UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

November 10, 2016 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled 'Amended Civil Minute Order.'

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.

3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.

4. If no disposition is set forth below, the matter will be heard as scheduled.

---

1. 14-25820-D-11 INTERNATIONAL MANUFACTURING GROUP, INC.
16-2082
MCFARLAND V. BATTLE CREEK STATE BANK

STATUS CONFERENCE RE: COMPLAINT
4-27-16 [1]

2. 14-25820-D-11 INTERNATIONAL MANUFACTURING GROUP, INC.
16-2090
MCFARLAND V. CALIFORNIA BANK & TRUST ET AL

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
8-24-16 [54]

Final ruling:
Per a stipulated order, this status conference is continued to February 9, 2017 at 10:00 a.m. No appearance is necessary.

3.	14-25820-D-11 16-2109 MCFARLAND V. MICHELSON FAMILY PARTNERS, INC. ET AL	INTERNATIONAL MANUFACTURING GROUP, INC.	CONTINUED STATUS CONFERENCE RE: COMPLAINT 5-27-16 [1]
4.	16-20428-D-7 16-2085 VENTURA V. DEPARTMENT OF DEFENSE ET AL	YHADIRA VENTURA	CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT 6-7-16 [7]
5.	10-42050-D-7 12-2359 BURKART V. MAHARAJ	VINCENT/MALANIE SINGH	NOTICE OF CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT 7-26-12 [1]
6.	10-42050-D-7 12-2365 BURKART V. PANDEY	VINCENT/MALANIE SINGH	CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT 7-27-12 [1]

7.	10-42050-D-7 12-2475 BURKART V. KAIWAI	VINCENT/MALANIE SINGH	CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT 4-8-13 [11]

8.	14-27267-D-7 16-2138 EDMONDS V. SARAD	SARAD/USHA CHAND	CONTINUED STATUS CONFERENCE RE: COMPLAINT 7-6-16 [1]

Final ruling:

The Plaintiff has been granted an extension of time to serve the complaint. As a result, this status conference is continued to February 9, 2017 at 10:00 a.m. No appearance is necessary on November 10, 2016.

9.	16-23668-D-7 16-2185 MACHLAN V. HUNTER	SUZANNE HUNTER	STATUS CONFERENCE RE: COMPLAINT 9-9-16 [1]

10.	11-42673-D-11 15-2212 CAMARA V. ROCK	LINDA ROCK	PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT TO DETERMINE DISCHARGEABILITY 1-22-16 [16]

11. 13-35288-D-7 DUSTIN/KAREN BOLE
14-2097
GENERAL COUNCIL OF THE ASSEMBLIES OF GOD V. BOLE ET

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT TO DETERMINE NONDISCHARGEABILITY OF DEBT
4-8-14 [1]

Final ruling:

Per the parties' request, this pre-trial conference is continued to February 9, 2017 at 10:00 a.m. No appearance is necessary.

12. 14-25820-D-11 INTERNATIONAL MANUFACTURING GROUP, INC.
16-2090
OMM-1
MCFARLAND V. CALIFORNIA BANK & TRUST ET AL

CONTINUED MOTION TO DISMISS ADVERSARY PROCEEDING
9-21-16 [81]

Tentative ruling:

This is the motion of defendant Bank of America, N.A. (the "Bank") to dismiss the first amended complaint ("Amended Complaint") of the plaintiff, Beverly McFarland, who is also the trustee in the chapter 11 case in which this adversary proceeding is pending (the "trustee"), pursuant to Fed. R. Civ. P. 12(b)(6), incorporated in this adversary proceeding by Fed. R. Bankr. P. 7012(b). The trustee has filed opposition and the Bank has filed a reply. For the following reasons, the court intends to grant the motion in part.

In Count 6 of the Amended Complaint, the trustee seeks to recover from the Bank, as a subsequent transferee; that is, a transferee of the initial transferee, the value of portions of allegedly fraudulent transfers made by the debtor in the underlying chapter 11 case, International Manufacturing Group, Inc. ("IMG"), to defendant Jamestown S'Klallam Tribe (the "Tribe") or Jamestown Health and Medical Supply Company, LLC ("JHMS"). The transfers fall into three categories: (1) a payment of $739,632.82 made by JHMS to the Bank in November of 2009 from funds initially transferred by IMG to JHMS; (2) a $4.5 million payment made by the Tribe or JHMS to the Bank from funds the Tribe or JHMS had received out of the registry of the Superior Court of Washington, which funds had been deposited into the court registry by IMG (the "Court Registry Transfers"); and (3) some portion of the $767,901.57 in payments IMG made to the Tribe between September of 2011 and February of 2014 (the "Jamestown Tribe Transfers"). As indicated, the trustee seeks only recovery of alleged fraudulent transfers from the Bank, under § 550 of the Bankruptcy Code. She does not seek to avoid any transfers to the Bank.

