

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

AVCO CORPORATION,	:	Case No. 4:12-cv-01313
	:	
Plaintiff	:	(Judge Brann)
	:	
v.	:	
	:	
PRECISION AIRMOTIVE LLC,	:	
	:	
Defendant and	:	
Counterclaim Plaintiff	:	
	:	
v.	:	
	:	
AVSTAR FUEL SYSTEMS, INC.,	:	
	:	
Counterclaim	:	
Defendant.	:	

MEMORANDUM

September 19, 2013

For the reasons that follow, the Court denies counterclaim defendant AVStar Fuel Systems, Inc.’s (hereinafter, “AVStar”) January 2, 2013 motion to dismiss counterclaims (ECF No. 63), but stays proceedings in this Court with respect to those counterclaims.

I. Background

Plaintiff AVCO Corp. (hereinafter, “AVCO”) commenced this action by

filing a complaint on July 6, 2012, asserting various claims against defendant Precision Airmotive LLC (hereinafter, “Precision”) – defamation (count I), product disparagement (count II), tortious interference with contractual relations (count III) – and seeking declaratory relief and the cancellation of several trademarks. (Compl., ECF No. 1).

AVCO asserts that it (acting through its unincorporated Lycoming Engines division (hereinafter, “Lycoming”)) is a manufacturer and seller of aircraft engines. (Compl. ¶ 8). Its engine designs are “type certificated,” meaning that they have been approved by the Federal Aviation Administration (hereinafter, “FAA”). A fuel injection system (also known as a “servo”) is a component part of many of AVCO’s designs, (Id. ¶ 10), and AVCO designates servos appropriate for installation in its engines by codes of the form RSA-10ED1, with each component of the code (i.e., “RSA,” “10,” “E,” “D,” “1”) describing an aspect of the servo. (Id. ¶¶ 11-17). AVCO calls these codes “model designations.” Each model designation corresponds to an AVCO part number associated with AVCO’s engine design. (Id. ¶ 18). As the type certificate holder for its engines, AVCO is entitled by law to delegate the manufacture of parts (including servos) for its engines to outside suppliers, and has selected two such suppliers for this purpose – defendant Precision and AVStar. (Id. ¶¶ 19-20).

AVCO alleges that Precision has engaged in a wrongful campaign “to obtain a monopoly” in the servo supply market by “attempting to prevent Lycoming from using any suppliers other than” Precision, and by registering and seeking to enforce the trademark of the model designations. (Id. ¶¶ 25-26). In particular, Precision has been misrepresenting to AVCO customers that AVStar servos are counterfeit; that Precision is the only manufacturer of the RSA-model designated servos; that Precision’s servos incorporate patented technology; that other manufacturers of the servos are infringing on Precision’s trademarks; and that servos from other manufacturers carry a safety risk. (Id. ¶¶ 27-40).

Precision answered on September 10, 2012 (ECF No. 16) (hereinafter, “Answer”), denying liability and asserting counterclaims against AVCO and newly joined counterclaim defendant AVStar: trademark infringement (count I), unfair competition under the Lanham Act (count II), unfair competition under Pennsylvania law (count III), breach of contract (count IV against AVCO only), tortious interference with contractual relations (count V against AVStar only), and tortious interference with prospective contractual relations (count VI).

Precision asserts that it and its predecessors-in-interest have for several decades been the “sole and exclusive source of fuel injection servos” bearing the model numbers beginning with RS and RSA. (Answer ¶¶ 8-13). In 2010, Precision

registered nine such model numbers (all beginning “RSA”) as trademarks. Precision claims that “[t]here has never been a time, prior to the recent infringement by [AVCO] and AVStar, when anyone in the industry used the RSA Marks to refer to fuel injection servos manufactured by a source other than Precision” or its predecessors. (Id. ¶ 13).

