inc. v. Estate of Bishop, 229 F.3d 877 (9th Cir. 2000). Reconsideration is also available to prevent manifest injustice. Navajo Indian Nation v. Confederated Tribes and Bands of the Yakima Indian Nation, 331 F.3d 1041, 1046 (9th Cir. 2003). In this instance, the bankruptcy court found that the Taylor Family Group's motion under Civil Rule 59(e) offered no newly discovered evidence or proof of any manifest error in the court's rulings on the applicability of the injunction and release clauses. Hr'g Tr. 91:1-10. As with the Civil Rule 52(b) motion, the court considered the reconsideration motion as merely an opportunity to disagree with the court's conclusions regarding summary judgment,

to relitigate and amplify their earlier arguments and to try to convince the court that the arguments had more substance to them than was argued on February 1. Hr'g Tr. 91:12-14.

Under the Rule 60(b)(1) motion, the Taylor Family Group alleged "surprise" at the language in the order restricting the scope of the order to the Tamboril case. However, based upon our review of the record, the bankruptcy court properly ruled that "there's certainly no surprise. Everybody knew what was before me on February 1st. . . . The order incorporates the findings, the findings only reflect to Tamboril. That's not surprise." Hr'g Tr. 91:17-24. Indeed, as explained in In re Walker, 332 B.R. 820, 829 (Bankr. D. Nev. 2005), a decision cited by the Taylor Family Group: "The court [and parties] knew exactly what was being argued . . . and the reasons behind the Original Order were set forth in open court at the conclusion of the hearing. . . . Surprise cannot be an issue since the grounds . . . did not extend beyond the pleadings or the allegations[.]"

Following its consideration of the three motions, the bankruptcy court heard the second summary judgment motion on the third, fourth and sixth claims for relief. As to the third and fourth claims, seeking an injunction enjoining the Taylor Family Group from pursuing the Taylor v. Tamboril litigation, and a mandatory injunction requiring that the action be dismissed as to all the named plaintiffs in the adversary proceeding, the bankruptcy court held that the Taylor Family Group's opposition to granting those claims was predicated on the relief sought in the three motions. Hr'g Tr. 100:1-6. In fact, the Taylor Family Group did not even challenge the bankruptcy court's ruling at the

hearing: "[COUNSEL FOR THE TAYLOR GROUP]: Your Honor, to save time and in light of what you've ruled on this morning, I don't really have any argument to offer. . . . As far as the [second summary judgment motion on the third and fourth claims] is concerned, Judge, we've withdrawn all of our defenses with respect to the substantive merits of it. They're entitled to an injunction, but an injunction for what?" Hr'g Tr. 113:12-16. The bankruptcy court then granted the second summary judgment motion on claims three and four as "the natural and logical result of the orders that have been entered in this case." Hr'g Tr. 123:13-15.

As to the First Summary Judgment Order, the bankruptcy court committed no error. Appellees met the burden of showing no genuine issues of material fact remained, and supported their entitlement to summary judgment by ample evidence. When the burden then shifted to the Taylor Family Group, they were unable to establish any genuine material facts that remained at issue. There was no opposition to the second summary judgment motion as to claims three and four. The bankruptcy court was therefore correct to grant Appellees' motion for summary judgment under the First through Fourth Claims for Relief.

III.

The bankruptcy court did not abuse its discretion in not finding the Taylor Family Group in contempt or awarding sanctions against the Taylor Family Group under its inherent power or Rule 9011.

A.

Contempt

In the cross-appeal, Appellees seek review of the bankruptcy

court's denial of the sixth claim in their complaint, which asked the court to adjudge the Taylor Family Group in contempt of the plan injunction, and to award Appellees damages. The bankruptcy court instead concluded that Appellees had not established by clear and convincing evidence that the Taylor Family Group had knowingly violated the confirmed plan's permanent injunction (¶ 10.4) by failing to dismiss Appellees as defendants in Taylor v. Tamboril.

Failure to comply with an injunction may subject the nonconforming party to civil contempt. Gunn v. Univ. Comm. To End War, 399 U.S. 383, 389 (1970). A party who knowingly violates a bankruptcy injunction is subject to contempt proceedings under § 105(a). Zilog, Inc. v. Corning (In re Zilog, Inc.), 450 F.3d 996, 1007 (9th Cir. 2006). The moving party must show by clear and convincing evidence that the contemnors intentionally violated a specific and definite order of the court. Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1191 (9th Cir. 2003). The moving party must also show that the contempt sanction is justified. Renwick v. Bennett (In re Bennett), 298 F.3d 1059, 1069 (9th Cir. 2004).

