

NOT FOR PUBLICATION

JUN 29 2010

SUSAN M SPRAYL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

5	In re:)	BAP Nos. NV-09-1343-PaDH
6	MEGA-C POWER CORPORATION,)	NV-09-1380-PaDH
)	(Cross-Appeals)
7	Debtor.)	Bk. No. 04-50962-GWZ
8	_____)	Adv. No. 07-05017-GWZ
9	LEWIS CHIP TAYLOR; CHIP TAYLOR,)	
10	in Trust; JARED TAYLOR; ELGIN)	
11	INVESTMENTS, INC.; SHARON TAYLOR;)	
12	NICOLE TAYLOR PIGNATELLI; PAUL)	
13	PIGNATELLI; COLIN TAYLOR; LEWIS)	
14	SKIP TAYLOR; LOUISE TAYLOR;)	
15	1407580 ONTARIO LIMITED; 1248136)	
16	ONTARIO LIMITED; MEGA C)	
17	TECHNOLOGIES, LTD.,)	
18	Appellants/Cross-Appellees,)	
19	v.)	M E M O R A N D U M ¹
20	AXION POWER INTERNATIONAL, INC;)	
21	AXION POWER CORPORATION; ROBERT)	
22	AVERILL; GLENN PATTERSON; HAP)	
23	INVESTMENTS, LLC; IGOR FILIPENKO;)	
24	THOMAS GRANVILLE,)	
25	Appellees/Cross-Appellants.)	
26	_____)	

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.

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.

1 These appeals arise from a complex Chapter 11² case and the
2 resulting adversary proceeding concerning ownership of the rights
3 to a lead-acid-carbon battery device. Appellants, referred to in
4 this decision as the Taylor Family Group, appeal the bankruptcy
5 court's grant of summary judgment to Appellees on four claims in
6 their complaint. Appellees cross-appeal the denial of Appellees'
7 claim for contempt damages, and denial of their motion for
8 sanctions. We AFFIRM the judgment of the bankruptcy court in all
9 respects.

10
11 **FACTS**

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

15 On December 23, 1999, C&T entered into a joint venture
16 agreement (the "Joint Venture Agreement") with Chip Taylor in
17 Trust to license a limited class of stationary applications³ of
18 the Technology to a new corporation organized in Ontario, Canada,
19 to hold that license, Mega-C Technologies, Inc. ("MCT"). Chip
20 Taylor in Trust held 80 percent of the stock of MCT, and C&T the

21
22 ² Unless otherwise indicated, all "Code," "chapter" and
23 "section" references are to the Bankruptcy Code, 11 U.S.C.
24 §§ 101-1330 prior to its amendment by the Bankruptcy Abuse
25 Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119
26 Stat. 23 (2005). "Rule" references are to the Federal Rules of
27 Bankruptcy Procedure and "Civil Rule" references are to the
28 Federal Rules of Civil Procedure.

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

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

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

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

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

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

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

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

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

15 In February 2003, Debtor made the initial payment of \$400,000
16 to the shareholders of MCT required by the Agreement of
17 Association. However, it then notified MCT and C&T that it would
18 be unable to make the second payment of \$400,000 due on April 1,
19 2003.

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

28 As a result of these defaults and other disputes, three

1 lawsuits were commenced in the courts in Canada. Jared Taylor v.
2 Mega-C Power Corp., no. 03-CV-253159 (Ont. Sup. Ct., July 30,
3 2003); Chip Taylor in Trust v. Mega-C Power Corp., no. 03-CV-
4 255175 (Ont. Sup. Ct., Sept. 11, 2003); and Taylor v. Tamboril,
5 no. 04-CL-5317 (Ont. Sup. Ct., Feb. 10, 2004). The issues in
6 these lawsuits included conflicting claims by various parties
7 regarding ownership of Debtor's stock, and a contest over rights
8 to the Technology.

