Docket No. 13-56066

In the

United States Court of Appeals

For the

Ninth Circuit

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VINCENT TORES,

Debtor-Appellant,

v.

SANTA YNEZ BAND OF CHUMASH INDIANS

Appellees

Appeal from the 16 May 2013 Decision of the U.S. District Court Central Division
Hon. Judge Michael W. Fitzgerald, affirming the decision on appeal
From the United States Bankruptcy Court, Northern District
The Hon. Robin Riblet

[No. 212-CV-04513 MWF]

BRIEF OF APPELLANT

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Appellant Debtor In Pro Per

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I. INTRODUCTION

This case represents a glaring example of the reasons why sanctions and attorneys fees should be imposed for abuses of the judicial system. Although courts have extended a common law legal immunity to Indian tribes, it has been said that immunity doctrine is a legal anachronism that should be eliminated in this day and age.[1] In the case of abuses connected to Bankruptcy cases Congress has already abrogated that immunity for tribes that file claims in pending bankruptcy cases and in a case like this, cannot hide behind Indian tribal immunity to engage in a 12 year campaign to harass the Debtor/Appellant and extend and prolong litigation to pummel him into surrendering his rights and give up through sheer exhaustion.

[NOTE: all references to the paginated Clerks Transcript before the District Court will be in brackets with the initials CT followed by the page number where the reference can be found in that record.]

[1] Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc. [1998] 523 U.S. 752

SUMMARY OF FACTS AND PRIOR PROCEEDINGS

On or about the months of January and February 1999 the Santa Ynez Band of Mission Indians, their Chairman Alex Valencia and the Business Committee hired Appellant to construct a street lighting system along a series of roads and streets at tribal property in Santa Ynez, County of Santa Barbara, California . This was a fixed price contract for $740,000. Appellant had done work for the tribe before and had good relations with several tribal members.

The tribe had begun to prosper greatly from their profitable class III gaming casino which had been opened on tribal land but was not yet authorized by State Law.

Appellant began working on the street light project and as it progressed the Business Committee and Chairman began asking him to do other projects on tribal land including a storm drain system, road grading, building a parking lot for casino buses including a rip-rap wall and backfill to protect that lot from flood waters from the adjacent creek, clearing the entire length of the Sanja Cota Creek as it ran through tribal lands and removal of junk, old cars, refrigerators, car batteries and other miscellaneous items of trash and debris from the creek bed that had been used as a tribal

dump. Appellant was also hired to clean the shoulders of State Route 246 as it ran through tribal lands a distance of about 1 mile, install outside lighting on the casino and other improvement projects. [CT 1076 to 1078]

These improvements and major clean-up efforts were being made because California tribes were seeking to legalize casino gambling and the tribe and its government wanted the tribal land and casino area to look neat and clean. Appellant's arrangement with the tribal government for these other projects was each would be requested by the Chairman and Business Committee, what was ever work involved or need was discussed, the work was done, appellant presented invoices which were reviewed by the Business Committee and Chairman, then approved and paid.

Because of the success of the casino several estranged tribal members had moved back to the reservation, mostly from the large extended Armenta family. [Deposition of Gilbert Cash, CT 1056 to 1069]

In November of 1999 this family, the largest in the tribe, determined to take over the tribal government and using claims that Appellant was doing defective work, overcharging and conspiring with the then Chairman Alex Valencia and the Business Committee to improperly take tribal money. [CT 1056 to 1061], [CT 1063 to 1069], [CT 1048 to 1053] They launched an

effort to oust the existing Chairman Alex Valencia who resigned under duress.

In several heated intimidating meetings these Armenta family members [Armenta, Littlejohn, Mangueray, et. al.], had forced Chairman Valencia to resign and in December 1999 installed the current chairman Vince Armenta. To justify the claims used to depose Mr. Valencia, the new regime refused to pay Appellant for the outstanding invoices due him for work already completed. They also refused to allow him to complete the light project which was nearly completely done except for some writing and testing and refused to allow Appellant to retrieve equipment and materials left behind on tribal land.

Appellant's outstanding invoices totaled approximately $800,000 and he had outstanding debts to subcontractors and materialmen that he intended to pay when the tribe paid him. To continue the ruse which was used to depose the former Chairman, the new regime hired an out-of-state witness Mr. Northrop who worked for other Indian tribes as some kind of construction supervisor in the upper Midwest. He was hired by Appellees to inspect and find purported faults in Appellant's work.