<u>I. Sufficiency of the Allegations</u>

The trustee seeks to avoid, as against the Bank's co-defendants, certain transfers pursuant to § 544(b) and applicable state law. Under that subsection, the trustee may avoid a transfer "that is voidable under applicable law by a creditor holding an [allowable] unsecured claim . . . ." § 544(b). It is a prerequisite to the trustee's recovery from the Bank under § 550 that the trustee allege and prove that IMG made transfers avoidable under § 544 of the Code. § 550(a) ["[T]o the extent that a transfer is avoided under section 544 . . ., the trustee may recover . . . the property transferred [or its value]."]. The Bank begins with the contention

that, as to all three categories of transfers, the trustee has failed to allege the transfers could have been avoided by an actual unsecured creditor of IMG, as required by § 544(b). The Bank contends

> the Complaint does not contain a single factual allegation to support how or why an unsecured creditor could have avoided the payments to the initial transferees (including the Superior Court) under state fraudulent transfer laws. The closest the Complaint comes are a handful of references to "Innocent Creditors," and the conclusory allegation that "IMG and/or the substantively consolidated debtors had a number of creditors who could have avoided the JHMS-Related Transfers as of the petition date (May 30, 2014)."

Bank's Memo., DN 83, at 7:2-7. Those allegations, the Bank claims, are not sufficient to state a plausible claim to relief.

The court agrees with the trustee that the "painstakingly detailed allegations" in the Amended Complaint are more than sufficient to state a claim to relief for the avoidance of actual fraudulent transfers – a claim that could have been asserted by an unsecured creditor of IMG under the California Uniform Fraudulent Transfer Act. Further, the Amended Complaint alleges ING had "a number of creditors" who could have avoided the transfers as of the petition date. Although the trustee does not specifically allege these were unsecured creditors, as required under § 544(b), the court is satisfied the Bank has adequate notice of the particular conduct alleged "so that [it] can defend against the charge and not just deny that [it has] done anything wrong." Kearns v. Ford Motor Co., 567 F.3d 1120, 1124 (9th Cir. 2009). (As the trustee points out, a number of unsecured creditors have filed proofs of claim in the parent case.)

II. The Court Registry Transfers

The Bank challenges the trustee's claims to recover the court registry transfers on three grounds: (1) that they constitute an impermissible collateral attack on the orders of the Washington Superior Court; (2) that the judicial and sovereign immunity of the initial transferee, the Superior Court, bars recovery; and (3) that the Bank, as the transferee of "an unquestionable good faith transferee for value"; namely, the Superior Court, cannot be held liable. The court finds the Bank's first point is well-taken and the court therefore need not address the other two.

The trustee alleges the $4.5 million payment by the Tribe or JHMS to the Bank came from funds deposited by IMG into the registry of the Superior Court of Washington for Kings County following the issuance of a preliminary injunction by that court. She further alleges those funds were paid out of the court's registry to the Tribe and/or JHMS pursuant to orders of the Superior Court. The Bank alleges the trustee's causes of action to avoid and recover those transfers constitute an impermissible collateral attack on the orders of the Superior Court. The Bank relies on Batlan v. Bledsoe (In re Bledsoe), 569 F.3d 1106 (9th Cir. 2009), in which a bankruptcy trustee sought to recover as constructive fraudulent transfers, under both § 548 of the Bankruptcy Code and Oregon fraudulent transfer law, certain pre-petition transfers made by the debtor to his former spouse pursuant to an Oregon state court dissolution judgment.

Citing Oregon case law, the Ninth Circuit held that under Oregon law, "a party must allege extrinsic fraud to bring a successful collateral challenge to a

regularly obtained court judgment" (Bledsoe, 569 F.3d at 1110-11), and that, again under Oregon law, the rule applies to fraudulent transfer claims under the UFTA." Id. at 1111. The Bank cites a Washington Supreme Court case holding that a party may collaterally attack a court order only where the order is "absolutely void, not merely erroneous" (Bresolin v. Morris, 86 Wn.2d 241, 245 (1975)), and that "[a] judgment is void only where the court lacks jurisdiction of the parties or the subject matter or lacks the inherent power to enter the particular order involved." Id. Thus, whereas the test under Oregon law is extrinsic fraud, under Washington law, it is whether the court lacked personal or subject matter jurisdiction or lacked the inherent power to enter the order. The trustee's claim against the Tribe and JHMS based on the court registry transfers, Count 3, purports to seek avoidance under "applicable state law, including Cal. Civ. Code § 3439.04 and Rev. Code Wash. § 19.40.041." Amended Complaint, DN 54, ¶ 355. At least so far as Washington law is concerned, the Amended Complaint misses the mark because it does not allege the Washington Superior Court did not have jurisdiction or did not have the power to enter the orders it did.

The trustee's attempt to distinguish Bledsoe is unpersuasive. First, she claims it is distinguishable because in the underlying state court case in Bledsoe, the trustee had alleged only constructive fraudulent transfers and "did not argue that the dissolution judgment was obtained in order to thwart Debtor's creditors." Trustee's Opp. at 30:14-16. But the trustee in the present case does not allege the Washington Superior Court orders were anything other than regularly obtained court orders following contested proceedings. The trustee next contends she "does not expressly or implicitly challenge[] the validity of any Superior Court orders" (Trustee's Reply at 30:8-9); she seeks only to avoid "transfers of money that Wannakuwatte unilaterally caused IMG to make in direct furtherance of his Ponzi scheme and other fraudulent activity." Id. She adds the Tribe's authorities do not involve transfers motivated in part by the fear of being held in contempt of court. However, as the Bank replies, the trustee's allegations themselves in the Amended Complaint make clear the transfers were made because the court's orders required IMG to make payments in the total amount deposited.