An accepted defense to civil contempt is that the alleged contemnor had a "good faith and reasonable interpretation of the order." Labor/Cmty. Strategy Ctr. v. L.A. County Metro. Transp. Auth., 564 F.3d 1115, 1123 (9th Cir. 2009); Vertex Distr., Inc. v. Falcon Foam Plastics, Inc., 689 F.2d 885, 889 (9th Cir. 1982) ("If a defendant's action 'appears to be based on a good faith and reasonable interpretation of [the court's order],' we will not hold the defendant in contempt."); see also United States v.

Koblitz, 803 F.2d 1523, 1527 (11th Cir. 1986) ("A civil contempt order can only be upheld if it is supported by clear and convincing evidence that . . . the underlying order was clear, definite, and unambiguous, ...").

The bankruptcy court made several findings of facts that indicate that the Taylor Family Group had committed at least technical violations of the plan injunction. For example, the bankruptcy court found: (1) the plan confirmation order was a specific and definite order of the court, and (2) the permanent injunction and releases affirmatively required the Taylor Family Group to dismiss Appellees from the action.

However, the bankruptcy court made no findings that any violation of the plan injunction by the Taylor Family Group was intentional, or that contempt sanctions were justified. At the May 12, 2008, hearing, the bankruptcy court disagreed with the Taylor Family Group's position that, since the Taylor v. Tamboril proceeding was stayed by the Ontario court, the Taylor Family Group could continue the stay rather than dismiss the Appellees. However, the bankruptcy court held that such a position was "not without some logic and I don't believe that it establishes [by] clear and convincing evidence of a specific . . . intent or engagement in conduct to violate a specific and definite order of the court." Hr'g Tr. 126:21-25 (May 12, 2008). We consider that finding equivalent to a finding that, although the bankruptcy court disagreed with the Taylor Family Group's legal position concerning its duty under the plan injunction, it was a reasonable interpretation of those provisions. In addition, the court also observed that "there is no evidence that anything has occurred in

the Canadian litigation . . . that would have caused any damage."

Having carefully considered the matter, the bankruptcy court concluded that "[Appellees] have not met their burden of proving that Defendants are in contempt of the Second Amended Plan and the Confirmation Order by their failure to dismiss Plaintiffs previously from Taylor v. Tamboril." Implicitly, by this conclusion, the bankruptcy invokes Bennett's rule that any contempt sanction must be justified.

The bankruptcy court applied the correct rule of law and its application of those legal standards to the facts was neither illogical, implausible, nor without support in inferences that may be drawn from the facts in the record. The bankruptcy court did not abuse its discretion by denying claim six for a finding of contempt and imposition of contempt sanctions.

B.

The Sanctions Order

Whether to award sanctions under Rule 9011 or the bankruptcy court's inherent powers is another decision where, as an appellate tribunal, we properly defer to the trial court. Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 402 (1990). ("Familiar with the issues and litigants, the district court is better situated than the court of appeals to marshal the pertinent facts and apply the fact-dependent legal standard mandated by Rule 11."); Smith v. Lenches, 263 F.3d 972, 978 (9th Cir. 2001) (the "district court has broad fact-finding powers to grant or decline sanctions and that its findings warrant great deference"); Gotro v. R & B Realty Group, 69 F.3d 1485, 1488 (9th Cir. 1995) (noting deference owed

to trial court's refusal to impose Rule 11 sanctions).

The bankruptcy court correctly noted that the standard required to justify invocation of its inherent powers is clear and convincing evidence. In re Bennett, 298 F.3d at 1069. It declined to exercise its inherent powers in this case because it could not find that the Taylor Family Group acted with the subjective intent to engage in vexatious or reckless conduct. Id.

As to Appellees' Rule 9011 sanctions request, the bankruptcy court was not persuaded that, in filing repeated reconsideration motions, the Taylor Family Group's actions, or those of its attorneys, rose to the level of frivolous and improper conduct that is necessary to award sanctions under Rule 9011/Civil Rule 11. Valley Nat'l Bank of Ariz. v. Needler (In re Grantham Bros.), 922 F.2d 1438, 1443 (9th Cir. 1991). On this record, we defer to the bankruptcy court and conclude that the bankruptcy court did not abuse its discretion in declining to award sanctions. The bankruptcy court applied the correct rule of law and the proper evidentiary standard, and its application of those legal standards to the facts was neither illogical, implausible, nor without support in inferences that may be drawn from the facts in the record.

CONCLUSION

The bankruptcy court's decision is AFFIRMED in all respects.