

In The
Supreme Court of the United States

—◆—
VINCENT TORRES,

Petitioner,

v.

THE SANTA YNEZ BAND OF CHUMASH INDIANS,

Respondent.

—◆—
**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

—◆—
**BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

—◆—
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RESTATEMENT OF QUESTION PRESENTED

Whether Petitioner Vincent Torres (“Torres”) has presented compelling reasons for granting certiorari given the following:

(1) Sovereign immunity is not an issue in this case because Respondent The Santa Ynez Band of Chumash Indians (“the Tribe”) never asserted sovereign immunity as a defense to Torres’ motion for sanctions, nor did the bankruptcy court deny Torres’ motion for sanctions on the ground of sovereign immunity;

(2) The bankruptcy court instead denied Torres’ motion for sanctions based on its factual finding that the Tribe did not file a proof of claim in bad faith;

(3) The district court and the court of appeals both affirmed the bankruptcy court’s ruling on the ground that no abuse of discretion was shown, not on the ground of sovereign immunity, which was not raised as a defense by the Tribe;

(4) The record in this case abundantly shows that, as the district court and court of appeals have found, the bankruptcy court did not abuse its discretion in denying the motion for sanctions; and

(5) The court of appeals’ unpublished decision in this case does not address an important federal question and does not conflict with the decision of any other United States court of appeals or any state court of last resort.

**CORPORATE DISCLOSURE STATEMENT
PURSUANT TO SUPREME COURT RULE 29.6**

Respondent The Santa Ynez Band of Chumash Indians has no parent corporation and no publicly held corporation owns 10% or more of its stock.

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INTRODUCTION

Torres has presented no “compelling reasons” for his Petition for Writ of Certiorari (“Petition”) to be granted. *See* Sup. Ct. R. 10. The sole issue presented by this case is whether the bankruptcy court abused its discretion by denying a motion for sanctions filed by Torres. Torres claimed that he was entitled to sanctions because the Tribe and its chairman, Vincent Armenta, allegedly filed a “false and fraudulent proof of claim in Torres’ chapter 11 case” without legal or factual basis for the proof of claim.

The Tribe’s proof of claim was based on a pending state court lawsuit brought by the Tribe against Torres arising from construction work performed by Torres. Torres had also filed a counterclaim in the state court action against the Tribe. After Torres filed his bankruptcy petition, the bankruptcy court lifted the automatic stay and instructed Torres and the Tribe to liquidate their claims against each other by proceeding with the state court action. The bankruptcy court further authorized the Tribe to file a proof of claim in the bankruptcy proceedings, which the Tribe did.

The trial of the state court action was completed in April 2005. In its statement of decision, the state court denied the Tribe’s claims against Torres and found that Torres was entitled to recover only \$302,450 of the \$850,000 that he sought from the Tribe. The state court’s finding that Torres’ charges must be reduced by more than 63% vindicated many

of the Tribe's concerns about Torres' billing practices. In addition, the state court judge made express written findings (because Torres raised the issue at trial) that neither the Tribe nor its chairman had acted in bad faith by litigating the billing dispute with Torres. Among other things, the state court found that the tribal chairman's credibility had not been impeached during the trial and that "the new tribal chairman may have suspected Defendant of taking advantage of the Tribe. His motive-behind-the-motive was to protect his people. His quantum of proof could well be lower than that required by the law to establish what he suspected."

Following unsuccessful appeals from both Torres and the Tribe, the state court judgment became final on January 22, 2008. Torres did not seek sanctions against the Tribe in the state court (at either the trial court or the appellate court level), nor did he bring an action against the Tribe for malicious prosecution. Instead, Torres waited until January 19, 2012, almost four years after the state court action became final, to file a motion for sanctions against the Tribe in the bankruptcy court.

Following the bankruptcy court's denial of Torres' motion, Torres appealed the bankruptcy court's decision to the United States District Court for the Central District of California. After carefully reviewing the record of this case, the district court affirmed the bankruptcy court's denial of Torres' motion for sanctions, stating that "this Court agrees with the bankruptcy court's conclusion that the factual record

does not support a finding of bad faith.” Thereafter Torres appealed the bankruptcy court’s decision to the Ninth Circuit Court of Appeals, which held in an unpublished opinion that the bankruptcy court did not abuse its discretion in denying Torres’ motion. The court of appeals’ opinion addressed no important questions of federal law and conflicted with no decisions of any other United States court of appeals or any state courts of last resort.