Because Appellant insisted on being paid and to retrieve his equipment and materials still on site, Chairman Armenta had his cousin

Maxine Littlejohn write a letter to all tribal members falsely stating the amounts of money Appellant had been paid, some three million dollars and claimed Appellant committed some kind of a County Code violation for work done in an area of the Sanja Cota Creek where he was told to work by the tribe who told him it was tribal land and the Business Committee had requested that work be done to reclaim eroded land for a parking lot for the casino. Depositioni of Alex Valencia [CT 1010 to 1050]

As a part of the campaign to discredit Appellant the Tribal chairman solicited a vote by the entire tribe to ban Appellant from coming to the tribal land for any reason. after circulating a false and defamatory document entitled "Reason for banning Vince Torres." [CT 0849] and [CT 1063]

Next the Chairman Armenta instigated a lawsuit in the U.S. District Court in Los Angeles the sole basis of that lawsuit was the false claim Appellant was illegally living on the reservation. [CT 1090 to 1102] The tribal government knew where he lived, had been to his off reservation house on Roblar [CT 1047 to 1048] and [CT 1061] and even sent his termination letter to that address.

Appellant had to expend considerable money to defend himself in that suit and when the tribe lost a summary judgment motion seeking a federal

court order to ban Appellant from the reservation lands, they dismissed their federal lawsuit. [CT 1104 to 1106].

Based on that frivolous lawsuit Appellant filed a malicious prosecution action however the tribe successfully moved the State court to dismiss that suit on the grounds of tribal sovereign immunity from lawsuits and it was dismissed without any determination on the merits. That dismissal was upheld on appeal to the State Appellate Court, Second Appellant District, Division 6.

Meanwhile the tribal government and Chairman Armenta had their attorneys file a verified form complaint [CT 0165 to 0178] in State Superior Court alleging and swearing a variety of purported causes of action arising out of Appellant's prior work for the tribe. Included in these verified allegations was ***the claim the tribe had paid other contractors to correct Appellant's defective workmanship or complete that work***. One materialmen FAMCO Ripe sent their supervisor, a Mr. Ghia Castro in early 2000 to inquire of the new Tribal Chairman Vincent Armenta concerning payment of their invoice for drain pipe [CT 1271 to 1276] what he was told established animus toward Appellant.

On 27 December 2000 Appellee tribe filed a first amended verified complaint against alleging a variety of similar purported causes of action

including the claim they had paid other contractors to correct or complete Appellant's work.

In the mean time Appellant's unpaid subcontractors and materialmen put appellant's contracting business on a "cash and carry basis only" and rescinded credit accounts. Some began suing him and others were threatening lawsuits. On 22 May 2002 the tribe filed their second amended complaint. [CT 1424 to 1433]

Appellee tribe undertook an extensive discovery effort in connection with their pending state court action between January 2001 and August 2002 requiring Appellant and his attorney to travel to San Luis Obispo for several depositions. Appellant's business was largely depleted and his attorneys fees mounting, and Appellant was forced to borrow money against his home to live. When he ultimately couldn't make payments on his second trust deed and could not borrow further because of the several judgments against him by subcontractors and material suppliers, he could not pay because the tribe did not pay him, his credit was depleted and he faced foreclosure.

On 17 September 2002 Appellant had to file a petition for relief pursuant to Chapter 11 of the Bankruptcy Act.

On 2 December 2002 Appellee tribe then filed their $3,000,000 claim in Appellant's Chapter 11. Within days another purported creditor, Petrine

Mitchum, represented by the same attorneys as the tribe filed two additional frivolous claims against debtor totaling $320,000[2].

The $3,000,000 claim was signed by tribal chairman Vincent Armenta and stated it was for:

> **"Contract for Construction – Breached / caused Creditor Addt'l Expenses"**

There were no supporting documents, invoices, cancelled checks or any proof of any additional expenses or payments made to anyone. The Appellee tribe only attached a copy of the Second Amended Complaint filed in state court. Nearly two years went by and Appellees never made a Motion to lift the stay of the State court action until appellant hired Special Counsel James Marino who then filed an objection to the $3,000,000 proof of claim and scheduled the videotaped deposition of Chairman Armenta in connection with the claim he had filed. This deposition was scheduled after a thorough review of all the depositions previously taken in the State court case and the responses to interrogatories and requests for admissions.

[2] Both these claims were withdrawn later when a deposition of the creditor revealed they were also groundless.

It was apparent from that review there was no valid basis for the $3,000,000 claim or any part of it, so Appellant filed a verified objection to that claim. [CT 0014 to 0027]

In connection with that objection Appellant took the Deposition of Chairman Armenta who had signed and filed the $3,000,000 claim and had submitted the vague and non-responsive answers to interrogatories and responses to request for admissions in the State court action. [CT 00158 to 00161] At the deposition Chairman Armenta continued to evade and obfuscate and failed to provide any basis for the $3,000,000 claim [CT 0394 to 0403] and [CT 0423 to 0435] stating repeatedly he could not recall [some 57 times], the factual basis for the claim, had to consult with "documents" [26 times], documents which he did not know where they were. At the time he was served with the Notice of Deposition he was also served with a Notice to Produce all documents establishing monies paid to either complete work that Appellant had not completed or who and how much they had paid anyone to correct any work done incorrectly or defectively by Appellant. [CT 1140 to 1142] He produced nothing.