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

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

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

1 On February 1, 2006, the bankruptcy court approved a
2 Settlement Agreement between Noall and Appellees. The Settlement
3 Agreement resolved any claims held by Debtor against Appellees.
4 The Settlement Agreement was incorporated in Debtor's Second
5 Amended Plan, which in turn, was confirmed by the bankruptcy court
6 on November 8, 2006.⁴

7 The Settlement Agreement and Second Amended Plan vested
8 whatever rights Debtor had in the Technology, along with Debtor's
9 physical assets, in Appellees. In exchange, Appellees transferred
10 5.7 million shares of its stock to a Liquidation Trust and a
11 Second Amended Shareholders Trust.

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

16 10.4. Injunction. From and after the Effective Date, and
17 except as provided in this Plan and the Confirmation
18 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

19
20 ⁴ The Taylor Family Group appealed the order approving the
21 settlement to the BAP. The Panel affirmed the effective
22 provisions of the Settlement Order, and dismissed as interlocutory
23 any appeals from the provisions of the order that would not become
24 effective until the effective date of a confirmed plan. Taylor v.
25 Mega-C Power, no. NV-06-1060/1078 BSJ (9th Cir. BAP, September 29,
26 2006). The BAP's decision was appealed to the Ninth Circuit. The
27 court of appeals dismissed the appeal as equitably moot because no
28 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).

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

23 The release is found at ¶ 10.5:

24 10.5. Releases. On the Effective Date the following
25 releases shall become effective; (i) by and between the
26 Trustee, on the one hand, and Fonner on the other hand;
27 and between the Trustee, on the one hand, and the
28 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

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

28 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

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

7
8 Third Claim for Relief: Enforcement of Permanent Injunction

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

14 Fourth Claim for Relief: Mandatory Injunction

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

20 Sixth Claim for Relief: Sanctions for Violation of Plan Injunction

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

25 The Taylor Family Group responded to the amended complaint
26 with a motion to dismiss filed on July 13, 2007. The motion
27 detailed the history of the litigation involving the parties, and
28 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

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.

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

6 The bankruptcy court entered its scheduling order on December
7 13, 2007. Appellees filed their first motion for summary
8 judgment, seeking relief under the first and second claims,
9 asserting that the Taylor Family Group's claims against them were
10 released by the Second Amended Plan, and that the litigation was
11 barred by the plan injunction. The Taylor Family Group responded
12 with an opposition and their own summary judgment motion on
13 October 15, 2007. The Taylor Family Group argued that the
14 Appellees' summary judgment motion was inappropriate because facts
15 were in dispute. The Taylor Family Group argued that their
16 summary judgment motion should be granted, however, by dismissing
17 the action, and determining which claims they were barred from
18 pursuing in the Canadian litigation.

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

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

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

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

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

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

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

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

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

19 As to Appellees' request for Rule 9011 sanctions, the
20 bankruptcy court was not persuaded that the Taylor Family Group's
21 actions, or those of their attorneys, rose to the level of
22 frivolous and improper conduct that is necessary to award
23 sanctions. Tr. Hr'g 213:1-3. The court therefore declined to
24 award Appellees sanctions. Again, the bankruptcy court entered
25 detailed Findings of Fact and Conclusions of Law in support of its
26
27
28

1 decisions.⁶

2 On February 10, 2009, the Taylor Family Group filed a fourth
3 motion to set aside the First Summary Judgment Order, this time
4 styled as a motion to vacate the summary judgment under Civil Rule
5 60(b)(3). In it, the Taylor Family Group accused Appellees of
6 submitting fraudulent evidence to the bankruptcy court,
7 specifically the declaration of Michael Kishinevsky, the attorney
8 for C&T. The bankruptcy court considered this motion at a hearing
9 on April 23, 2009. The court determined that there was no
10 evidence that any misrepresentation had occurred. Tr. Hr'g
11 202:17-18 (April 23, 2009). The bankruptcy court entered Findings
12 of Fact and Conclusions of Law regarding the motion to vacate on
13 November 10, 2009. The same day, the court entered a Judgment in
14 favor of Appellees on claims one, two, three and four, and
15 dismissing claims five and six.