Precision alleges that AVStar, after years in the overhaul and replacement parts business, recently entered into direct competition with Precision by manufacturing new servos. (Answer ¶¶ 14-15). In order to attract customers away from Precision, AVStar has been placing Precision’s RSA marks on AVStar servos. (Id. ¶ 16). The strategy has succeeded. AVCO informed Precision that it was cancelling numerous existing orders from Precision to purchase from AVStar instead. (Id. ¶ 18).

But AVCO is not just an innocent purchaser, according to Precision. Rather, it “instructed, knew about, or otherwise was involved in AVStar’s decision to use the RSA marks,” and has referred to AVStar servos by their RSA marks in the documentation associated with its engines. (Id. ¶¶ 19-20). It has done this because it, along with AVStar “consciously desired and intended to use the RSA Marks for the purpose of associating AVStar’s new fuel injection servos with the decades of goodwill associated with the RSA Marks, which goodwill belongs to Precision.”

(Id. ¶ 21).

On September 24, 2012, AVCO moved to strike Precision's answer and counterclaims for failure to comply with the Federal Rules of Civil Procedure. (ECF No. 35). On May 10, 2013, this Court largely denied that motion, but did dismiss Precision's tortious interference with contractual relations counterclaim against AVStar (count V) for being improperly joined. (See ECF No. 69). That left four counterclaims against AVStar: trademark infringement (count I), unfair competition under the Lanham Act (count II), unfair competition under Pennsylvania law (count III), and tortious interference with prospective contractual relations (count VI).

On January 2, 2013, AVStar briefed a motion to dismiss the remaining counterclaims against it. (ECF No. 64). Precision submitted a brief in opposition on January 22, 2013 (ECF No. 65), and AVStar replied on February 7, 2013 (ECF No. 66). This motion is now ripe for disposition.

II. The Motion is Denied; Proceedings respecting Precision's Counterclaims are Stayed.

First, some more history. AVStar has, until recently, been in bankruptcy, having filed a voluntary petition under Chapter 11 of the Bankruptcy Code on May 10, 2010, in the Southern District of Florida. (See AVStar Ex., ECF No. 63-5). On

September 22, 2010, Precision filed a proof of claim in the United States Bankruptcy Court for the Southern District of Florida (hereinafter, the “bankruptcy court”) against AVStar for an amount not less than \$3 million, asserting many of the theories now pursued in this Court – i.e., trademark infringement, unfair competition, false description, dilution by blurring or tarnishment, trademark imitation, and common law injury to business reputation. (See id., ECF No. 63-8). AVStar objected to the claim on November 24, 2010 (see id., ECF No. 63-10), and the bankruptcy court – having received no response from Precision and adjudging AVStar’s objection “fair and reasonable” – disallowed Precision’s claim on February 2, 2011 (see id., ECF No. 63-11). This apparently ended Precision’s active participation in the bankruptcy proceeding.

A year-and-a-half later, on September 10, 2012, while AVStar’s plan of reorganization (hereinafter, “the plan”) was proceeding towards confirmation in the bankruptcy court, Precision asserted its counterclaims against AVStar in this case. Two months later, on November 14, 2012, the bankruptcy court confirmed AVStar’s plan (id., ECF No. 63-13), and the bankruptcy case was closed on December 27, 2012 (id., ECF No. 63-14).

In its order confirming the plan (hereinafter, the “confirmation order”), the bankruptcy court permanently enjoined “all Persons who have held, hold or may

hold Claims [against AVStar]”¹ from “commencing or continuing in any manner any action or other proceeding of any kind with respect to any such Claim” on and after the plan’s effective date.² (Id., ECF No. 63-13 ¶ 15). The confirmation order also provided for the discharge of all claims against AVStar “based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the [plan’s] Effective Date in any way relating to [AVStar], the Chapter 11 case or the conduct thereof, or [the] Plan.” (Id. ¶ 16). The confirmation order clarified, however, that “nothing . . . shall release” AVStar from “any Claim or causes of action for gross negligence or willful misconduct.” (Id.). Finally, the confirmation order retained in the bankruptcy court “exclusive jurisdiction over all matters arising out of, and related to, the Bankruptcy Case and the Plan to the fullest extent [sic] permitted by law.” (Id. ¶ 20).

