ORDERED.

Dated: September 09, 2021

Karen S. Jennemann
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re	)	
	)	
VIA AIRLINES, INC.,	)	Case No. 6:19-bk-06589-KSJ
	)	Chapter 7
Debtor.	)	
	)	

ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT AND SUSTAINING DEBTOR'S OBJECTIONS TO CLAIMS 105 AND 107 OF ADI ACQUISITION AND ADI HOLDINGS

In their duplicative $25 million claims,[1] the Claimants, ADI Holdings Company Inc. and ADI Acquisition Co., LLC, assert the Debtor, Via Airlines, Inc., misappropriated trade secrets of their subsidiary, Aerodynamics Incorporated. The Debtor objected[2] and now both parties seek summary judgment.[3] The Debtor further argues the claims are baseless, frivolous, and filed in bad faith justifying an award of attorneys' fees to reimburse the Debtor for spending unneeded legal costs. Summary

[1] Claims Nos. 105 and 107.
[2] Doc. Nos. 291 and 293. Responses and Supplemental Objections are filed at Doc. Nos. 345, 346, 403, and 404.
[3] Doc. Nos. 415, 416, and 417. Responses are filed at Doc. Nos. 421, 422, and 423.

judgment for the Debtor is appropriate. Both claims are disallowed; the Claimants and their attorneys shall reimburse the Debtor for its bankruptcy related legal expenses.

ADI Holdings Company, Inc. ("Holdings")[4] acquired the stock of Aerodynamics Incorporated ("Aerodynamics")[5] in 2011. Holdings sold its ownership interest in Aerodynamics to ADI Acquisition Co., LLC ("Acquisition") in a Stock Purchase Agreement on May 6, 2015.[6] Holdings never directly owned any assets of Aerodynamics.

In turn, Acquisition later sold its ownership interest in Aerodynamics to Carlsbad-Palomar Airlines, Inc. in a Stock Purchase Agreement on December 22, 2017.[7] Aerodynamics was not a party to this agreement.

So, *Holdings* owned Aerodynamics between 2011 and May 6, 2015. *Acquisition* next owned Aerodynamics between May 6, 2015, and December 22, 2017. Neither Holdings nor Acquisition owned Aerodynamics when the Debtor, Via Airlines Inc.,[8] filed this Chapter 11 bankruptcy[9] on October 8, 2019.[10]

The bar date for creditors to file a claim arising before the petition date was February 1, 2020. Acquisition timely filed Claim 105. Holdings timely filed Claim No. 107. Aerodynamics never filed a proof of claim.

[4] Holdings is a Georgia corporation, based in Kennesaw, Georgia.
[5] Aerodynamics is a Michigan corporation with operations in Beachwood, Ohio and Kennesaw, Georgia.
[6] Ex. 1 of John Beardsley's Declaration attached to Acquisition's Mot. for Summ. J., Doc. No. 417-2.
[7] Ex. 2 of John Beardsley's Declaration attached to Acquisition's Mot. for Summ. J., Doc. No. 417-3.
[8] The Debtor is a Colorado corporation based in Maitland, Florida, and, at one point, was owned by Ami Vizer.
[9] All references to the Bankruptcy Code refer to 11 U.S.C. § 101, *et seq.*
[10] Doc. No. 1.

On July 22, 2020, the Debtor confirmed a Plan of Reorganization that provides for distributions, albeit minimal, to unsecured creditors.[11] Under the Confirmation Order, a Discharge Injunction arose[12] precluding any creditor, including Aerodynamics, from pursuing collection of any pre-bankruptcy claim other than under the confirmed plan.[13] Aerodynamics never filed a claim and is prevented from pursuing collection of any pre-bankruptcy claim against the Debtor.

Both Holdings and Acquisition are holding companies whose purpose was to hold the stock of Aerodynamics. Holdings was divested of ownership in May 2015, when it sold its Aerodynamics stock to Acquisition.[14] Acquisition was divested of ownership when it sold its Aerodynamics stock to a third party, Carlsbad-Palomar Airlines, Inc., in 2017.[15]

Yet, both Holdings and Acquisition filed duplicative claims for $25 million against the Debtor on January 31, 2020.[16] The virtually identical claims assert one claim against the Debtor: In 2015, Via Airlines misappropriated the trade secrets of Holdings and Aerodynamics in connection with a potential business opportunity involving Aerodynamics and Caesars Entertainment Operating Company.