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

19

20 **JURISDICTION**

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

23

24 ⁶ The Taylor Family Group filed an appeal of the Second
25 Summary Judgment Order granting summary judgment on Appellees'
26 first through fourth claims. Appellees cross-appealed the
27 dismissal of its claim six for contempt and denial of the
28 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).

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

3
4 **ISSUES**

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

10
11 **STANDARDS OF REVIEW**

12 We review de novo the bankruptcy court's decision to grant
13 summary judgment. Huppert v. City of Pittsburg, 574 F.3d 696, 701
14 (9th Cir. 2009).

15 An order granting or denying a motion for civil contempt is
16 reviewed for abuse of discretion. Hilao v. Est. of Marcos, 103
17 F.3d 762, 764 (9th Cir. 1996). A bankruptcy court's decision
18 declining to impose sanctions pursuant to Rule 9011 or the court's
19 inherent powers is also reviewed for abuse of discretion. Trulis
20 v. Barton, 107 F.3d 685, 691 (9th Cir. 1995). In applying an
21 abuse of discretion test, we first "determine de novo whether the
22 [bankruptcy] court identified the correct legal rule to apply to
23 the relief requested." United States v. Hinkson, 585 F.3d 1247,
24 1262 (9th Cir. 2009). If the bankruptcy court identified the
25 correct legal rule, we then determine whether its "application of
26 the correct legal standard [to the facts] was (1) illogical,
27 (2) implausible, or (3) without support in inferences that may be
28 drawn from the facts in the record." Id. (internal quotation

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

7 DISCUSSION

8 I.

9 The bankruptcy court had jurisdiction.

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

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

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

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

5 As to subject matter jurisdiction, the Taylor Family Group
6 provides no legal authority suggesting that federal courts lack
7 subject matter jurisdiction to enjoin parties over whom they have
8 jurisdiction from engaging in foreign proceedings. The lack of
9 citations on this point is understandable since it is the law of
10 this circuit that "federal courts in the United States with
11 jurisdiction over the parties have the power to enjoin them from
12 proceeding with an action in the courts of a foreign country[.]"
13 Seattle Totems Hockey Club v. Nat'l Hockey League, 652 F.2d 852,
14 855 (9th Cir. 1981); accord Laker Airways Ltd. v. Sabena, 731 F.2d
15 909 (D.C. Cir. 1984); Canadian Filters (Harwich) Ltd. v.
16 Lear-Sieglar, Inc., 412 F.2d 577 (1st Cir. 1969).⁷

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

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

23 ⁸ [COUNSEL FOR THE TAYLOR FAMILY GROUP]: I just
24 want to make it clear that we agree to the
25 jurisdiction of this court . . . to interpret
26 its own rules, to determine the Ninth Circuit
27 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.

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

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

7 Moreover, a bankruptcy court has subject matter jurisdiction
8 to interpret its own orders. Beneficial Trust Deeds v. Franklin
9 (In re Franklin), 802 F.2d 324, 326 (9th Cir. 1986). The specific
10 orders interpreted here were the injunction and release clauses of
11 the Second Amended Plan, as implemented by the bankruptcy court's
12 order confirming that plan. In particular, the bankruptcy court
13 has exclusive jurisdiction to definitively interpret the
14 provisions of the Second Amended Plan and Confirmation Order.
15 Huse v. Huse-Sporsem, A.S. (In re Birting Fisheries, Inc.), 300
16 B.R. 489 (9th Cir. BAP 2003). Once a plan that contains
17 injunctions and releases has been confirmed and becomes a final
18 judgment (which occurred here when the appeal of the confirmation
19 order was dismissed), the injunction and releases cannot be
20 attacked on subject matter jurisdiction grounds. Travelers Indem.
21 Co. v. Bailey, 129 S. Ct. 2195, 2203 (2009); Trulis, 107 F.3d at
22 691.