These provisions of the confirmation order largely mirror provisions of bankruptcy law. Under the Bankruptcy Code, as a general matter, “the confirmation of a plan . . . discharges the debtor from any debt that arose before the

¹The bankruptcy court capitalized terms that were defined in the plan. (Id. n.1).

²For purposes of the Bankruptcy Code and the plan, a “claim” is defined, in relevant part, as a “right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.” 11 U.S.C. § 101(5).

date of such confirmation . . . whether or not . . . proof of the claim based on such debt is filed or deemed filed under section 501 of this title; . . . such claim is allowed under section 502 of this title; or . . . the holder of such claim has accepted the plan.”³ 11 U.S.C. § 1141(d). As for the power of the bankruptcy court, “the district courts . . . have original but not exclusive jurisdiction of all civil proceedings arising under title 11 [i.e., the Bankruptcy Code], or arising in or related to cases under title 11,” and “may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.” See 28 U.S.C. §§ 157 & 1334.

All of which brings the Court to the present juncture, with AVStar making a number of ungainly arguments for dismissal of Precision’s counterclaims. In essence, AVStar first argues that “only the bankruptcy court has exclusive jurisdiction to determine the permissibility of [Precision’s] claims against AVStar” (see AVStar Supp. Br., Jan. 2, 2013, ECF No. 64, at 11 (hereinafter, “AVStar Supp. Br.”)); second, that Precision’s counterclaims are “barred by the bankruptcy court’s final injunction” (id.); and third, that Precision is barred, by force of res

³For purposes of the Bankruptcy Code, “debt” is defined as “liability on a claim.” 11 U.S.C. § 101(12).

judicata and the bankruptcy discharge, from litigating claims “predicated on pre-confirmation activity that could have been raised prior to confirmation”(id. at 14; AVStar Reply Br., Feb. 7, 2013, ECF No. 66, at 4-7 (hereinafter, “AVStar Reply Br.”)). Accordingly, AVStar contends, Precision’s counterclaims should be dismissed in their entirety.

Precision offers several arguments in response. To AVStar’s assertion that only the bankruptcy court has jurisdiction over Precision’s counterclaims, Precision answers that its allegations involve “ongoing trademark infringement and other tortious conduct” that postdates confirmation of the plan and is not “related to” the bankruptcy case or the plan, and thus is not subject to the bankruptcy court’s jurisdiction. (See Precision Opp’n Br., Jan. 22, 2013, ECF No. 65, at 5-8 (hereinafter, “Precision Opp’n Br.”)).⁴ To AVStar’s assertion that Precision’s counterclaims are precluded by the confirmation order’s discharge and injunction provisions, Precision answers that its counterclaims allege “willful misconduct,” and thus were explicitly not released in the confirmation order. (See Precision Opp’n Br., at 5). To AVStar’s assertion that res judicata bars Precision’s counterclaims, Precision answers that res judicata precludes neither post-

⁴Precision makes additional arguments on the issue of jurisdiction (Precision Opp’n Br., at 4-5), but these do not merit discussion.

petition/pre-confirmation claims based on AVStar’s “willful misconduct,” nor post-confirmation conduct (id. at 11-13), and that there is no bar to pre-confirmation conduct serving as the basis for injunctive relief (id. at 10-11).

a. Subject Matter Jurisdiction

Although on different sides of the issue, both parties assume that subject matter jurisdiction in this case is an either/or proposition – that is, either this Court or the bankruptcy court has jurisdiction over Precision’s counterclaims, but not both. The Court disagrees.