Nevada Litigation

Claims 105 and 107 both rely on a Complaint (the "Nevada Complaint") filed by Holdings and Aerodynamics in the United States District Court for the District

[11] Doc. No. 252.
[12] 11 U.S.C. §§ 524, 1141.
[13] Doc. No. 380.
[14] Ex. 1 of John Beardsley's Declaration attached to Acquisition's Mot. for Summ. J., Doc. No. 417-2.
[15] Ex. 2 of John Beardsley's Declaration attached to ADI Acquisition's Mot. for Summ. J., Doc. No. 417-3.
[16] Claims Nos. 105 and 107.

Court of Nevada against Via Airlines, Inc., and others (the "Nevada Litigation").[17] The four-count Complaint contains a single count against the Debtor, Via Airlines, for "Misappropriation of Trade Secrets." (The remaining issues in the Nevada Litigation are against other third parties and are irrelevant to this bankruptcy dispute.) The claim is straight-forward—Holdings and Aerodynamics contend the Debtor misappropriated trade secrets to interfere with the negotiations of a charter agreement between Aerodynamics and Caesars Entertainment Operating Company.[18] Caesars ultimately contracted with the Debtor, not Aerodynamics.

On November 7, 2018, before Via Airlines filed this Chapter 11 bankruptcy and "after a year and a half of extensive discovery,"[19] the Nevada District Court entered summary judgment[20] for the Debtor concluding Holdings raised no genuine factual dispute[21] that it held no trade secrets which the Debtor could misappropriate.[22] The order also declined to award Debtor attorneys' fees against Holdings. Although numerous other issues remain unresolved in the Nevada Litigation, the order finally resolved any claim Holdings had against the Debtor. Holdings has no such claim.[23]

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[17] Compl., *Aerodynamics Inc. v. Caesars Ent. Operating Co.*, No.: 2:15-cv-1344 (D. Nev. July 16, 2015), Doc. No. 1.
[18] Compl., *Aerodynamics Inc. v. Caesars Ent. Operating Co.*, No.: 2:15-cv-1344 (D. Nev. July 16, 2015), Doc. No. 1.
[19] Holdings acknowledges the Nevada District Court entered the final summary judgment against Holdings only after "a year and a half of extensive discovery and motion practice." Doc. No. 416, pg. 2.
[20] Defs.' Mot. for Summ. J., *Aerodynamics Inc. v. Caesars Ent. Operating Co.*, No.: 2:15-cv-1344 (D. Nev. July 16, 2015), Doc. No. 210.
[21] Under Nevada law, a plaintiff must demonstrate a "valuable trade secret" was wrongfully misappropriated "through use, disclosure, or nondisclosure of use of the trade secret . . . in breach of an express or implied contract or by a party with a duty to not disclose. *Frantz v. Johnson*, 999 P.2d 351, 358 (Nev. 2000).
[22] Doc. No. 408. The Sealed Order Granting in Part Motions for Summary Judgment entered in the Nevada Litigation also is sealed in this case.
[23] This action remains pending. The District Court has not entered a final judgment under Federal Rule of Civil Procedure 54(b). Because there has been no 54(b) certification, the summary judgment order is not a final, appealable order for purposes of 28 U.S.C. § 1291. *Gonzalez v. US Hum. Rts. Network*, No. CV-20-00757-PHX-DWL, 2021 WL 1312553, at *1-2 (D. Ariz. Apr. 8, 2021) (citing *Special Invs., Inc. v. Aero Air, Inc.*, 360 F.3d 989, 993 (9th Cir. 2004); *Noel v. Hall*, 568 F.3d 743, 747 (9th Cir. 2009)).

When the Nevada Litigation was filed on July 16, 2015, Holdings had no ownership interest in Aerodynamics because it already had sold its stock to Acquisition on May 6, 2015.[24] Acquisition is not now and never was a party to the Nevada Litigation, even though it owned Aerodynamics when the Nevada Complaint was filed. So, Holdings was a plaintiff in the Nevada Litigation, even though it no longer owned Aerodynamics, and Acquisition, who *did* own Aerodynamics when the litigation was filed, is not a party. And Aerodynamics, who may once have had a valid claim, has lost its claim against the Debtor because it never filed a claim and is now barred under the Discharge Injunction.