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

1 applied only to one of the Canadian actions, Taylor v. Tamboril,
2 because only that lawsuit involved Appellees. See Hr'g Tr. 30:24-
3 25 (May 12, 2008) (stating that the first summary judgment only
4 applies to Taylor v. Tamboril); Hr'g Tr. 98:8-10 (May 12, 2008)
5 (stating that the second summary judgment only applies to that one
6 case). Appellees did not cross-appeal the bankruptcy court's
7 limitation of the reach of its ruling, and so the Taylor Family
8 Group's argument misses the mark.⁹

9
10 **II.**

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

13 Summary judgment shall be granted "if the pleadings, the
14 discovery and disclosure materials on file, and any affidavits
15 show that there is no genuine issue as to any material fact and
16 that the movant is entitled to judgment as a matter of law."
17 Civil Rule 56(c)(2), as incorporated by Rule 7056; Barboza v. New
18 Form, Inc. (In re Barboza), 545 F.3d 702, 707 (9th Cir. 2008).
19 The trial court does not weigh evidence in resolving such motions,
20 but rather determines only whether a material factual dispute
21 remains for trial. Covey v. Hollydale Mobilehome Estates, 116
22

23 ⁹ At the hearing before the Panel, the Taylor Family Group'
24 counsel suggested that the Taylor Family Group was concerned that
25 the court's ruling could require them and other parties to dismiss
26 the other two Canadian proceedings. The bankruptcy court
27 repeatedly stated that its decisions only related to Taylor v.
28 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).

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

2 A dispute is genuine if there is sufficient evidence for a
3 reasonable fact finder to hold in favor of the non-moving party,
4 and a fact is "material" if it might affect the outcome of the
5 case. Far Out Prods., Inc. v. Oskar, 247 F.3d 986, 992 (9th Cir.
6 2001) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242,
7 248-49 (1986)). The initial burden of showing there is no genuine
8 issue of material fact rests on the moving party. Marqolis v.
9 Ryan, 140 F.3d 850, 852 (9th Cir. 1998). If the non-moving party
10 bears the ultimate burden of proof on an element at trial, that
11 party must make a showing sufficient to establish the existence of
12 that element in order to survive a motion for summary judgment.
13 Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

14 In this action, the bankruptcy court twice granted summary
15 judgment to Appellees, based on its interpretation of its own plan
16 confirmation order, which in turn incorporated the injunction and
17 releases from the Second Amended Plan. In reviewing these
18 decisions, the Ninth Circuit instructs us that we must "give
19 deference to the [bankruptcy] court's interpretation of its own
20 order, based on the court's extensive oversight of the decree from
21 the commencement of the litigation to the current appeal."
22 Hallett v. Morgan, 296 F.3d 732, 739-40 (9th Cir. 2002); accord
23 United States v. Alshabkhoun, 277 F.3d 930, 933-34 (7th Cir.
24 2002); Brown v. Neeb, 644 F.2d 551, 558 n.12 (6th Cir. 1981).

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

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

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

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

26 THE COURT: The only claims that the defendants can have
27 are derivative. Because the basis on which they are
28 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

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

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

4 Whether a claim is derivative or direct is determined by
5 state law. Lapidus v. Hecht, 232 F.3d 679, 682 (9th Cir. 2000).

6 A derivative suit is brought on behalf of the corporation by
7 individual shareholders to enforce the corporation's rights.

8 Shoen v. SAC Holding Corp., 137 P.3d 1171, 1179 (Nev. 2006).

9 Nevada looks to the law of Delaware as persuasive on the question
10 of direct versus derivative claims. Shoen, 137 P.3d at 1179-84.

11 To assert a direct claim, a party must show that it was harmed,
12 and that the harm is separate and distinct from other

13 shareholders. Tooley v. Donaldson, Lufkin & Jenrette, Inc., 845
14 A.2d 1031, 1038-39 (Del. 2004).