Torres now seeks a third review of the bankruptcy court’s decision. In his Petition, he asserts that this Court should grant certiorari to clarify the limits of tribal sovereign immunity. Torres fails to mention, however, that the Tribe never raised sovereign immunity as a defense to Torres’ motion for sanctions, nor did the bankruptcy court deny Torres’ motion on the ground of sovereign immunity. The bankruptcy court instead denied the motion for sanctions because it found that neither the Tribe nor its chairman acted in bad faith. The district court and the court of appeals similarly did not address sovereign immunity in their decisions because this issue was never raised by the Tribe. Because the Tribe did not rely on sovereign immunity as a defense to the sanctions motion, review by this Court of the applicability or limits of tribal sovereign immunity would have no effect on the outcome of this case.

Four different courts – the state court, the bankruptcy court, the district court, and the court of appeals – have reviewed the Tribe and its chairman’s conduct, and all four have come to the same

conclusion: The evidence does not show that the Tribe litigated the billing dispute with Torres in bad faith. The bankruptcy court, the district court, and the court of appeals have similarly found that no actions by the Tribe or its chairman outside of the state court action warrant the imposition of sanctions. Despite the findings by these four courts, however, Torres seeks to continue this litigation by requesting a third review of the bankruptcy court's order, all the while shrilly asserting that the Tribe is pursuing a vendetta against him. The record simply does not support his assertions. Given the broad discretion given to the bankruptcy court to award or deny sanctions, and given the absence of any important federal questions presented by this case, a third review of the bankruptcy court's order by this Court is unwarranted.



STATEMENT OF THE CASE

A. Torres' Agreement With The Tribe

This litigation arose from construction work which the Tribe hired Torres to perform on the Tribe's reservation. The terms of the work, which were not documented in writing, included installing street lights, cleaning a creek, installing a storm drain system, removing debris, and performing a general cleanup of the reservation. Torres began the work in January 1999 and periodically sent bills to the Tribe, which the Tribe paid. During 1999, the Tribe paid Torres \$1,975,654.

B. The Tribe's Concerns About The Amounts Charged By Torres

Because of the amounts that Torres was charging for his work, the Tribe became concerned about whether Torres was billing appropriately. Among other things, the Tribe was concerned about the following charges:

1. Torres billed the Tribe \$740,000 to install street lights, an amount that was \$400,000 over what the Tribe was informed to be the fair market value for the time and materials spent doing the work. Torres also failed to complete the work and left exposed bolts in violation of accepted standards of workmanship.

2. Torres was charged \$94,720 by a subcontractor for performing engineering, permit processing, and surveying tasks, but billed the Tribe \$250,000 for this work without adding any value.

3. Torres billed the Tribe an excessive amount for the construction of storm drains that proved to be defective and caused damage to the Tribe's property.

4. Torres billed the Tribe an excessive amount for grading he performed outside the reservation that was in violation of local, California, and federal law, and for deficient grading on the reservation. Torres' charges for this work would have been excessive even if the work had been done correctly.

C. The Tribe's Concerns About The Quality Of Torres' Work

In addition to its concerns that it was being taken advantage of with respect to billing, the Tribe also became concerned about the quality of Torres' work. On October 8, 1999, the Santa Barbara County Building and Safety Division issued a Notice of Correction because of Torres' unpermitted grading beyond the boundaries of the reservation, which Torres did not correct. In April 2000, the Santa Ynez River Water Conservation District ("District") issued a demand due to a debris pile left by Torres within the District's easement and for damages to a hydrant caused by Torres. In addition to these infractions, the following items of Torres' work were substandard:

1. Torres incompletely and negligently cut back slopes along a roadway to contain and divert waters, causing conditions of erosion.
2. Torres trenched along the road and left open holes, causing serious hazards for vehicles.
3. Torres constructed storm drains but neglected to construct concrete boxes, leaving holes and not permitting proper drainage.
4. Torres graded roads without shooting grades or procuring engineering services, resulting in poor grading. As a result of these deficiencies, the Tribe was required to hire others to repair erosion conditions and to set concrete boxes in storm drains.

5. Torres caused damaged to the creek bed by unpermitted grading in and near the creek bed, resulting in a Notice of Correction being issued by the District.