Parties' Cross Motions for Summary Judgment

With this background, Debtor objected to Acquisition's Claim 105[25] and Holdings' Claim 107[26] contending the claims are baseless and should be disallowed. Debtor and Holdings/Acquisition filed cross motions for summary judgment.[27]

In Debtor's Motion for Summary Judgment, Via Airlines first contends both Holdings and Acquisition are asserting frivolous and baseless claims because *res judicata* or collateral estoppel precludes Holdings' from relitigating the order of the Nevada District Court concluding Holdings held no trade secrets the Debtor could misappropriate. As to Acquisition, Debtor argues the claim is a derivative claim of Aerodynamics, who failed to timely file a claim in this bankruptcy case and is barred by the Discharge Injunction from proceeding. Alternatively, Debtor argues

[24] Ex. 1 of John Beardsley's Declaration attached to Acquisition's Mot. for Summ. J., Doc. No. 417-2.
[25] Doc. No. 293. Responses and a Supplemental Objection to Claim 105 are located at Doc. Nos. 345 and 404.
[26] Doc. No. 291. Responses and a Supplemental Objection to Claim 107 are located at Doc. Nos. 346 and 403.
[27] Doc. Nos. 415, 416, and 417. Responses are located at Doc. Nos. 421, 422, and 423.

Acquisition's claim is barred by the statute of limitations governing trade secret claims in Nevada. Debtor requests attorneys' fees incurred in connection to the opposition of Holdings' and Acquisition's frivolous claims.

In their Cross Motion for Summary Judgment, Holdings and Acquisition argue their claims were filed in good faith and factual disputes preclude summary judgment as a matter of law. They vehemently contest Debtor's request for attorneys' fees. And, after reviewing the weakness of the Claimant's arguments, I conclude the real dispute between these parties is not whether the claims are valid but rather whether they are so baseless that Claimants should reimburse the Debtor for their bankruptcy related legal fees and costs.

Legal Standard for Summary Judgment

Federal Rule of Civil Procedure 56(a), made applicable to bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7056, provides that "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."[28] The moving party must establish the right to summary judgment.[29] "Facts are material if, under applicable law, they would affect the outcome of the suit."[30] A dispute is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party."[31] Once the moving party has met its burden, the burden shifts to

[28] Fed. R. Civ. P. 56(a).
[29] *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Find What Inv. Grp. v. FindWhat.com*, 658 F.3d 1282, 1307 (11th Cir. 2011).
[30] *Welch v. Regions Bank (In re Mongelluzzi)*, 591 B.R. 480, 489 (Bankr. M.D. Fla. 2018) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)); *accord Find What Inv. Grp.*, 658 F.3d at 1307.
[31] *Anderson*, 477 U.S. at 248; *accord Find What Inv. Grp.*, 658 F.3d at 1307.

the nonmovant to show evidence raising a genuine issue of material fact for trial.[32] In determining summary judgment, "facts must be viewed in the light most favorable to the nonmoving party only if there is a 'genuine' dispute as to those facts."[33]

Acquisition/Holdings Cannot Assert a Derivative Claim Because Aerodynamics' Claim is Barred by the Discharge Injunction

Claimants, at best, hold derivative claims of their subsidiary Aerodynamics. Aerodynamics never filed a claim. And, given the bar date has run, the Debtor's plan is confirmed, and a Discharge Injunction precludes enforcing any claim, Aerodynamics does not have a valid claim. And, if Aerodynamics has no claim, then its shareholders, successively Holdings and Acquisition, hold no valid derivative claim. Acquisition and Holdings merely step into the shoes of Aerodynamics and fail. For this simple reason, the Debtor may have summary judgment disallowing both Claims 105 and 107 in their entirety.

For completeness, however, I will analyze Holdings' and Acquisition's separate claims. Under this analysis, the Debtor is still entitled to summary judgment on these baseless claims.

Holdings' Claim 107 is Barred by *Res Judicata* or Collateral Estoppel

In the Debtor's Motion for Summary Judgment on Holdings' Claim 107,[34] it argues the doctrine of *res judicata* precludes relitigation.

> The general principle of *res judicata* prevents the re-litigation of issues and claims already decided by a competent court. "Once a party has fought out a matter in litigation with the other party, he cannot later renew that

[32] *Boyle v. City of Pell City*, 866 F.3d 1280, 1288 (11th Cir. 2017).
[33] *Scott v. Harris*, 550 U.S. 372, 380 (2007).
[34] Doc. No. 415.