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

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

26 When a motion for summary judgment is properly made and
27 supported, an opposing party may not rely merely on
28 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

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

3 Civil Rule 56(e)(2), incorporated by Rule 7056; see also Margolis,
4 140 F.3d at 852 ("[T]o defeat a summary judgment motion, the
5 non-moving party must demonstrate that the evidence is such that a
6 reasonable [trier of fact] could return a verdict in his or her
7 favor.") (emphasis added); Anderson, 477 U.S. at 249 ("If the
8 evidence is merely colorable or is not significantly probative,
9 summary judgment may be granted. . . . [T]here is no issue for
10 trial unless there is sufficient evidence favoring the non-moving
11 party for a jury to return a verdict for that party.") (emphasis
12 added). The only evidence presented to the bankruptcy court by
13 the Taylor Family Group in response to the testimony and
14 documentary evidence presented by Appellees was the declaration of
15 Chip Taylor. The bankruptcy court properly found that the
16 declaration was made without personal knowledge of the facts, and
17 thus failed to meet the requirements of Civil Rule 56(e)(1).
18 Further, the bankruptcy court concluded that Taylor's testimony
19 was inconsistent and implausible.¹⁰

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

25
26 ¹⁰ The bankruptcy court also found that the deposition
27 testimony of Chip Taylor and Lewis Skip Taylor, presented as
28 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.

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

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

10 THE COURT: Did I or did I not, for a considerable period
11 of time at the commencement of the hearing on February
12 1st, indicate that I would provide the parties with
13 additional time? And wasn't I told that the parties
14 would like [an immediate ruling on the first summary
15 judgment motion]?

16 COUNSEL FOR THE TAYLOR GROUP: That is absolutely
17 correct. That's exac -

18 THE COURT: And that's exactly what I did.

19 COUNSEL FOR THE TAYLOR GROUP: That's exactly what [the
20 transcript of February 1] says. But additional time as
21 to discuss deriv-

22 THE COURT: To discuss exactly - go ahead, finish your
23 sentence. You're right.

24 COUNSEL FOR THE TAYLOR GROUP: I believe additional time
25 with respect to determining what's derivative or not or
26 a derivative analysis

27 THE COURT: I would have been, I think its pretty clear,
28 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

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

12 Challenging the bankruptcy court's findings and order
13 granting the First Summary Judgment Order, the Taylor Family Group
14 filed a whirlwind of motions under Civil Rules 52(b), 59(e) and
15 60(b). The thrust of the three motions was that the bankruptcy
16 court should reexamine its decision that the Taylor Family Group
17 only had derivative claims. At the hearing in conjunction with
18 Appellees' second summary judgment motion, the court found that
19 the Taylor Family Group blurred the distinctions among the three
20 motions in an attempt to restate and amplify their arguments
21 against the First Summary Judgment Order, create new issues, argue
22 new theories, and introduce new evidence so as to augment the
23 record on appeal. As to the Civil Rule 52(b) motion, the
24 bankruptcy court found that the Taylor Family Group was not
25 seeking to clarify the court's findings and conclusions, but was
26 instead attempting to challenge the premises upon which those
27 findings were based by submitting new evidence and arguments that
28 were available, but not raised, in response to the first summary

1 judgment motion.

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

11 Regarding Civil Rule 59(e), made applicable in bankruptcy
12 proceedings by Rule 9023, a bankruptcy court may, of course, alter
13 or amend, or in other words reconsider, an order. Even so, the
14 Ninth Circuit has held that motions for reconsideration should not
15 be granted unless the trial court is presented with newly
16 discovered evidence, committed clear error, or if there is an
17 intervening change in controlling law. Kona Enterprises, Inc. v.
18 Estate of Bishop, 229 F.3d 877 (9th Cir. 2000). Reconsideration
19 is also available to prevent manifest injustice. Navajo Indian
20 Nation v. Confederated Tribes and Bands of the Yakima Indian
21 Nation, 331 F.3d 1041, 1046 (9th Cir. 2003). In this instance,
22 the bankruptcy court found that the Taylor Family Group's motion
23 under Civil Rule 59(e) offered no newly discovered evidence or
24 proof of any manifest error in the court's rulings on the
25 applicability of the injunction and release clauses. Hr'g Tr.
26 91:1-10. As with the Civil Rule 52(b) motion, the court
27 considered the reconsideration motion as merely an opportunity to
28 disagree with the court's conclusions regarding summary judgment,