When Appellant's Chairman could not evade answering questions any more he and his attorneys abruptly walked out of the deposition. [CT 1185 to 1191]

Following that deposition Appellant made a second supplemental objection to the $3,000,000 claim adding to that objection the transcript of the deposition establishing there was no basis for the $3,000,000 claim filed in Bankruptcy.

It was at that point Appellees and their counsel then made their motion to Lift the existing stay of the State court action. [CT 0029 to 0028] The basis of that Motion was the claims that Appellant's Chapter 11 was filed in bad faith, the claims are non-dischargeable and can be most judiciously resolved in State court and other reasons. [CT 0030-0037]

Appellant opposed the lifting of the stay because the $3,000,000 claim filed in Appellant's chapter 11 could be simply resolved in the Bankruptcy Court given the complete lack of any evidence ever produced to support that claim or any part of it.

A hearing on the Motion to lift the stay was held on 28 September 2004.

The Bankruptcy Court granted the Motion to lift the stay and at the same time ordered the State court to resolve the merits, if any of the $3,000,000 claim which ostensibly was based on the same construction projects of Appellants as the lawsuit. [CT 0299 to 0302] At that hearing Appellants pointed out that Appellee Indian tribe had waived their immunity

from lawsuit by filing that $3,000,000 proof of claim in bankruptcy and that Appellant had outstanding unpaid invoices that he had a right to collect from Appellees because they arose out of the same transaction and course of conduct forming the apparent basis for the proof of claim.

The Bankruptcy Court agreed and ordered that Appellant could assert his counterclaims for unpaid invoices in State court. Appellees drafted the courts order themselves providing for Appellant's rights on his counter-claim.

Once the case was actively before state court and reopened the Appellees then asserted to the State court Judge Canter, that he did not have the authority to hear Appellant's counterclaim for unpaid invoices. After a hearing before Judge Canter the State court agreed with Appellant that he had the authority to hear Appellant's counterclaim, [CT 0313 to 0321] despite the provisions in the order lifting the stay which Appellees had drafted, stating "7. ***OTHER 9. Debtor may pursue any cross-complaint arising out of the State court Action referenced herein.*** Appellees then went back to the Bankruptcy Court to make what they styled as a Motion for Clarification [CT 0303 to 0311] which Appellant Debtor then had to file opposition to. [CT 0331 to 0410]

That Motion was denied by the Bankruptcy Court out of hand as there was no need for any clarification [CT 0488 to 0491]. The State court action then proceeded to a trial lasting 8 weeks.

After the first week the court threw out the causes of action for fraud and conversion on the basis Appellees presented no evidence of either and granted Appellant's Motion for non-suit.

The balance of the trial concerned Appellees claims Appellant's work was negligent, that he overcharged for the work performed and breached his contract with the tribal government and also involved Appellants proving up his unpaid invoices some 5 years after they had not been paid when due in November 1999.

The court ruled against the tribal Plaintiffs on all remaining causes of action and found for Appellant on all the amounts due that he was able to prove up at the time of trial, some $309,950 and awarded Appellant interest at the legal rate from the date they became due and unpaid sine November of 1999. [CT 1364 to 1383]

After judgment was entered Appellees filed an appeal and Appellant cross-appealed to be reimbursed for monies he had paid the engineering firm of Wallace Company which monies he had paid himself out of pocket on Appellee's behalf.

On or before 13 June 2006 a vote was taken from the entire tribal counsel who voted 71 to 3 to pay the amount of judgment in the favor of Appellant without further litigation, however Chairman Armenta continued to press the appeal for two more years. [CT 1269]

Appellees posted no bond, so Appellant executed his judgment for $509,075 including interest and deposited the monies into the bankruptcy trust accounts of the Debtors estate pending final resolution of the case. [CT 0520 to 0524]

Appellees then made a Motion to hold Appellant and his counsel in contempt claiming Appellant could not execute his money judgment for his unpaid invoices and that the Bankruptcy Court should hold the Debtor and his counsel in contempt. [CT 0494 to 0518]

That frivolous Motion was brought on the claim that the language in the order lifting the stay requiring any judgment ***against the Debtor*** would have to come back to the Bankruptcy Court for enforcement.

Obviously that did not apply to any judgment in favor of the Debtor and against the tribal creditor which owed the Debtor $509,075. That Motion was denied out of hand on the basis that the portion of the order lifting the stay and requiring confirmation of any judgment before execution did not apply to Appellants/Debtor's recovery of the unpaid invoices he was

owed by the creditor and only applied to any judgment that might have been entered against the Appellant Debtor. [CT 1485 to 1487]

After pursuing the appeal of the state court action, notwithstanding the vote of the tribal council to settle and pay the judgment 2 years earlier the trial court's judgment was affirmed on appeal. [CT 1256 to 1253] Even after the statement of decision and judgment and the affirmation of that appeal made final 22 February 2008 Appellees still, did not withdraw their false, improper and likely fraudulent $3,000,000 proof of claim requiring Appellant to then move the Bankruptcy Court to formally deny and overrule the proof of claim.