> duel." *Res judicata* comes in two forms: claim preclusion (traditional "*res judicata*") and issue preclusion (also known as "collateral estoppel").[35]

Federal common law governs the claim-preclusive effect of a judgment rendered by a federal court sitting in diversity.[36] Looking to federal common law, it requires that "we determine the preclusive effect of the prior decision by reference to the law of the state where the rendering federal diversity court sits."[37] Here, Nevada state law applies because the Nevada District Court entered the judgment while sitting in diversity.[38]

Under Nevada law, three elements must be met to apply claim preclusion: "(1) the same parties or their privies are involved in both cases, (2) a valid final judgment has been entered, and (3) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case."[39]

Here, prongs one and three are not in dispute. The parties in the Nevada Litigation, Holdings and the Debtor, Via Airlines, are the same parties involved in this bankruptcy litigation. And Holdings' sole claim against the Debtor in the Nevada Litigation is the same exact claim of misappropriation of trade secrets asserted in its Claim 107, given the claim attaches the Complaint filed in the Nevada Litigation for its support.

Under the second prong, Holdings argues the Nevada District Court's summary judgment order determining Holdings held no trade secrets the Debtor could

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[35] *Cmty. State Bank v. Strong*, 651 F.3d 1241, 1263 (11th Cir. 2011) (internal citations omitted) (first quoting *Comm'r v. Sunnen*, 333 U.S. 591, 598 (1948); then citing *Sunnen*, 333 U.S. at 597-98); *accord Five Star Cap. Corp. v. Ruby*, 194 P.3d 709, 711 (Nev. 2008), *holding modified by Weddell v. Sharp*, 350 P.3d 80 (Nev. 2015).
[36] *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 508 (2001); *Taylor v. Sturgell*, 553 U.S. 880, 891 (2008).
[37] *Daewoo Elecs. Am. Inc. v. Opta Corp.*, 875 F.3d 1241, 1246-47 (9th Cir. 2017) (citing *Semtek Int'l Inc.*, 531 U.S. at 508).
[38] *Id.*
[39] *Five Star Cap. Corp.*, 194 P.3d at 713.

misappropriate is not a final, appealable order.[40] Ironically, Holdings concedes the same exact order, the Nevada District Court's summary judgment order determining the Debtor is not a prevailing party entitled to fees from Holdings, *is* final.[41] Holdings relies on the principle of collateral estoppel (issue preclusion), as opposed to the closely related principle of *res judicata* (claim preclusion), but affirmatively states, "Because the issue of an award of fees and costs was fully and fairly litigated and decided against Via in the Nevada action, Via is barred from relitigating this issue in this court."[42]

I agree that the Debtor cannot relitigate the issue. But Holdings does not explain why it (but not the Debtor) *CAN* relitigate the ruling finding Holdings has no misappropriation of trade secrets claim against the Debtor. Why is the Debtor's claim for fees barred but not Holdings' claim for misappropriation, given both were addressed in the same order? Holdings is barred under the doctrine of *res judicata* from any recovery against the Debtor on Claim 107.

Even if the order was not binding under *res judicata* because Holdings retained a right to appeal the Nevada District Court's summary ruling, and Holdings' own affirmative statements did not judicially estop them from proceeding, I similarly would conclude collateral estoppel would prevent Holdings from litigating the exact same issue before the Bankruptcy Court.

To apply collateral estoppel (issue preclusion) under Nevada law these elements are required:

[40] Doc. No. 421.
[41] Doc. No. 416 at 16-18.
[42] Doc. No. 416 at 18.

> (1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; . . . (3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation; and (4) the issue was actually and necessarily litigated.[43]

Here, each of the four factors are satisfied. Holdings' sole claim against the Debtor in the Nevada Litigation is the same exact claim of misappropriation of trade secrets asserted in its Claim 107, based on the same set of occurrences and facts, and involve Holdings and Debtor, the same parties in the Nevada Litigation. After a review of the competing motions for summary judgment, exhibits, and relevant Nevada law, the Nevada District Court concluded Holdings held no trade secrets the Debtor could misappropriate. The issue was actually and necessarily litigated.