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

4 Under the Rule 60(b)(1) motion, the Taylor Family Group
5 alleged "surprise" at the language in the order restricting the
6 scope of the order to the Tamboril case. However, based upon our
7 review of the record, the bankruptcy court properly ruled that
8 "there's certainly no surprise. Everybody knew what was before me
9 on February 1st. . . . The order incorporates the findings, the
10 findings only reflect to Tamboril. That's not surprise." Hr'g
11 Tr. 91:17-24. Indeed, as explained in In re Walker, 332 B.R. 820,
12 829 (Bankr. D. Nev. 2005), a decision cited by the Taylor Family
13 Group: "The court [and parties] knew exactly what was being argued
14 . . . and the reasons behind the Original Order were set forth in
15 open court at the conclusion of the hearing. . . . Surprise
16 cannot be an issue since the grounds . . . did not extend beyond
17 the pleadings or the allegations[.]"

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

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

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

21
22 **III.**

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

26 A.

27 Contempt

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

1 court's denial of the sixth claim in their complaint, which asked
2 the court to adjudge the Taylor Family Group in contempt of the
3 plan injunction, and to award Appellees damages. The bankruptcy
4 court instead concluded that Appellees had not established by
5 clear and convincing evidence that the Taylor Family Group had
6 knowingly violated the confirmed plan's permanent injunction
7 (§ 10.4) by failing to dismiss Appellees as defendants in Taylor
8 v. Tamboril.

9 Failure to comply with an injunction may subject the
10 nonconforming party to civil contempt. Gunn v. Univ. Comm. To End
11 War, 399 U.S. 383, 389 (1970). A party who knowingly violates a
12 bankruptcy injunction is subject to contempt proceedings under
13 § 105(a). Zilog, Inc. v. Corning (In re Zilog, Inc.), 450 F.3d
14 996, 1007 (9th Cir. 2006). The moving party must show by clear
15 and convincing evidence that the contemnors intentionally violated
16 a specific and definite order of the court. Knupfer v. Lindblade
17 (In re Dyer), 322 F.3d 1178, 1191 (9th Cir. 2003). The moving
18 party must also show that the contempt sanction is justified.
19 Renwick v. Bennett (In re Bennett), 298 F.3d 1059, 1069 (9th Cir.
20 2004).

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

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

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

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

1 the Canadian litigation . . . that would have caused any damage.”

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

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

15
16 B.

17 The Sanctions Order

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

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

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

8 As to Appellees' Rule 9011 sanctions request, the bankruptcy
9 court was not persuaded that, in filing repeated reconsideration
10 motions, the Taylor Family Group's actions, or those of its
11 attorneys, rose to the level of frivolous and improper conduct
12 that is necessary to award sanctions under Rule 9011/Civil Rule
13 11. Valley Nat'l Bank of Ariz. v. Needler (In re Grantham Bros.),
14 922 F.2d 1438, 1443 (9th Cir. 1991). On this record, we defer to
15 the bankruptcy court and conclude that the bankruptcy court did
16 not abuse its discretion in declining to award sanctions. The
17 bankruptcy court applied the correct rule of law and the proper
18 evidentiary standard, and its application of those legal standards
19 to the facts was neither illogical, implausible, nor without
20 support in inferences that may be drawn from the facts in the
21 record.

22
23 **CONCLUSION**

24 The bankruptcy court's decision is AFFIRMED in all respects.
25
26
27
28