Appellant first moved the Bankruptcy Court to overrule and dismiss the pending $3,000,000 claim in 2008 and again in 2011 and finally that occurred on 20 January 2011 [CT 1265 to 1266]

After the final resolution of Appellee's $3,000,000 claim Appellant Debtor made the present Motion for sanctions and attorneys fees which Motion was denied and that denial was affirmed in an appeal to the U.S. District Court by order of Judge Michael W. Fitzgerald.

This Appeal to the Ninth Circuit Court of Appeals then ensued.

ISSUES ON APPEAL

A. Did the Bankruptcy court commit error by failing or refusing to exercise her discretion and consider awarding Appellant sanctions and attorneys fees for a 12-year long campaign of harassment of Appellant Debtor and a long pattern of abuse of the federal and State courts and proceedings in the furtherance of that improper campaign costing Appellant Debtor over $575,000 in attorneys fees to date because the court believed much of the abuses occurred in other courts and proceedings.

B. Did the tribe waive its immunity from lawsuit by filing a false, improper and likely frivolous claim as part of their 12 year campaign of harassment of Appellant and to evade paying the long overdue invoices owed to Appellant and to justify using the work performed by Appellant as an excuse to oust the previous tribal government and take over the tribe and its highly profitable casino and other businesses.

C. The Bankruptcy Court lifted the stay of the State court action and ordered the State court to determine the merits, if any, of the $3,000,000 claim filed in bankruptcy which Appellee had connected to the State court action and determine any merits of both simultaneously. Accordingly the State court ***did not consider any other issues*** like the long pattern of

harassment including among other things the frivolous federal lawsuit to ban Appellant from tribal property by claiming Appellant was illegally residing on tribal land when the tribal government knew exactly where Appellant lived in a home he owned on Roblar Avenue in the County of Santa Barbara.

SUMMARY OF ARGUMENTS ON APPEAL

A. When the Bankruptcy Court lifted the stay it did not direct that the State court determine the long pattern of harassment and the prolongation of litigation and patent abuses of process engaged in by appellants and their Chairman. The Bankruptcy Court only empowered the state court to determine the merits, if any, of any part of the $3,000,000 claim as it might relate to the unsupported allegations contained in Appellee's State court lawsuit. The Bankruptcy Court mistakenly concluded the harassment and abuses of Appellant using the processes of the federal District Court, the bankruptcy court including the improper filing of the $3,000,000 claim in Bankruptcy Court and the state court action to further the pattern of harassment of Appellant, and evade paying Appellant his money thereby prolonging unsupported and improper litigation for 12 years based on the false claims there were things wrong with the work he had done, and the false claim they had to pay others to correct that work, yet could not ever produce any evidence whatsoever they paid anyone.

The Bankruptcy Judge erred in refusing to exercise her discretion in this matter repeatedly asserting on the record, that the abuses and harassment of Appellant did not occur in her courtroom and she mistakenly inferred that

Appellant had some other avenue for recourse to recover his hundreds of thousands in attorneys fees, costs and other damages including the loss of his home and the destruction of his contracting business, when there was and is no other forum to make Appellant whole.

B. By filing a false, improper and unsupported proof of claim the tribe waived its immunity from unconsented lawsuit and the defense of tribal immunity was not and is not available to shield their tribal chairman Vincent Armenta from engaging in the long pattern of harassment and evasion he did, to silence Appellant/Debtor and pummel him into exhausted submission and to further the ruse used to seize control of the tribal government using the construction contracts the prior tribal government had made with Appellant as an excuse to remove the prior Chairman Alex Valencia. Then, having made that false excuse was compelled to continue in the patent lies to cover up the fact it was all a ploy to depose the former tribal chairman and seize control of the tribal government and business committee. The tribe and its errant chairman are legally responsible for the abuses they subjected the Appellant to for 12 years.

C. The Bankruptcy Court's order lifting the stay of the State court action included the order to the State court to determine the merits, if any existed, of the $3,000,000 proof of claim filed in Bankruptcy and do so

simultaneously with the purported causes of action alleged in the state court complaint. The State court did not consider the years long pattern of harassment and abuses heaped on Appellant and only considered the motives of Chairman of Armenta in the context of his credibility as a witness in connection with the contract or Breach of contract causes of action in the State court complaint. None of the issues concerning the banishment efforts, the false and defamatory publications about Appellant and his work, the frivolous federal lawsuit in District Court to ban Appellant claiming he was living on the reservation and other harassing and vexatious matters. Moreover the tribe successfully asserted the claim of sovereign immunity when Appellant did bring suit in State court for that frivolous federal lawsuit in District court asserting Appellant was unlawfully living on tribal land when they knew exactly where he was living, but the tribe successfully blocked that suit at the outset claiming "sovereign immunity." Appellant had no other recourse other than the Bankruptcy Court to recover the hundreds of thousands of dollars he had to expend to defend himself from the harassing and vexatious claims made by Appellee tribe over a 12 year period, all of which claims proved after trial, to be improper, false, frivolous and vexatious.