6. Torres damaged a hydrant, causing it to leak, and piled debris within the District's easement, blocking access to the hydrant and denying fire protection to the entire reservation.

In November 1999, the Tribe instructed Torres to stop work and leave the reservation due to its concerns over the quality of work being done and the amounts being charged. The Tribe asked Torres to submit detailed billing statements for his work and to provide backup for his charges.

D. The Tribe's Retention Of A Construction Expert To Investigate Torres' Work And Billing

Because of the aforementioned concerns, the Tribe retained a construction expert, Glen Northrup, to inspect the work done by Torres. Mr. Northrup conducted such an inspection in February 2000, soon after Torres left the job site, and obtained quotes from other local contractors as to what they would have charged to do the work in question. Mr. Northrup also reviewed the materials used on site, obtained prices from local suppliers, and reviewed aerial photos and topographical maps of the reservation both before and after Torres' work was performed. Based on this investigation, Mr. Northrup concluded that by billing the Tribe more than \$2 million, Torres had grossly

overcharged the Tribe for his work. This opinion was also expressed by engineers who had been hired by Torres.

E. The Tribe's State Court Action And Torres' Counterclaim

Based on the results of its investigation, on November 3, 2000 the Tribe filed suit against Torres in the California Superior Court for the County of Santa Barbara (the "state court action"), alleging breach of contract, negligence and misrepresentation based on the deficient work done by Torres and the excessive charges for his work, and for the work which the Tribe had to pay for to remediate Torres' defective work and to complete the work Torres should have completed. The Tribe later amended its complaint to include claims for equipment that Torres had not returned. Torres filed a counterclaim against the Tribe, claiming that the Tribe owed him an additional \$850,000 for services rendered.

F. Torres' Bankruptcy

On September 16, 2002, Torres filed for bankruptcy and a deadline was set for the filing of proofs of claim. The Tribe timely filed a proof of claim in Torres' bankruptcy proceeding on December 10, 2002 to preserve its claims giving rise to the state court action. At that time the state court action had not yet been adjudicated. The Tribe believed that its claims in the state court action were meritorious, and it

further believed that if it prevailed it would recover some or all of the fees which had been improperly charged by Torres (totaling more than \$2 million). The Tribe also believed that it would recover the amounts expended by the Tribe to remediate Torres' defective work as prayed for in the state court action.

On September 3, 2004, the Tribe filed a motion for relief from the automatic stay to allow it to proceed with its state court action against Torres. Over Torres' opposition, the bankruptcy court granted the Tribe's motion and authorized both parties to proceed with their respective claims in the state court. As part of its order granting relief from the stay, the bankruptcy court specifically granted leave for the Tribe to file a proof of claim.

Torres filed an objection to the Tribe's proof of claim, which was set for hearing simultaneously with the Tribe's motion for relief from stay. The bankruptcy court declined, however, to rule on Torres' objection, stating as follows:

This Court abstains from considering the merits of Torres's Objection to Claim of the Movant, filed herein. This Court will defer to the State Court before whom the State Court Action referenced herein was pending for a determination of the merits and amount of the Movant's Claim.

G. The Resumption Of The State Court Action

The state court action proceeded to trial in April 2005. A principal point of contention concerning the Tribe's claim was whether the Tribe had entered into a fixed price agreement with Torres. The state court found that the oral agreement for Torres' services was, in fact, a fixed price agreement, and therefore the Tribe could not recover excessive amounts charged by Torres, absent proof of fraud, which the state court found had not been made.

With respect to Torres' multiple claims against the Tribe for amounts allegedly owed, which totaled \$850,000, the state court sustained only two of these claims, and awarded Torres a total of \$309,950, less than half of the amount that Torres claimed he was owed by the Tribe. Among other things, the state court rejected Torres' claim for reimbursement for amounts paid to a subcontractor, finding that Torres had already been reimbursed for such amounts, and further rejected Torres' claim that he was entitled to a 35% markup, finding instead that a 15% markup is a reasonable profit for a contractor. Judgment was entered in the state court action on September 13, 2005. Torres did not seek sanctions in the state court for the Tribe's claims against him, nor did he pursue any other recourse against the Tribe, such as an action for malicious prosecution. Both the Tribe and Torres appealed the judgment, but neither appeal was successful, and the state court judgment became final on January 22, 2008. Torres subsequently brought a motion to disallow the Tribe's claim against

him, which the bankruptcy court granted without objection from the Tribe.

