

Dated: February 20, 2020



Brenda Moody
Brenda Moody Whinery, Chief Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re:
DAVID K. CROWE and COLLEEN M. CROWE,

Debtors.

Chapter 11 Proceeding
Case No. 4:19-bk-04406-BMW

TURBINE POWERED TECHNOLOGY, LLC,

Plaintiff,

Adversary Case No. 4:19-ap-00260-BMW

v.
DAVID K. CROWE and COLLEEN M. CROWE,

Defendants.

RULING AND ORDER RE: MOTION TO POSTPONE RULING ON MOTION FOR PARTIAL SUMMARY JUDGMENT (COUNTS I-III)

This matter came before the Court pursuant to the *Motion to Postpone Ruling on Motion for Partial Summary Judgment (Counts I – III)* (the “Motion to Postpone”) (Dkt. 28) and attached *Declaration of Ted L. McIntyre II in Support of Request for Denial or Continuance of Summary Judgment Under FRCP 56(d)* (Dkt. 28 at Ex. A) and *Declaration of Chelsea R. Thompson in Support of Request for Denial or Continuance of Summary Judgment Under FRCP 56(d)* (Dkt. 28 at Ex. B) filed by the Plaintiff, Turbine Powered Technology, LLC (“TPT”), on December 20, 2019; the *Response to TPT’s Motion to Postpone Ruling on Motion for Partial Summary Judgment* (Dkt. 38) filed by the Defendants, David and Colleen Crowe (the “Debtors”), on

1 January 10, 2020; and all pleadings related thereto.

2 Based upon a review of the record, the Court deems this matter suitable for disposition
3 without a hearing,¹ argument, or further briefing.

4 **I. Jurisdiction**

5 The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C.
6 §§ 157(b)(2)(B), 157(b)(2)(I), 157(b)(2)(J), and 1334. The Debtors have consented to this Court’s
7 jurisdiction to enter final orders and judgments. When TPT filed its proof of claim, it voluntarily
8 submitted itself to the jurisdiction of this Court. *Langenkamp v. Culp*, 498 U.S. 42, 44, 111 S. Ct.
9 330, 331, 112 L. Ed. 2d 343 (1990); *see also Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 58-
10 59 and n. 14, 109 S. Ct. 2782, 2799-2800 and n.14, 106 L. Ed. 2d 26 (1989). TPT has also
11 conceded that it has submitted to this Court’s jurisdiction. (*See* Dkt. 1; 1/22/2020 Hearing Tr.
12 25:11-19).

13 **II. Factual Background & Procedural Posture**

14 On April 12, 2019 (the “Petition Date”), the Debtors filed a voluntary petition for relief
15 under chapter 11 of the Bankruptcy Code.

16 On July 16, 2019, TPT filed a disputed, contingent, unliquidated proof of claim in the
17 administrative bankruptcy case, to which the Debtors have objected. (Admin. Dkt. Proof of Claim
18 12-1; Admin. Dkt. 176).²

19 On July 22, 2019, TPT filed the complaint against the Debtors that commenced this
20 adversary proceeding. (Dkt. 1). The complaint alleges that TPT’s claims are non-dischargeable
21 pursuant to §§ 523(a)(2)(A), 523(a)(4), 523(a)(6), and 727(a)(4) of the Code³ and asks the Court
22 to enter a non-dischargeable judgment in TPT’s favor in the sum of not less than \$30,014,536.82,
23 plus interest of 10% per annum. (Dkt. 1).

24 The claims asserted by TPT in this case arise from the same facts as asserted by TPT in a
25 pre-petition action pending before the 16th Judicial District Court for the Parish of St. Mary in

26 ¹ The Court will note that a hearing on the Motion to Postpone was never requested.

27 ² References to the “Admin. Dkt.” are references to docket entries on the administrative docket, case
28 number 4:19-bk-04406-BMW, of which the Court will take judicial notice.

³ Unless otherwise indicated, statutory references are to the Bankruptcy Code, title 11 of the United
States Code.

1 Louisiana in which TPT has alleged, among other things, breach of contract, breach of fiduciary
2 duty, tortious interference with a business relationship, and violations of the Louisiana Uniform
3 Trade Secrets and Unfair Trade Practices Act (the “Louisiana State Court Action”).

4 On August 21, 2019, the Debtors filed their answer to the complaint. (Dkt. 2).

5 On October 24, 2019, the Court held an initial scheduling conference at which time the
6 Court opened discovery to both parties. (10/24/2019 Hearing Tr. 50:4-8).

7 On November 13, 2019, the Debtors filed a *Motion for Partial Summary Judgment (Count*
8 *I – III)* (the “Motion for Partial SJ”) (Dkt. 18), in which they ask the Court to grant summary
9 judgment in their favor on the basis that TPT has failed to describe its alleged trade secret with
10 sufficient particularity. The Debtors believe that if the Motion for Partial SJ is granted in their
11 favor, TPT will not have a claim in the bankruptcy case and this adversary proceeding will be
12 largely, if not entirely, resolved.

13 On December 20, 2019, TPT filed the Motion to Postpone, in which it asks the Court to
14 postpone ruling on the Motion for Partial SJ on the basis that Debtor David Crowe has failed to
15 comply with TPT’s discovery requests⁴ and TPT needs to conduct discovery in order to prepare
16 a meaningful response to the Motion for Partial SJ. The Debtors have objected to the Motion to
17 Postpone on the basis that until TPT has presented a prima facie case, discovery is not
18 appropriate. (Dkt. 38).