Having filed the $3,000,000 claim in Bankruptcy the tribe and its chairman waived any defense of legal immunity arising out of the construction contract as a matter of law and the entire course of conduct connected to it because Congress abrogated that tribal immunity for Bankruptcy matters.

DISCUSSION

A. The Bankruptcy Court erred in refusing to consider the 12 year campaign of harassment by Appellees against Appellant Debtor including the filing of an improper groundless claim for $3,000,000. The court labored under the mistaken belief she could not award sanctions and attorneys fees because the improper and offensive conduct "did not occur in her court."

There is little doubt that the Bankruptcy Court has the power and authority to impose sanctions for improper and outrageous conduct by a creditor claimant either by statute, In Re Marsch [9th circ. 1995] 36 F.3d 778 or through the use of its inherent equitable powers, Chambers v. Nasco (1991) 501 U.S. 32.

The Supreme Court made it clear in that case, Chambers v. Nasco (1991) 501 U.S. 32 111 S.Ct. 2112, 2135-2136, that the equitable powers of the court to sanction improper conduct include matters occurring outside of the instant court and include a pattern of conduct occurring in ancillary matters.

In the present case Appellant had performed a long series of construction projects and provided services to Appellee tribe [CT 1076-1078] and was paid for them periodically by the tribal business Committee and Chairman who hired him. [CT 1010-7 to 1035-21]

This relationship began in early 1999 and continued until late in 1999 when members of the largest extended tribal family, began to return to the tribal property when their gaming casino became highly profitable. [CT 1057-2 to 1074-21] In an effort to seize control of the existing tribal government these family members accused the Business Committee and then Chairman Alex Valencia of improper conduct and expenditures of tribal funds and focused on Appellant and the various construction projects he was working on, some completed and others still in progress, in November 1999. [CT 1076-1078]

In a series of hostile meetings [CT 1057-2 to 1074-21] [CT 1046-7 to 1053-11] the Armenta clan forced the resignation of Chairman Valencia and undertook to successfully recall other members of the Business committee.

They terminated the existing contract with Appellant, denigrated and disparaged his work and circulated a defamatory letter claiming Appellant had been paid twice the amount he had actually been paid and falsely claimed Appellant had caused an environmental violation by doing work in the Sanja Cota Creek in an area the tribal officials told him to do work and told him that was tribal property when it was not.

When Appellant sought payment for the outstanding invoices past due and to retrieve equipment and material still on the tribal site, the new

Chairman Vincent Armenta circulated a petition for the tribe to vote to ban Appellant from the tribal property.

The malice and animus the tribal chairman held for Appellant was demonstrated early on when he informed one of the material suppliers representatives Ghia Castro, who had furnished culvert drain pipe for one project, that he would run Appellant out of business. [CT 1272-1275] Mr. Armenta then circulated a false and defamatory document entitled "Reason for banning (Appellant) Torres" containing, among other things, the false claim the tribe had been fined for creek work.

The tribal council then voted to ban Appellant and refused to pay him the outstanding balances due on invoices and refused to allow him to complete three remaining projects that were largely finished except for a few details.

Chairman Armenta hired an out of state construction supervisor who worked for Indian tribes in the upper Midwest to come to the tribal land and negatively critique Appellant's work including such silly and senseless claim that bolts holding the light standard to their concrete footings were "dangerous" because the nuts were not covered with plastic caps which was never part of any industry standard. [CT 1364 to 1378]

After the passage of a tribal ordinance to ban Appellant from tribal land because of allegedly doing shoddy work and overcharging, the Tribal Chairman and newly constituted tribal government filed a lawsuit in the U.S. District Court in Los Angeles to enforce the banishment and alleged as the sole basis for that lawsuit the false claim that Appellant was illegally living on the tribal reservation lands even though the tribal government knew where appellant owned a home off of tribal lands and at all times resided there. [CT 1090 to 1102]

That case was dismissed when the trial court denied the tribe's Motion for Summary Judgment and then wrote a lengthy published opinion found at Santa Ynez Mission Indians v. Torres 262 Fed.Supp.2d 1038.

Appellant subsequently filed a malicious prosecution case based on the tribe's voluntary dismissal of that frivolous lawsuit but the State court dismissed that action without reaching the merits when the tribe claimed "sovereign immunity" from that suit. That dismissal was affirmed on appeal.

In the interim the tribe and Chairman Armenta filed a State court complaint alleging among other things Appellant's work was defective and in that verified complaint asserted they had to pay other contractors to correct that defective work.

For nearly two years Appellees engaged in extensive discovery and continued to evade and obfuscate answering basic facts concerning their claims against Appellant. [CT 1401 to 1404] and [CT 1407 to 1419]

When Appellant's subcontractors and suppliers of equipment and materials began suing Appellant and obtaining judgments against him, Appellant was forced to seek protection by filing a Chapter 11 petition.