H. Torres' Motion For Sanctions In The Bankruptcy Court

On January 19, 2012, approximately four years after the state court action became final, Torres filed a motion in the bankruptcy court for sanctions against the Tribe and its chairman, Vincent Armenta. Torres asserted that the Tribe's claim against him was "false and fraudulent" and therefore both it and Mr. Armenta should be sanctioned under 28 U.S.C. § 1927, which provides for sanctions in certain circumstances against an "attorney or other person admitted to conduct cases in any court of the United States." Torres also sought sanctions under the bankruptcy court's inherent power to sanction. Torres' motion did not specify the amount of sanctions that should be awarded.

The Tribe and its chairman opposed the motion for sanctions on the grounds that Torres had failed to present any evidence indicating that the Tribe or its chairman had acted in bad faith or violated any court orders. The Tribe and its chairman did not raise the issue of sovereign immunity and did not assert that they could not be sanctioned because of sovereign immunity.

The bankruptcy court held a hearing on Torres' motion for sanctions on April 27, 2012. After the bankruptcy court observed that neither the Tribe nor

its chairman were licensed attorneys, Torres agreed to abandon his claim for sanctions under 28 U.S.C. § 1927. The bankruptcy court proceeded to find that neither the Tribe nor its chairman should be subject to sanctions under the court's inherent power to sanction. On May 10, 2012, the bankruptcy court issued a written order denying Torres' motion for sanctions.

I. Torres' First Appeal Of The Denial Of His Motion For Sanctions

On May 22, 2012, Torres appealed the bankruptcy court's denial of his motion for sanctions to the United States District Court for the Central District of California. After full briefing by the parties, oral argument took place on March 18, 2013. On March 27, 2013, the district court issued an unpublished ruling affirming the bankruptcy court's decision in its entirety.

The district court based its ruling on two grounds. First, after examining the record, the district court agreed with the bankruptcy court that the facts did not support a finding of bad faith on the part of the Tribe or its chairman. Second, the district court held that "simply because a claim is ultimately deemed meritless or without evidentiary support does not necessarily indicate that such a claim was brought in bad faith." *Citing T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 638 (9th Cir. 1987). In that regard, the district court found

that the bankruptcy court properly expressed concern with imposing sanctions simply because the Tribe was ultimately unsuccessful in its claim against Torres. The district court concluded that “Mr. Torres lacks sufficient evidence to persuade this Court that the Bankruptcy Court abused its discretion or that the Bankruptcy Court’s factual findings were clearly erroneous.” The district court did not address sovereign immunity as defense because the Tribe did not raise this issue in the appeal.

J. Torres’ Second Appeal Of The Denial Of His Motion For Sanctions

Torres filed a notice of appeal to the Ninth Circuit Court of Appeals on June 14, 2013. This was Torres’ second appeal of the bankruptcy court’s denial of his motion for sanctions. As before, neither the Tribe nor its chairman raised sovereign immunity as a defense. On March 24, 2015, the court of appeal issued an unpublished opinion affirming the bankruptcy court’s decision. In its ruling, the court of appeals stated: “The bankruptcy court did not abuse its discretion in denying Torres’s motion for sanctions after concluding that the Santa Ynez band of Chumash Indians did not act in bad faith by filing a proof of claim in Torres’s bankruptcy proceedings.”

K. Torres’ Petition For A Writ Of Certiorari

On June 22, 2015, Torres filed a petition to this Court for a writ of certiorari (docketed on June 25,

2015), seeking a third review of the bankruptcy court's order. Unfortunately, Torres' petition contains numerous false statements unsupported by the record, which under this Court's rules the Tribe is obliged to identify herein. *See* Sup. Ct. R. 15. Specific misstatements include the following:

On page 2, Torres asserts that "the bankruptcy court's refusal to consider" his motion for sanctions constitutes a denial of due process. The record in fact shows that the Bankruptcy Court carefully considered the extensive briefing and oral argument made by Torres but denied the motion because it found that the Tribe had not acted in bad faith.

On page 4, Torres claims that the real motive for the complaints about his work was to support a "coup" of the Tribe's leadership. The only support in the record for this completely concocted claim is a declaration submitted by Torres in which he claimed to be aware of the private thoughts of other people and to have knowledge of events that occurred outside of his presence. Torres is incompetent to testify about such matters.