19 On December 20, 2019, TPT also filed the *Response to Motion for Partial Summary*
20 *Judgment (Counts I-III)* (the “Response”) (Dkt. 30). On January 10, 2020, the Debtors filed the
21 *Reply to Motion for Partial Summary Judgment (Counts I-III)* (the “Reply”) (Dkt. 37). Oral
22 argument has been requested by the Debtors.

23 TPT’s Response and TPT’s controverting statement of facts rely on documents that TPT
24 asserted it would seek to file under seal. (*See* Dkts. 30 & 31). However, although TPT filed the
25 *Amended Motion to File Confidential Information and Documents Under Seal* (the “Motion to
26 File Under Seal”) (Dkt. 33) on January 3, 2020, TPT has not taken appropriate steps to pursue

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28 ⁴ The Motion to Postpone suggests that TPT has not actually propounded any discovery requests on
Debtor David Crowe. Rather, TPT takes issue with unanswered discovery requests propounded in the
State Court Case, which case is stayed as to Debtor David Crowe by the bankruptcy case.

1 that motion. (*See* Dkts. 47; 1/22/2020 Hearing Tr. 49:19-57:18)). There is nothing in the Motion
2 to File Under Seal that suggests TPT does not possess the information that it thinks necessary to
3 defeat the Motion for Partial SJ. In TPT’s controverting statement of facts, TPT expressly
4 represents that it “has recaptured its trade secrets and will, with leave of this Court, file those
5 documents under seal in order to maintain the secrecy of the trade secrets and proprietary
6 information.” (Dkt. 31 at 5). Further, counsel for TPT has represented to the Court that TPT is
7 prepared to provide sufficient documentation to this Court regarding its alleged trade secrets.
8 (1/22/2020 Hearing Tr. 34:4-11).

9 Although TPT has filed a motion to abstain, asking the Court to abstain from, or in the
10 alternative, stay this proceeding to allow the Louisiana State Court to liquidate TPT’s claims, the
11 Court has denied such motion. (Dkt. 52).

12 **III. Legal Analysis**

13 Pursuant to Federal Rule of Civil Procedure 56(d) (“Rule 56(d)”), as incorporated by
14 Federal Rule of Bankruptcy Procedure 7056:

15 If a nonmovant shows by affidavit or declaration that, for specified
16 reasons, it cannot present facts essential to justify its opposition,
the court may:

- 17 (1) defer considering the motion or deny it;
18 (2) allow time to obtain affidavits or declarations or to take
discovery; or
19 (3) issue any other appropriate order.

20 A party seeking to delay summary judgment pursuant to Rule 56(d) on the basis that
21 additional discovery is needed “bears the burden of proffering facts sufficient to satisfy the
22 requirements of [Rule] 56(d).” *Martinez v. Columbia Sportswear USA Corp.*, 553 F. App’x 760,
23 761 (9th Cir. 2014). In order to satisfy this burden, the movant “must state ‘what
24 other *specific* evidence it hopes to discover [and] the relevance of that evidence to its
25 claims.’” *Stevens v. Corelogic, Inc.*, 899 F.3d 666, 678 (9th Cir. 2018), *cert. denied*, 139 S. Ct.
26 1222, 203 L. Ed. 2d 208 (2019) (quoting *Program Eng’g, Inc. v. Triangle Publ’ns, Inc.*, 634 F.2d
27 1188, 1194 (9th Cir. 1980)). “In particular, ‘[t]he requesting party must show [that]: (1) it has set
28 forth in affidavit form *the specific facts* it hopes to elicit from further discovery; (2) the facts

1 sought exist; and (3) the sought-after facts are essential to oppose summary judgment.” *Id.*
2 (quoting *Family Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortg. Corp.*, 525 F.3d 822, 827 (9th
3 Cir. 2008)).

4 When faced with a Rule 56(d) motion, courts consider: (1) “whether the movant had
5 sufficient opportunity to conduct discovery[;]” (2) “whether the movant was diligent[;]”
6 (3) “whether the information sought is based on mere speculation[;]” and (4) “whether allowing
7 additional discovery would preclude summary judgment.” *Martinez*, 553 F. App’x at 761.

8 As a preliminary note, the Motion for Partial SJ challenges TPT to set forth its prima facie
9 case by identifying its asserted trade secrets with sufficient particularity, and “a party may be
10 required to identify its trade secrets with reasonable particularity before it can take discovery.”
11 *BioD, LLC v. Amnio Tech., LLC*, No. 2:13-CV-1670-HRH, 2014 WL 3864658, at *4 (D. Ariz.
12 Aug. 6, 2014). Further, TPT has represented to the Court that it is in a position to produce
13 documents regarding its trade secret.

14 Additionally, the Court has opened discovery to both parties, and there is nothing on the
15 docket that indicates TPT has propounded any discovery on the Debtors in the context of this
16 adversary. To the contrary, the record indicates that TPT has delayed in prosecuting this
17 adversary, by, among other things, failing to propound discovery and failing to file the documents
18 it alleges define its trade secret.

19 Moreover, neither of the declarations TPT filed in support of its Motion to Postpone
20 satisfy the Rule 56(d) standard because neither of the declarations set forth any specific facts that
21 TPT alleges it must discover in order to present a prima facie case or oppose the Motion for
22 Partial SJ.

23 **IV. Conclusion**

24 Wherefore, based upon the foregoing, upon consideration of the entire record, and for
25 good cause shown;

26 **IT IS HEREBY ORDERED** that the Motion to Postpone is denied.

27 **DATED AND SIGNED ABOVE.**