"It is widely recognized that the finality requirement is less stringent for issue preclusion than for claim preclusion."[44] To be "final" for collateral estoppel purposes, a decision need not possess "finality" in the sense of 28 U.S.C. § 1291.[45] A "final judgment" under collateral estoppel can be any prior adjudication of an issue in another action determined to be "sufficiently firm" to be accorded conclusive effect.[46]

After extensive discovery, the parties submitted competing motions for summary judgment. The Honorable Judge Dorsey considered the issues and then entered her ruling. Holdings' possession of trade secrets therefore was fully adjudicated

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[43] *Five Star Cap. Corp.*, 194 P.3d at 713.
[44] *Garcia v. Prudential Ins. Co. of Am.*, 293 P.3d 869, 874 n.7 (Nev. 2013) (quoting *Christo v. Padgett*, 223 F.3d 1324, 1339 (11th Cir. 2000)).
[45] *Luben Indus., Inc. v. United States*, 707 F.2d 1037, 1040 (9th Cir. 1983) (citing *Miller Brewing Co. v. Jos. Schlitz Brewing Co.*, 605 F.2d 990, 996 (7th Cir. 1979); Restatement (Second) of Judgments § 13 (1982)).
[46] *Kirsch v. Traber*, 414 P.3d 818, 822-23 (Nev. 2018) (quoting Restatement (Second) of Judgments § 13 & cmt. g (1982)) ("A judgment is final within the context of issue preclusion if it is 'sufficiently firm' and 'procedurally definite' in resolving an issue.").

and "sufficiently firm" for purposes of collateral estoppel. Holdings is precluded from litigating the same issue in this bankruptcy action, as it would otherwise give Holdings a second bite at the apple.

And, even if neither *res judicata* nor collateral estoppel applied, after reviewing the pleadings, I *again* would enter the exact same summary judgment against Holdings on virtually identical grounds as the Nevada District Court. Debtor has proven no factual disputes exist that would preclude summary judgment against Holdings as a matter of law. Holdings has no independent, non-derivative trade secret which the Debtor could misappropriate. So, under any legal theory, Holdings has no claim against the Debtor. Period.

Acquisition's Claim 105 is Barred by the Statute of Limitations

In Debtor's Motion for Summary Judgment,[47] Debtor argues Acquisition's claim is barred by Nevada's applicable statute of limitations. In response, Acquisition requests summary judgment,[48] arguing it possesses Aerodynamics' claims for misappropriation of trade secrets through derivative claims of Aerodynamics and the transfer of Aerodynamics' claims to Acquisition under the stock purchase agreement dated May 6, 2015.[49]

Acquisition, even assuming it held any trade secrets, is barred from asserting a claim against the Debtor under Nevada's statute of limitations governing trade secret claims. Under Nevada law, an action for misappropriation of trade secrets "must be

[47] Doc. No. 415.
[48] Doc. No. 417.
[49] Ex. 1 of John Beardsley's Declaration attached to Acquisition's Mot. for Summ. J., Doc. No. 417-2.

brought within 3 years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered."[50]

Acquisition acquired its subsidiary, Aerodynamics, through a Stock Purchase agreement on May 6, 2015.[51] Approximately two months later, Aerodynamics filed its claim for misappropriations of trade secrets against the Debtor on July 15, 2015.[52] But, Acquisition was not a party to the lawsuit; Holdings was. Acquisition necessarily knew of its subsidiary's claim for misappropriations at the latest on July 15, 2015.

Acquisition's first assertion for misappropriation of trade secrets against the Debtor was on January 31, 2020, the date Acquisition filed Claim 105 in this bankruptcy. This was over three years after the latest possible date of discovery of the misappropriation claim; thus, any claims for misappropriation of trade secrets against the Debtor are time barred under Nevada's statute of limitations law.

Acquisition then confirms it is asserting a derivative claim for its former subsidiary, Aerodynamic, but Aerodynamics failed to timely file a proof of claim. The bar date for creditors with a claim arising before the petition date was February 1, 2020. Because Aerodynamics is barred from asserting any claim in this bankruptcy, so is Acquisition.

Acquisition next argues its Stock Purchase Agreements for the purchase of Aerodynamics shares and their later sale to Carlsbad-Palomar Airlines, Inc. somehow gives them standing to assert Aerodynamics barred claim. There is simply no

[50] Nevada Revised Statute § 600A.080.
[51] Ex. 1 of John Beardsley's Declaration attached to Acquisition's Mot. for Summ. J., Doc. No. 417-2.
[52] Compl., *Aerodynamics Inc. v. Caesars Ent. Operating Co.*, No.: 2:15-cv-1344 (D. Nev. July 16, 2015), Doc. No. 1.

remaining claim to assign. Aerodynamics claim is forever barred as is any derivative claim by a former shareholder.[53] Claims 105 and 107 are disallowed

The Debtor's Motions for Summary Judgment are granted. Both Claims 105 and 107 are disallowed in their entirety. Holdings' and Acquisition's Motions for Summary Judgment are denied. The only remaining issue is whether the claims were so frivolous, baseless, and abusive to justify an award of attorneys' fees to compensate the Debtor for its legal work.