On page 8, Petitioner falsely claims that Mr. Armenta was coached by his attorney and provided evasive answers at his deposition. Nothing in the record supports this untrue accusation.

Throughout the Petition, Torres accuses Mr. Armenta of engaging in illegal acts, without

identifying any evidence supporting such claims. There is nothing in the record to support these false and scurrilous accusations.



REASONS FOR DENYING THE PETITION

This case presents no question of top priority. The court of appeals did not decide an important question of federal law, and its ruling, even if it had been published, does not conflict with the decision of any other United States court of appeals or any state court of last resort. The sole issue presented for appellate review is whether the bankruptcy court abused its discretion in denying Torres' motion for sanctions. As both the district court and the court of appeals found, the evidence in the record overwhelmingly shows that the bankruptcy court did not abuse its discretion. Further review of this case is therefore unwarranted. Torres clearly has not carried his burden of demonstrating "compelling reasons" for the Petition to be granted. *See* Sup. Ct. R. 10.

I. This Case Does Not Present An Important Question Of Federal Law

Torres asserts that certiorari should be granted in order to clarify whether this Court's decision in *Michigan v. Bay Mills Indian Community*, 572 U.S. ___; 134 S.Ct. 2024 (2014) enables a tribal officer or employee to avoid legal responsibility for "outrageous

and abusive actions” by claiming the tribe’s sovereign immunity. Petition at p. 23. The record clearly shows, however, that neither the Tribe nor its chairman ever raised sovereign immunity as a defense to Torres’ motion for sanctions. They instead argued that sanctions were unwarranted given the facts of this case. Because the Tribe and Mr. Armenta did not claim sovereign immunity, the bankruptcy court did not address sovereign immunity in its ruling, and it did not deny Torres’ motion on the ground that it applied. The bankruptcy court denied Torres’ motion because it found (as did the state court before it) that the Tribe and its chairman did not act in bad faith.

The Tribe and its chairman also did not assert sovereign immunity as a defense in Torres’ appeal of this matter to the district court and to the court of appeals. The district court and the court of appeals accordingly did not mention sovereign immunity in their rulings, nor did they affirm the bankruptcy court’s decision on the ground of sovereign immunity. They instead affirmed the denial of the motion for sanctions solely because they found that no abuse of discretion had occurred. Indeed, after examining the record, the district court stated that it agreed with the bankruptcy court that the facts did not support a finding of bad faith on the part of the Tribe or its chairman.

Torres also asserts that “in refusing to consider Petitioner’s right to recover his attorneys fees the bankruptcy court below denied Petitioner’s Constitutional rights to due process of law under the Fourth

(sic) and Fourteenth Amendments to the United States Constitution.” Petition at p. 2. Nothing in the record shows, however, that the bankruptcy court refused to consider Torres’ arguments. On the contrary, the transcript of the hearing on the sanctions motion shows that the bankruptcy court carefully considered all of the voluminous papers filed by Torres in support of his motion. The bankruptcy court simply disagreed with Torres that the Tribe and its chairman had acted in bad faith.

Torres further suggests that he was somehow prevented from submitting evidence supporting his sanctions motion because of the sovereign immunity doctrine. Petition at pp. 22-23. As previously stated, however, the Tribe did not raise sovereign immunity as a defense to Torres’ motion. Although the Tribe objected to declarations submitted by Torres on the grounds of hearsay, impermissible lay opinion, and lack of personal knowledge, it did not argue that evidence submitted by Torres was inadmissible because of sovereign immunity. The bankruptcy court did not in any case rule on the Tribe’s objections, and nothing in the record indicates that the bankruptcy court did not consider all of the evidence – even the inadmissible evidence – submitted by Torres.

Contrary to the Petition, this case presents no important issues of federal law justifying review by this Court. This is instead a fact-based case of little interest to anyone except the parties thereto.

II. The Court Of Appeals' Decision Does Not Conflict With Any Decisions By Another Court Of Appeals Or Any State Court Of Last Resort

The court of appeals' unpublished opinion in this case (by a unanimous three-judge panel) does not conflict with the decisions of any other court of appeals or any state court of last resort. The court of appeals merely ruled that "the bankruptcy court did not abuse its discretion in denying Torres's motion for sanctions after concluding that the Santa Ynez Band of Chumash Indians did not act in bad faith by filing a proof of claim in Torres's bankruptcy proceedings." Nothing in the court of appeals' unpublished opinion conflicts with the decisions of any other court.