No party seriously disputes that this Court has jurisdiction over Precision’s counterclaims pursuant to 15 U.S.C. § 1121 (trademark jurisdiction), 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1332 (diversity jurisdiction), 28 U.S.C. § 1338 (intellectual property jurisdiction), and 28 U.S.C. § 1367 (supplemental jurisdiction). For AVStar to be correct in its argument that this Court ultimately lacks jurisdiction, AVStar’s bankruptcy proceeding must have worked to strip this Court of these otherwise valid sources of power.

Jurisdiction over bankruptcy cases and related proceedings is provided for in 28 U.S.C. § 1334, which says, in relevant part:

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

Cases reach the bankruptcy courts because, pursuant to 28 U.S.C. § 157(a), “[e]ach district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.”

When Precision filed its counterclaims in this Court, the United States Bankruptcy Court for the Southern District of Florida had already asserted jurisdiction over AVStar’s bankruptcy case, and Precision’s counterclaims commenced “proceedings . . . related to” that case. Thus, Precision’s counterclaims fell within the jurisdiction of the bankruptcy court. The bankruptcy court’s jurisdiction over the counterclaims did not, however, strip this Court of jurisdiction.

In Mar. Elec. Co., Inc. v. United Jersey Bank, 959 F.2d 1194 (3d Cir. 1991), the United States Court of Appeals for the Third Circuit (hereinafter, the “Third Circuit”) reasoned that “§ 1334(b) does not confer ‘related to’ jurisdiction only upon the specific district court presently exercising jurisdiction over a particular

bankruptcy case ‘under title 11.’ Instead, the district courts generally enjoy § 1334(b)’s grant of ‘related to’ bankruptcy jurisdiction. All district courts are empowered by the statute to hear cases ‘related to’ specific bankruptcies pending in other district courts.” Mar. Elec. Co., 959 F.2d at 1211-12. Thus, rather than strip this Court of jurisdiction, “§ 1334(b) [is] an additional basis” for this Court’s subject matter jurisdiction. Id. at 1211 (emphasis in original).

To the extent AVStar posits that the bankruptcy court’s retention of “exclusive jurisdiction” over “all matters . . . related to . . . the Bankruptcy Case” (AVStar Ex., ECF No. 63-13 ¶ 20) strips this Court of jurisdiction, the argument is unavailing. “[N]either the bankruptcy court nor the parties can write their own jurisdictional ticket.” In re Resorts Int’l, 372 F.3d 154, 161 (3d Cir. 2004). Rather, “[i]f there is no jurisdiction under 28 U.S.C. § 1334 or 28 U.S.C. § 157, retention of jurisdiction provisions in a plan of reorganization . . . are fundamentally irrelevant.” Id. As applied here, the bankruptcy court was without power to assert “exclusive jurisdiction” over matters related to the bankruptcy case when its statutory grant of jurisdiction is explicitly “not exclusive.” 28 U.S.C. § 1334(b). Thus the bankruptcy court’s retention of jurisdiction in the confirmation order is “fundamentally irrelevant” to this Court’s power to hear this case.

The Court notes that AVStar’s real problem seems to be not with this

Court's jurisdiction, but with the venue Precision has chosen for its counterclaims. While this Court is a proper forum in light of Precision's assertion that it seeks relief only in relation to AVStar's post-petition conduct, see 28 U.S.C. § 1409(e), the Court is sympathetic to AVStar's displeasure since "it may be argued forcefully that the federal bankruptcy laws tend to focus all bankruptcy related matters in a single bankruptcy court." Mar. Elec. Co., 959 F.2d at 1212 (internal quotation marks omitted). Had AVStar moved for a change of venue under 28 U.S.C. § 1412, which provides that a "district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties," relief may have been warranted. As it is, however, AVStar's motion to dismiss on the ground that this Court lacks jurisdiction over Precision's counterclaims must be denied.