As part of the continuing campaign of harassment Appellees then served a copy of a proof of claim on 18 October 2002, filed that unsupported proof of claim in Bankruptcy on 20 December 2002, again asserting they had to pay others to correct or complete Appellant's projects on tribal lands. [CT 001 to 003] Chairman Armenta signed this proof of claim, apparently on 2 December 2002.

It has been held that a creditor's filing of an improper proof of claim is grounds for sanctions. See for example In Re: Silverkraus [9th Circ. 2 336 F.3d 864 [Frivolous Filings} Filings without reasonable inquiry for proper basis Cooter & Gell v. Hartmarx Corp. [1990] 496 U.S. 384 and Business Guides, Inc. v. Chromatic Communications Enterprises [9th Circ. 1898) 892 F.2 902. In In Re: Marsch 36 F.3d 778, supra, this court recognized that it is nearly impossible to sustain a claim that a proof of claim or action is completely frivolous because artful attorneys and culpable parties can easily

invent some colorable justification for their improper actions. Accordingly this court distinguished between purely frivolous claims and those filed for improper purposes. From the outset Appellee tribe could establish no basis for either their state court complaint or the $3,000,000 claim filed in Bankruptcy because ***there was no valid basis*** and the $3,000,000 was clearly filed for improper purposes. The state court complaint offered no claim or prayer for any specific amount of damages. Having verified in their complaint [CT 0864 to 0868] that they "had to pay others to correct Appellant's work," it would have been an easy matter to produce the evidence or documentation of such payment if it had occurred. A review of the evasive unresponsive deposition testimony of Chairman Armenta confirms that there was no such payment made and no evidence of it existed. [CT 1144 to 1192] Those improper allegations also were disclosed in the course of the trial of the State Court action. [See statement of decision CT 1240 to 1254]

It has been held by this court that the use of the Bankruptcy Court processes for harassment purpose warrants imposition of sanctions. See In Re Akridge [9th circ. B.A.P. 1988] 89 B.R. 66 and In Re Wefre [9th Circ. B.A.P. 1988] 88 B.R. 242. See also Chambers v. Nasco [1991] supra 501 U.S. 32.

In addition the fact that the Bankruptcy Court may lack subject matter jurisdiction over certain aspects of a case does not deprive it of the power to award sanctions. See In Re Balboa Improvements Ltd. [9th Circ. B.A.P. 1989] 99 B.R. 966.

As set out in Chambers v. Nasco, the fact that some of the elements of the improper integrated campaign against Appellant occurred in other federal or state courts does not deprive the Bankruptcy court of the ability to impose sanctions when the key element of establishing Bankruptcy jurisdiction was the filing of the improper $3,000,000 claim made without any basis. Moreover it was that filing of the improper proof of claim that stripped the tribal government of the immunity shield it had been hiding behind to wage its campaign of harassment against Appellant in the comfort of complete immunity for the misconduct of the tribal government and its chairman. [See Krystal Energy Company v. Navajo Tribe [9th Circ. 2004] 357 F.3d 1055.

Lastly it has been held by this court that improper conduct extending the litigation by making unnecessary motions or continuing litigation without client's authority are grounds for sanction and it is appropriate to sanction a party by making an award of attorneys fees to the party incurring those unnecessary legal fees and expenses. See for example Trulis v. Barton

[9th Circ. B.A.P. 2008] 67 F.3d 779 and Lockary v. Kayfetz [9th Circ. 1992] 974 F.2d 1166, 1176-1177.

When signing any pleading such as the $3,000,000 proof of claim, in Appellant's Chapter 11 case, Tribal chairman Armenta must be held to a reasonable standard to investigate the veracity of the claim.[3] His verified responses to interrogatories and requests for admissions which were provided to Appellant is also evidence there could be no reasonable belief by Appellees that there were any damages or that the tribe had paid anyone anything as asserted in the verified state court complaint and the proof of claim Chairman Armenta filed in Debtor's Chapter 11 case. The transcript of Chairman Armenta's deposition and his evasive answers to this straightforward inquiry are proof positive of the false and improper nature of his claims. By actual count chairman Armenta when asked repeatedly about the $3,000,000 claim answered "I don't recall" 57 times. "I would have to consult documents" 26 times.[4]

Finally when the evasive replies and patent obfuscation was apparently enough even for the tribe's own attorney, his attorney instructed

[3] When questioned what documents he would have to review could not explain what they were and when asked where they were he replied they could be anywhere from Buellton (Calif.) to Boston.

[4] He produced no relevant documents as required by the notice and could not testify about the few he did bring.

the Chairman not to answer anymore and abruptly ended the deposition and walked out with his client.

It should be noted that the Notice of Deposition was accompanied by a Notice to produce all such documents which evidenced the alleged payment to others and the extent of any work alleged to be done to correct or complete Appellant's work. All were required to be produced at the deposition and they were not. In fact when questioned about the documents Chairman Armenta testified he needed to review were not only not produced at the deposition but he could not even identify what they were or where they could be found.