III. The Bankruptcy Court Did Not Abuse Its Discretion By Denying Sanctions

In addition to showing the absence of any grounds for certiorari, the record in this case further shows that the bankruptcy court did not abuse its discretion in denying the motion for sanctions.

A. Standard Of Review Of The Bankruptcy Court's Order

A decision to grant or deny sanctions is reviewed for an abuse of discretion. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 55 (1991). Although the courts of appeals use different verbal formulas to characterize their standards of review, the scope of disagreement among

them is narrow. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 400 (1990). In the Ninth Circuit, an abuse of discretion is described as “a plain error, discretion exercised to an end not justified by the evidence, a judgment that is clearly against the logic and effect of the facts as are found.” *Int’l Jensen, Inc. v. Metrosound U.S.A., Inc.*, 4 F.3d 819, 822 (9th Cir. 1993). A reviewing court will not disturb a lower court’s exercise of discretion unless it has a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon a weighing of the relevant factors. *Smith v. Jackson*, 84 F.3d 1213, 1221 (9th Cir. 1996). “Normally, the decision of a trial court is reversed under the abuse of discretion standard only when the appellate court is convinced firmly that the reviewed decision lies beyond the pale of reasonable justification under the circumstances.” *Harman v. Apfel*, 211 F.3d 1172, 1175 (9th Cir. 2000), citing *Valley Engineers v. Electric Engineering Co.*, 158 F.3d 1051, 1057 (9th Cir. 1998). Stated differently, the standard means that within substantial margins the lower court could be upheld had it determined the issue one way or the other. *Speiser, Krause & Madole, P.C. v. Ortiz*, 271 F.3d 884, 887 (9th Cir. 2001).

In determining whether an abuse of discretion occurred, the reviewing court must accept the lower court’s findings of fact unless the reviewing court is left with the definite and firm conviction that a mistake has been committed. *Gonzalez-Caballero v. Mena*, 251 F.3d 789, 792 (9th Cir. 2001). In addition, the appealed decision is presumed to be correct, and

the appellant has the burden of overcoming this presumption. *Parke v. Riley*, 506 U.S. 20, 29 (1992). An appealed judgment will be affirmed if it is correct on any theory, even if the lower court's reasoning is incorrect. *Evans v. Chater*, 110 F.3d 1480, 1481 (9th Cir. 1997)

B. Sanctions May Be Issued Only Where The Court Makes An Explicit Finding Of Bad Faith Or Willful Misconduct

The inherent authority of a federal court to sanction is wide in scope and powerful in effect, and therefore courts should exercise it with discretion and restraint. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991). "A primary aspect of that discretion is the ability to fashion an appropriate sanction for conduct which abuses the judicial process." *Ibid.* Accordingly, before imposing sanctions under its inherent authority, a court must make an explicit finding of bad faith or willful misconduct. *In re Dyer*, 322 F.3d 1178, 1196 (9th Cir. 2003); *see also Primus Auto. Fin. Servs., Inc. v. Batarse*, 115 F.3d 644, 649 (9th Cir. 1997) ("We insist on the finding of bad faith because it ensures that 'restraint is properly exercised' and it preserves a balance between protecting the court's integrity and encouraging meritorious arguments." (citation omitted); quoting *Zambrano v. City of Tustin*, 885 F.2d 1473, 1478 (9th Cir. 1989).

In *Primus*, the district court imposed sanctions on the defense counsel for engaging in conduct that

was “outrageous” and “inexcusable” and making arguments that were “totally frivolous.” *Id.* at 646. On appeal, however, the Ninth Circuit reversed the sanctions order because the district court’s findings did not explicitly state that bad faith conduct or conduct tantamount to bad faith had occurred. *Ibid.*

The bad faith requirement sets a “high threshold” for justifying the imposition of sanctions. *Primus, supra*, 115 F.3d at p. 646. Mere recklessness alone does not constitute bad faith conduct and, under a court’s inherent power, does not justify the imposition of sanctions. *Fink v. Gomez*, 239 F.3d 989, 993-994 (9th Cir. 2001). “[S]anctions should be reserved for the ‘rare and exceptional case where the action is clearly frivolous, legally unreasonable or without legal foundation, or brought for an improper purpose.’” *Primus, supra*, 115 F.3d at p. 649 (citation omitted).