Fee Shifting Request

The Debtor seeks recovery of its attorneys' fees for bad faith and frivolous filings under § 18.010 of the Nevada Revised Statutes.[54] In their Cross Motions for Summary Judgment, Holdings and Acquisition contend filing their proofs of claims were made in good faith and on reasonable grounds. I cannot agree.

Under Nevada's fee-shifting statute, a party may recover attorney's fees "(b) when the court finds that the claim . . . was brought or maintained without reasonable ground or to harass the prevailing party."[55] Courts are directed to "liberally construe" the statute and shift fees "in all appropriate situations."[56]

In a similar case decided by the Nevada Bankruptcy Court, *In re Antonia Andrade-Garcia*, Bankruptcy Judge Landis analyzed this statute and awarded fees for an abusive prosecution of a stale, time-barred claim.[57] In shifting the fees to the

[53] Ex. 1 of John Beardsley's Declaration attached to Acquisition's Mot. for Summ. J., Doc. No. 417-2.
[54] The Debtor also seeks fees under § 6004.060 of the Nevada Revised Statutes. The Nevada District Court already has declined to assess fees under this statute, and I similarly decline to address any further fees under § 6004.060 of the Nevada Revised Statutes.
[55] Nevada Revised Statute § 18.010(2)(b).
[56] Nevada Revised Statute § 18.010(2)(b).
[57] *In re Antonia Andrade-Garcia*, 627 B.R. 158 (Bankr. D. Nev. 2021).

creditor, the Honorable Judge Landis opined that, consistent with the statute, pursuit of frivolous, baseless and time-barred claims "overburdens the limited judicial resources of this Court, hinders the timely resolution of meritorious claims, and increases the costs of professional services."[58]

Here, we have almost the exact same scenario. Both Acquisition and Holdings are asserting duplicative, derivative claims of their former subsidiary, Aerodynamics, which failed to timely file a claim. Any claim is forever barred under the Discharge Injunction.

But, even if you ignore that hurdle, the Nevada District Court already had finally ruled on the merits that Holdings had no claim against the Debtor for misappropriation of trade secrets, and the doctrine of *res judicata* or collateral estoppel precludes relitigation. And Acquisition never asserted a claim against the Debtor until January 31, 2020, well after any statute of limitations had expired.

The Court cannot understand why the Claimants continued to prosecute clearly specious claims. They had time to withdraw their claims before summary judgment motions were filed. The Court sent them to mediation to find a graceful solution. But Claimants persisted in their prosecution, even though the claims are baseless, frivolous, and brought without reasonable ground.

Under § 18.010(b) of the Nevada Revised Statutes, I will grant the Debtor's request and award reasonable attorneys' fees and costs incurred in rebuffing Holdings'

[58] *Id*. at 169.

and Acquisition's claims in this bankruptcy case.[59] The award is joint and several against both Claimants *and* each attorney and their firm who signed the pleadings filed by Holdings or Acquisition.

Accordingly, it is

ORDERED:

1. Debtor's Motion for Summary Judgment (Doc. No. 415) is granted.
2. Acquisition's Motion for Summary Judgment (Doc. No. 417) is denied.
3. Holdings' Motion for Summary Judgment (Doc. No. 416) is denied.
4. Debtor's Objections to Claims 105 and 107 (Doc. Nos. 404 and 403) are sustained.
5. Claims 105 and 107 are disallowed in their entirety.
6. Holdings, Acquisition, *and* the counsel and their firms who signed Claims 105 or 107 or any pleadings relating to the prosecutions of these claims, including Holdings' and Acquisition's Motions for Summary Judgment, are jointly and severally liable to reimburse all bankruptcy related attorneys' fees and costs incurred by Debtor in opposing Claims 105 and 107.
7. By **October 1, 2021**, Debtor's counsel shall file an Affidavit and attaching billable time records or invoices detailing the requested fees and costs. Any party shall file an objection, if desired, no later than **October 15, 2021**. If no timely objection is filed, Debtor shall submit an order awarding the

[59] The fees and costs are limited to *ONLY* those reasonably incurred in this bankruptcy case, not those associated with the Nevada Litigation, which the Nevada District Court previously declined to award.

requested fees and costs. The Court will set a further hearing if a timely objection is filed.

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Attorney Daniel A. Velasquez will serve a copy of this order on all interested parties and file a proof of service within 3 days of entry of the order.