It is abundantly clear the assertion in the proof of claim that the tribe had to pay others and the same assertion in their verified State court complaint were both false, untrue and improper. Even after an 8-week trial Appellees could produce no such evidence and a reasonable inquiry before filing that $3,000,000 proof of claim would have exposed the fact no such payments existed and neither were there any documents. That improperly filed proof of claim was just another key piece in the pattern of harassment

which prolonged the litigation greatly and cost Appellants hundreds of thousands of dollars in attorneys fees and costs.[5]

It is clear from the transcript of the hearing before the Bankruptcy Court that the judge refused to exercise her discretion to weigh the extensive evidence of a long pattern of harassment and improper actions of Appellees, and refused to do so on the basis that Appellees offensive and improper conduct did not "occur in her court" and therefore refused to consider Appellant's request for sanctions, attorneys fees and costs and denied Appellant's Motion.

B. The Bankruptcy Court acquired jurisdiction over 12 year pattern of harassment which came before the Bankruptcy Court by the improper filing of the false and unsupported claim for $3,000,000 filed by the tribe in Appellant/Debtor's chapter 11 case. As set out above the Bankruptcy Court has inherent jurisdiction to prevent improper conduct by parties. It has even been held that sanctions can be imposed on third parties.

As set out above in the In Re Balboa Improvement case 99 B.R. 966 supra the Bankruptcy need not have subject matter jurisdiction over all the elements of a case in order to impose sanctions for improper and unlawful conduct by a creditor. See also Chambers v. Nasco 501 U.S. 32 supra.

[5] Some $175,000 in attorneys fees were paid out to the firm of Sternberg and Leon right out of the bankruptcy estate.

The inherent power to sanction the conduct of litigants is the cornerstone to the fair and effective administration of justice. Although the courts have been liberal in the past concerning the availability common law immunity of Indian tribal governments to shield themselves from suit by using the doctrine of tribal legal immunity, this doctrine is fast becoming a legal anomaly in this day and age. See Kiowa tribe of Oklahoma v. Manufacturing Technologies, Inc. [1998] 523 U.S. 752 suggesting this outdated legal doctrine should be abrogated by Congress and it was suggested by way of dicta that could be easily done by adding Indian tribal governments to the Foreign sovereign Immunity Act.

In any case, as set out in the Krystal Energy Company v. Navajo 357 F.3d 1055 case Congress has abrogated that immunity defense in Bankruptcy cases so that any Indian tribe making claims in Bankruptcy (including false, fraudulent, frivolous or improper claims) has lost its legal immunity by Congressional abrogation and by a waiver as a matter of law.

Appellees were not free to make false and improper claims as they did in Appellant's case to harass him as a part of the tribal chairman's campaign to oust his predecessor and to prolong litigation in an effort to pummel Appellant into economic and legal exhaustion as they did in the present case.

Appellant is entitled to have the Bankruptcy Court exercise its discretion and consider the extensive evidence of the improper misuse of judicial process even though some of the many improper actions forming that harassment and misuse of process did not "occur in her courtroom" but it all occurred there, de facto, by the filing of the unsupported proof of claim in that court, and the lifting of the State court stay and the abrogation of tribal immunity for all the consequences arising out of that false and improper claim for $3,000,000 as hereinbefore set out including the cost of litigating an 8-week trial in State court.

C. The State court was empowered by the Bankruptcy Court's order to lift the stay of the action pending there to adjudicate three things. First the allegations in Appellee's State court complaint on the merits. Secondly to simultaneously adjudicate the merits, if any, of the $3,000,000 claim as it related the merits of the underlying State court lawsuit and the allegations therein. The third thing was to determine the validity and amount of any of the provable invoices that Appellant was entitled to be paid for back in November 1999.

The State court was not empowered to resolve more than these three issues.

The State court was not empowered to look into the pattern of harassment and abuses of the court system, the prolongation of litigation by Appellees and the obvious animus of the tribal Chairman Armenta which existed as far back as the meeting Chairman Armenta had with Ghia Castro the FAMCO representative, nor did the State court look into the frivolous federal court lawsuit banning Appellant from tribal land on the false and frivolous allegation he was illegally living on tribal lands.

In fact when Appellant filed suit for the malicious prosecution of that first Federal court lawsuit the tribe successfully moved to dismiss that complaint on the grounds of "sovereign immunity" and that dismissal was upheld on appeal. The State court had no power or authority to impose sanctions for the improper filing of the $3,000,000 proof of claim in Bankruptcy or the 12 year long pattern of harassment inflicted on appellant, contrary to assertions made at the Bankruptcy Court hearing on Appellant's motion for sanctions. Appellees knew full well that such an assertion went beyond the assignment given the State court and that the tribe would, as they always do, try to assert the shield of "sovereign immunity" while wielding the sword of legal harassment against Appellant with impunity but for the authority of the Bankruptcy Court, in section 106 of the bankruptcy act, and the decision in Krystal Energy Company v. Navajo Tribe, supra which case

law is restricted to Bankruptcy Court actions. Appellant had and still has no alternative to be made whole but by the Motion for Sanctions and attorneys fees in bankruptcy arising out of the improper filing of the groundless $3,000,000 proof of claim, the key element in the long-standing harassment campaign pursued by the tribal government and its chairman Vincent Armenta and used against Appellant who had done nothing wrong, yet has suffered hundreds of thousands of dollars in legal fees and costs, lost his home to foreclosure, lost his credit and had his business and reputation destroyed.