C. The Bankruptcy Court Correctly Determined That The Tribe Did Not Act In Bad Faith Or Engage In Willful Misconduct

After considering the evidence submitted by the parties in connection with Torres’ motion for sanctions, the bankruptcy court correctly found that the facts did not support an award of sanctions against the Tribe. In that regard, the bankruptcy court found that the Tribe and Torres had both brought actions against each other in the state court before Torres petitioned for bankruptcy protection.

After the petition was filed, the Tribe filed a proof of claim to preserve its right to obtain a determination of its claims in the state court lawsuit. The bankruptcy court did not find any irregularities in connection with the proof of claim. Upon a motion by the Tribe, the bankruptcy court directed the parties to litigate their claims in the state court, which they proceeded to do. The state court ultimately ruled in favor of Torres on the Tribe's claims but only awarded Torres \$309,950 of the \$850,000 he sought from the Tribe. Both parties appealed the state court judgment and both were unsuccessful on grounds unrelated to the merits. After the state court judgment became final, Torres moved to disallow the Tribe's claim without objection or interference from the Tribe.

Based on this record, the bankruptcy court concluded that the Tribe had done nothing that was sanctionable:

They did exactly what they were supposed to do. I said, "go back to the state court. Litigate it." They did litigate it.

The bankruptcy court's findings are abundantly supported by the record. The evidence shows that the Tribe's dispute with Torres was based on legitimate concerns about Torres' work and billing practices. Among other things, Torres charged the Tribe \$740,000 for streetlight installation, an amount which the Tribe was told was \$400,000 over the fair market value of the time and materials for the work. Torres then paid a subcontractor \$94,720 for

engineering, permit processing and surveying work but charged the Tribe \$250,000 for the same work without adding any value. Torres also overcharged the Tribe for the construction of storm drains and for deficient grading.

The Tribe conducted a thorough investigation of its claim before filing suit against Torres. Among other things, the Tribe retained a construction expert to investigate Torres' work and billing practices. After carefully inspecting Torres' work and the materials used on the job site, reviewing aerial photographs and maps of the work area, and obtaining prices from local contractors and suppliers, the expert concluded that Torres' bills to the Tribe, which exceeded \$2 million, were clearly excessive. Engineers who had been hired by Torres expressed similar opinions to the Tribe. It was only after the Tribe received these opinions that it brought suit against Torres in the state court.

The Tribe's concerns about Torres' billing practices were in large measure vindicated by the state court's decision, which found that the Tribe was only obligated to pay \$309,950 of the \$850,000 sought by Torres. The Tribe's success in reducing Torres' charges by more than 63% is strong evidence that the Tribe did not initiate its dispute with Torres in bad faith.

Moreover, as the bankruptcy court correctly observed, Torres had multiple remedies in the state court, which was in the best position to assess the merits of the Tribe's claims, if he believed that the Tribe had acted inappropriately in challenging his

work and bills. Among other remedies, Torres could have sought sanctions against the Tribe in the state court under California Code of Civil Procedure section 128.7. Patterned after Rule 11 of the Federal Rules of Civil Procedure, section 128.7 provides that an attorney who presents a pleading, motion or similar paper to the court makes an implied certification as to its legal and factual merit and is subject to sanctions for violation of this certification. Alternatively, Torres could have sued the Tribe for malicious prosecution if he believed that the Tribe had brought its action against him without probable cause. Torres availed himself of neither of these remedies. He instead waited until *four years* after the state court action was final to seek sanctions in another court.

In his Petition, Torres claims that the state court's ruling shows that the Tribe and its chairman acted maliciously and in bad faith. This assertion is directly contradicted by the language of the state court's ruling. Far from finding that the Tribe's action was a result of the tribal chairman's "personal vendetta" against Torres, as Torres claims, the state court instead found that the tribal chairman's credibility had not been impeached during the trial and that "the new tribal chairman may have suspected Defendant of taking advantage of the Tribe. His motive-behind-the-motive was to protect his people. His quantum of proof could well be lower than that required by the law to establish what he suspected." The state court's express finding that the tribal chairman's motive "was to protect his people" completely undercuts Torres'

assertion that the tribal chairman's motive was to pursue a personal vendetta. Given its 63% reduction of Torres' charges, the state court clearly believed, after a lengthy trial, that many of the Tribe's concerns about Torres' charges were well founded.