b. The Automatic Stay

At this juncture, the Court digresses to determine the important issue of whether Precision's counterclaims were filed in violation of the automatic stay.⁵

⁵In addition to having jurisdiction generally, this Court may determine the applicability of the automatic stay to Precision's counterclaims. See Brock v. Morysville Body Works, Inc., 829 F.2d 383, 387 (3d Cir. 1987) (quoting In re Baldwin-United Corp. Litig., 765 F.2d 343, 347 (2d Cir. 1985)) ("The court in which the litigation claimed to be stayed is pending . . . 'has jurisdiction to determine not only its own jurisdiction but also the more precise question whether

AVStar’s filing of a bankruptcy petition in 2010 operated as “a stay, applicable to all entities, of,” among other things, “the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title,” as well as of “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.” 11 U.S.C. §§ 362(a)(1) & (3). In its briefing, AVStar asserts that Precision “knowingly and intentionally violated the automatic stay” when Precision filed counterclaims against AVStar while AVStar’s bankruptcy was ongoing. (AVStar Br., at 1). Notwithstanding this accusation of scoundrelly conduct, AVStar does not very forcefully maintain (if at all) that this constitutes grounds for dismissal, presumably because the stay had been lifted by the time AVStar filed its motion papers.⁶

The Court, however, does not believe that the eventual lifting of the

the proceeding pending before it is subject to the automatic stay.”)

⁶Precision nevertheless addressed the applicability of the automatic stay to its counterclaims in its opposition brief. (See Precision Opp’n Br., at 2-4).

automatic stay functions as a cure for Precision’s previous violation (if, that is, Precision indeed violated the stay, an issue analyzed infra). Mar. Elec. Co. again sets forth the controlling law, which is that “[a]bsent relief from the stay, judicial actions and proceedings against the debtor are void ab initio.” 959 F.2d at 1207. Thus, “the parties themselves [can]not validly undertake any judicial action material to [claims or counterclaims] against [the debtor]” in violation of the automatic stay. Id. As applied here, it seems beyond dispute that Precision’s filing of counterclaims against AVStar in this Court is a “judicial action material” to those very counterclaims. Accordingly, if Precision violated the automatic stay when it filed its counterclaims, then Precision’s act was void and of no effect, and any subsequent Court decisions with respect to the counterclaims were also void. See id.

Turning to the issue of whether Precision’s counterclaims did in fact violate the automatic stay, the Court looks to 11 U.S.C. § 362(a). Two provisions arguably make the stay applicable here. The first is § 362(a)(1), which stays “the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the

commencement of the case under this title.”

In light of Precision’s representation that its allegations relate to AVStar’s post-petition conduct, the Court holds that this provision does not stay Precision’s counterclaims. By its terms, this provision “is limited to actions that could have been instituted before the petition was filed or that are based on claims that arose before the petition was filed.” Bellini Imp., Ltd. v. Mason & Dixon Lines, Inc., 944 F.2d 199, 201 (4th Cir. 1991). Since Precision’s counterclaims are based on AVStar’s alleged post-petition trademark infringement and interference with contractual relations, the counterclaims are not stayed under § 362(a)(1). See also Hazelquist v. Guchi Moochie Tackle Co., Inc., 437 F.3d 1178, 1180 (Fed. Cir. 2006) (each act of infringement gives rise to a separate cause of action). But see In re Spansion, Inc., 418 B.R. 84 (Bankr. D. Del. 2009).

The second potentially applicable provision is § 362(a)(3), which stays “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.” Property of the estate includes, among other things, “all legal or equitable interests of the debtor in property as of the commencement of the case,” and “[a]ny interest in property that the estate acquires after the commencement of the case.” 11 U.S.C. § 541(a)(1) & (7). Property from the estate is property over which the estate has control or possession. In re St.

Clair, 251 B.R. 660, 664 (D.N.J. 2000). With slight hesitation, the Court ultimately concludes that § 362(a)(3) too does not stay Precision’s counterclaims.