Appellant had and still has no alternative to be made whole but by the present Motion for Sanction and attorneys fees arising out of the improper filing of the groundless $3,000,000 proof of claim.

As set out in the transcript of the hearing on Appellant's Motion for sanctions and attorneys fees [CT 1561 to 1590] the bankruptcy judge repeatedly refused to exercise her discretion and consider the numerous improper actions of Appellees which were clearly undertaken to harass and punish Appellant and delay resolution of the case until Appellant was financially, legally and emotionally exhausted.

In the words of Judge Riblet at the hearing on Appellant's sanction Motion:

> "So, ultimately, the (sic) trundle back to this court, Mr. Namba, I guess it was Mr. Namba, ultimately renews his objection to the claim. The don't say boo. It gets disallowed based upon the underlying state court action. What the heck have they done in my court that is so offensive? They have done nothing in my court that's offensive."

In the court's colleque with counsel it was apparent that the court did not understand that Judge Canter only looked at any bad motives by Chairman Armenta at the State court trial in the context of his credibility as a witness on the contract cause of action and that the Bankruptcy court did not understand that sanctions could be awarded for conduct occurring in other ancillary proceedings as in Chambers v. Nasco supra.

It is also clear from the court's comments that the Bankruptcy judge did not understand the State court was not charged with examining the good or bad faith of the filing of the $3,000,000 proof of claim, only whether or not there was any merit to it based on the issues in the State court complaint and the State Court found no merit in any of Appellee's causes of action.

CONCLUSION

Appellant was denied his right to a fair hearing on his sanctions Motion and to recover his attorneys fees and costs because the Bankruptcy Court mistakenly believed that much of the offensive and sanctionable conduct of Appellees occurred "outside of her courtroom." The Bankruptcy Court failed to understand that Appellees had subjected Appellant to a 12 year campaign of harassment in an effort to reduce him to a state of economic, legal and emotional exhaustion and abandon his claim to be paid for his unpaid invoices.

Equally important Tribal Chairman Armenta did not want the false claims about Appellant, used as a ploy to seize control of the tribal government, to come to light. It was in the Chairman's interest to delay obfuscating and evade disclosure of the fact that there was nothing wrong with Appellant's work and the tribe never had to pay to correct or finish Appellant's work.

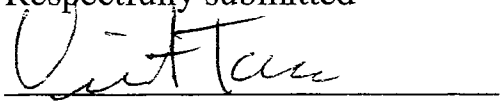
If that became known before he had consolidated power he might not have been able to hold onto the control of the tribe.

Besides the legal fees already paid out of this Bankruptcy there are and have been additional fees including those accrued in defending the false and frivolous lawsuit the tribe brought in federal court.

This court should reverse the decision below, send this case back to Bankruptcy Court with instructions to exercise her discretion over the entire course of conduct of Appellees going back to early 2000 when Chairman Armenta told Mr. Ghia [CT 1272 to 1273] that he was going to run Appellant out of business, then engaged in a course of conduct to sue appellant in State court, file a frivolous, unsupported $3,000,000 claim in Bankruptcy, filed for improper purpose and then after 2 years and on the eve of disposing of that baseless claim as evidenced by the deposition of chairman Armenta who filed it, made a Motion to lift the stay and have any merits of that claim resolved in State court. Then after the case is in State court, come back to Bankruptcy court on two occasions trying to get different rulings out of the Bankruptcy court and finally after an 8-week trial in which no evidence was submitted to support the state court lawsuit or Bankruptcy claim, refuse to withdraw the claim. Instead force the Appellant Debtor to come back to Bankruptcy court to make a Motion to dismiss that claim.

Appellant Debtor is entitled to a fair hearing on his Motion for sanctions and to recover over $580,000 in attorneys fees and costs defending the campaign of harassment brought against him by Appellees.

Respectfully submitted



Vincent Torres
Appellant

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation set forth in Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure. This brief uses a proportional typeface and 14-point font, and contains 7438 words.

DATED: November 12, 2013

Vincent Torres
Appellant

PROOF OF SERVICE

I am, and was at the time of the service hereinafter mentioned, over 18 years of age and not a party to the above-entitled action. My business address is 1026 Camino del Rio, Santa Barbara, California 93110. I am employed in the County of Santa Barbara.

On 12 November 2013, I served the within APPELLANT'S BRIEF on the following, by e-mail and by placing a true copy in the United States Mail, postage prepaid and addressed as follows:

Melissa J. Fassett
Price, Postel & Parma, LLP
200 E. Carrillo St.
Fourth Floor
Santa Barbara, CA 93101

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on 12 November 2013.

James E. Marino