Torres also blames the Tribe for the length of the litigation, and appears to assert that this fact, too, indicates that the Tribe acted in bad faith. The record, however, contains no evidence (and Torres cites none) indicating that the Tribe improperly delayed the litigation or otherwise pursued its claims in an inappropriate manner. On the contrary, the record shows that Torres' own conduct considerably extended the litigation and increased the costs to the parties. After the state court action was filed, Torres declared bankruptcy, and then unnecessarily and unsuccessfully fought the Tribe's motion to lift the automatic stay so that the parties' respective claims could be liquidated in the state court. As a counterclaimant in the state court action, Torres was at least equally responsible for the length of that action, and in fact he has admitted that the trial of his counterclaim consumed 21 of the 28 days it took to try the state court action. Like the Tribe, Torres appealed the judgment in the state court action, without success.

After the Tribe paid the judgment amount, Torres refused to provide a satisfaction of judgment and to release his lien on the Tribe's property, forcing the Tribe to pursue legal action in the state court to compel Torres to do so. Torres then inexplicably delayed obtaining an order from the bankruptcy court disallowing

the Tribe's proof of claim until January 20, 2011, three years after the state court judgment became final. The Tribe did not oppose the disallowance of its proof of claim in any way. Based on this record, it is absurd for Torres to claim that the length of the litigation somehow shows bad faith by the Tribe.

Torres also asserts that the bankruptcy court improperly denied his request for sanctions because it mistakenly believed that it lacked authority to sanction conduct occurring outside of the bankruptcy court. The bankruptcy court never stated that it lacked such authority, however, nor does the record show that the bankruptcy court denied Torres' motion for any reason other than the lack of evidence that the Tribe or its chairman had acted in bad faith. The bankruptcy court instead made it clear that it was denying Torres' motion because bad faith should not be presumed simply because the Tribe was unsuccessful in its claim against Torres. In that regard, the bankruptcy court stated:

You [counsel for Torres] know, you'd have me go down a slippery slope here. If every plaintiff who essentially was nonsuited, lack of evidence, and did not prevail at trial, would be open for sanctions . . . just because they didn't prove their case. . . .

As the district court found, the bankruptcy court was absolutely correct in expressing this concern. Mere lack of success does not indicate bad faith conduct, nor does it justify the imposition of sanctions. *See Fink v. Gomez, supra*, 239 F.3d at 993-994.

Finally, none of the cases relied on by Torres support the imposition of sanctions on a party who has not violated any statute or court order, and is not guilty of contempt. The case principally relied on by Torres, *Chambers v. NASCO, Inc.*, 501 U.S. 327 (1991), arose from facts far different from the instant case. In *Chambers*, the sole shareholder of a media company (Chambers) agreed to sell a television station to NASCO. Chambers subsequently repudiated the agreement and, to place the station beyond the reach of NASCO in the lawsuit which ensued, sold the station to a trust created by Chambers and operated by Chambers' relatives. Chambers thereafter violated an injunction and two restraining orders despite warnings and a \$25,000 contempt fine by the district court. Finally, in response to the district court's judgment in favor of NASCO, Chambers removed station equipment from service and persuaded station officials to oppose NASCO's pending FCC application to consummate the transfer of the station. *Id.* at 36-39.

The present case is readily distinguishable from *Chambers*. There is no evidence that the Tribe or its chairman violated any court orders or was guilty of contempt. The conduct Torres complained of – that the Tribe filed a proof of claim based on a then-pending lawsuit filed in the state court – was specifically authorized by the bankruptcy court when it lifted the stay to permit the Tribe to proceed with the state court action.



CONCLUSION

As discussed herein, the Tribe and its chairman did not raise sovereign immunity as a defense to the motion for sanctions in the bankruptcy court, in the district court, or in the court of appeals. Further review of this case to consider whether the Tribe or its chairman *could have raised* sovereign immunity as a defense would be purely advisory and would not change the outcome of the case. The only issue presented by this appeal is whether the bankruptcy court abused its discretion in denying sanctions. As both the district court and the court of appeals have found, the bankruptcy court's decision is abundantly supported by the record. Torres has not shown any compelling reasons for this Court to grant the Petition and therefore it should be denied.

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Respectfully submitted,

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