The Court hesitates because, in substance, Precision’s counterclaims allege that AVCO and AVStar have taken wrongful possession of goodwill associated with Precision’s RSA marks. “[G]ood will is property,” Anne Gilson LaLonde, Gilson on Trademarks § 1.03[4] (Matthew Bender), and in In re Atl. Bus. & Cmty. Corp., 901 F.2d 325 (3d Cir. 1990), the Third Circuit stated broadly that the “mere possession of property . . . is sufficient to invoke the protections of the automatic stay” against efforts to obtain possession of, or exercise control over, such property. Id. at 328. Precision’s effort to enjoin AVStar’s alleged infringement⁷ is – it can be plausibly argued – in essence an attempt to repossess the goodwill associated with the RSA marks, and accordingly violates the stay.

The flaw in this line of reasoning is that it neglects a consequential distinction between the nature of the debtor’s possession of real estate in Atl. Bus. & Cmty. and AVStar’s alleged possession of Precision’s goodwill here. In Atl.

⁷Precision’s prayer for relief seeks an injunction prohibiting AVStar from “using the RSA Marks, or any name, mark, or other designation or symbol that is confusingly similar to the RSA Marks, to refer to or in connection with products manufactured by AVStar . . . or . . . competing unfairly with Precision Airmotive in any manner whatsoever.” (Answer, at 26-27).

Bus. & Cmty., the debtor was a tenant at sufferance when its bankruptcy case commenced. In other words, when the Third Circuit reasoned that “mere possession . . . is sufficient,” the facts of the case involved an equitable interest in property. When subsequent courts have been faced with the different situation of debtors claiming protection of the stay in relation to possessory interests that were not rightfully obtained, they have held that the stay offers no protection. See St. Clair, 251 B.R. at 667 (“[W]e hold that ‘property from the estate’ encompasses property in the possession or control of the trustee or the debtor-in-possession, but only to the extent the trustee or debtor-in-possession has a good-faith, colorable claim to possession or control of the property.”). Cf. In re Sielaff, 164 B.R. 560, 567 n.7 (Bankr. W.D. Mich 1994). But see In re Blaylock, 301 B.R. 443 (Bankr. E.D. Pa. 2003).

The Court recognizes that AVStar has not yet answered Precision’s counterclaims, and, of course, the Court will reconsider the applicability of the stay if, consistent with Fed. R. Civ. P. 11, AVStar makes assertions contrary to the Court’s expectations. With that caveat, the Court does not expect that AVStar will assert that it has a good-faith, colorable claim to possession of goodwill associated with Precision (acquired, for example, through a licensing agreement with Precision to use the RSA marks). Nor does the Court expect AVStar to assert that

the marks symbolized goodwill associated with AVStar, an assertion that would also give AVStar a good-faith, colorable claim to possession or control of the RSA marks. In the absence of these assertions, the Court concludes that the stay does not apply to Precision's counterclaims.

What the Court does expect is that AVStar will join AVCO in asserting that what Precision considers "RSA marks" are mere "model designations," an assertion that does not trigger the protection of the automatic stay against Precision's counterclaims. AVStar may have a generalized right to use combinations of letters and numbers to designate servo models, but this is not a property interest, see Restatement (First) of Property § 5 cmts. a & b (1936) (contrasting interests that "exist in a person merely because he is a member of society," with interests "which exist only in a particular person" and give that particular person rights, privileges, powers and immunities distinct from other members of society, the latter type of interest being the subject matter of property law), and the automatic stay only applies to Precision's efforts to "obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. § 362(a)(3).

c. Discharge & Injunction

Finally, the Court turns to the scope of the discharge ordered by the

bankruptcy court and, relatedly, the scope of the bankruptcy court’s injunction against claimants “commencing or continuing in any manner any action or other proceeding of any kind with respect” claims against AVStar.⁸ The Court offers no opinion on AVStar’s primary contention – that the discharge and injunction compel dismissal of Precision’s counterclaims. Rather, the Court here is substantially in agreement with AVStar’s subordinate argument – that “[i]f Precision Airmotive has any complaint with the Reorganization Plan’s permanent injunction then it should address such complaints in the bankruptcy court and not this court.” (AVStar Reply Br., at 11).

Albeit in a non-precedential opinion, the Third Circuit in In re Kaiser Aluminum Corp., 386 F. App’x 201, 204 (3d Cir. 2010), analyzed the implications of the United States Supreme Court’s decision in Celotex Corp. V. Edwards, 514 U.S. 300 (1995), explaining that Celotex “prevents collateral attacks on Bankruptcy Court injunctions.” Kaiser Aluminum, 386 F. App’x at 204. Contrasting Celotex with the circumstances before the circuit court in Kaiser, the

⁸Because it determines that this case should be stayed on other grounds, the Court does not analyze AVStar’s arguments with respect to res judicata. In any case, AVStar’s discussion of the bankruptcy discharge and res judicata is ultimately a melange (see AVStar Reply Br., at 4-6), so it is not entirely clear that AVStar intends res judicata to serve as an independent basis for dismissal.

circuit court continued:

Celotex involved a true collateral attack: the attack on the injunction proceeded through the federal courts in a different district and circuit (the Northern District of Texas and the Fifth Circuit) from the issuing court (the Bankruptcy Court for the Middle District of Florida). Here, while the California Suit is separate from the injunction's issuing court, we are reviewing a motion for enforcement of the injunction filed in its issuing court. Accordingly, it is not a collateral attack because the issuing court, not the collateral court, was asked to determine the scope of the injunction.

Had the California District Court attempted to determine the scope of the injunction, it would have been improper under Celotex. The proper course of action for the California District Court would be to stay the matter pending a ruling by the Bankruptcy Court issuing the injunction. See, e.g., Aqualine Assocs. L.P. v. Genesis Health Ventures, Inc., 96 Fed.Appx. 132 (4th Cir.2004) (unpublished).

Kaiser Aluminum, 386 F. App'x at 204. Here, having been asked to determine the application of the bankruptcy court's injunction to Precision's counterclaims, this Court is in the position of the California District Court in Kaiser Aluminum.

Accordingly, the proper course of action is to stay the counterclaims against AVStar pending a ruling by the bankruptcy court that issued the injunction, i.e., the United States Bankruptcy Court for the Southern District of Florida.

III. Conclusion

For the foregoing reasons, AVStar's motion to dismiss is denied.

Proceedings in this Court with respect to Precision's counterclaims against AVStar

are stayed pending a ruling by the United States Bankruptcy Court for the Southern District of Florida on the applicability of its discharge and injunction to those counterclaims.

An Order follows.

BY THE COURT:

s/ Matthew W. Brann
Matthew W. Brann
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

AVCO CORPORATION,	:	Case No. 4:12-cv-01313
	:	
Plaintiff	:	(Judge Brann)
	:	
v.	:	
	:	
PRECISION AIRMOTIVE LLC,	:	
	:	
Defendant and	:	
Counterclaim Plaintiff	:	
	:	
v.	:	
	:	
AVSTAR FUEL SYSTEMS, INC.,	:	
	:	
Counterclaim	:	
Defendant.	:	

ORDER

AND NOW, this 19th day of September, 2013, it is hereby ORDERED in accordance with the accompanying memorandum that:

1. AVStar's motion to dismiss Precision's counterclaims (ECF No. 63) is DENIED.
2. Proceedings in this Court with respect to Precision's counterclaims against AVStar are stayed pending a ruling by the United States Bankruptcy Court for the Southern District of Florida on the

applicability of its discharge and injunction to those counterclaims.

BY THE COURT:

s/ Matthew W. Brann
Matthew W. Brann
United States District Judge