The trustee next asserts that in Bledsoe, "the dissolution judgment itself effectuated the transfer at issue" (Opp. at 30:17-18), whereas here, the Superior Court's orders did not themselves "effectuate the transfer." While the Bledsoe decision did refer to "the state-court judgment grant[ing] Defendant items valued at $93,737 (569 F.3d at 1108), it also referred to the transfers as having been "made pursuant to the dissolution judgment." Id. The court also referred to "transfers that have received a judicial imprimatur" and "transfers under a regularly obtained dissolution judgment following a contested proceeding." Id. at 1110. Even if the underlying state court judgment in the Bledsoe case itself "effectuated the transfers," as opposed to the debtor having made them "pursuant to the judgment," the court does not see a policy basis for distinguishing the two.

Finally, the trustee purports to distinguish Bledsoe on the basis that, whereas the state court ordered IMG to deposit into its registry the funds IMG claimed it expected to receive from a government contract, IMG instead deposited funds that "originated from IMG's investors." Amended Complaint, ¶ 156. Again, this appears to be a distinction without a difference. As the Bank points out, the trustee is nonetheless asking this court to undo the effects of the Superior Court's orders.

The court sees one issue that has not been sufficiently addressed by the parties. The Bledsoe court engaged in a two-step analysis. First, it cited an Oregon Supreme Court case, Johnson v. Johnson, 302 Ore. 382, 384 (1986), for its

holding that "a party may attack a judgment collaterally only by alleging and proving 'extrinsic fraud.'" Bledsoe, 569 F.3d at 1109. In introducing the second step in the analysis, the court "[began] by observing that nothing in Johnson suggests that its rule is not one of general applicability; that is, nothing suggests that the rule would not apply to all collateral attacks on judgments. Additionally, Trustee has failed to explain persuasively why UFTA fraudulent transfer claims would be subject to a different rule." Bledsoe, 569 F.3d at 1109-10. The court went on, however: "But we need not rest there, because we have guidance from the Oregon Court of Appeals." Id. at 1110.

The Bledsoe court then cited an Oregon appellate court case, Greeninger v. Cromwell, 140 Ore. App. 241, 246-47 (1996), which applied Johnson to a collateral attack in the form of a fraudulent transfer claim. Bledsoe characterized Greeninger as holding that the extrinsic fraud requirement of Johnson applies to collateral attacks in the form of state fraudulent transfer claims. Bledsoe, 569 F.3d at 1110. Thus, "[w]ith respect to the class of cases like this one, involving transfers under a regularly obtained dissolution judgment following a contested proceeding, we think that the Oregon Supreme Court would hold, as did Greeninger, that allegations of extrinsic fraud are required." Id.

Here, the Bank has taken the first step in the Bledsoe analysis: as discussed above, it has cited a Washington Supreme Court case, Bresolin, holding that a party may collaterally attack a court order only where the order is absolutely void, not merely erroneous, and that a judgment is void where the court lacked personal or subject matter jurisdiction or otherwise lacked the power to enter the order. However, the Bank did not undertake the second step in the analysis: it did not cite Washington case authority for the proposition that Bresolin governs collateral attacks in the form of fraudulent transfer claims. And the trustee has cited no case law to the contrary. As the Bledsoe court did with Johnson, this court finds nothing in Bresolin to suggest its rule does not apply to collateral attacks in the form of fraudulent transfer claims. Nor can the court discern any policy reason why fraudulent transfers should be subject to a different rule. In other words, it seems reasonable to this court that a collateral attack in the form of a fraudulent transfer claim can stand only if the plaintiff alleges and proves the judgment or order was void for lack of jurisdiction or power to enter it. Nevertheless, given that the issue is likely to be dispositive as to a large dollar portion of the trustee's claims, the court will give the parties the opportunity to brief that specific issue, limited to four pages each.

To conclude, Bledsoe is, like Krystal, a Ninth Circuit decision binding on this court, and unless the further briefing just described provides a compelling basis on which to distinguish it, the court intends to grant the Bank's motion as to the court registry transfers.

III. Abrogation of Sovereign Immunity

As to the Jamestown Tribe Transfers, the Bank contends the trustee cannot recover as against the Bank because she cannot avoid the transfers to the initial transferee – the Tribe. The Bank's argument is premised on the Tribe's alleged sovereign immunity defense. The Bank cites almost no authority for its argument. It does not mention § 106(a) of the Bankruptcy Code or the Ninth Circuit's holding in Krystal Energy Co. v. Navajo Nation, 357 F.3d 1055, 1061 (9th Cir. 2004). As a clear determination, not distinguishable in this case, that Congress abrogated tribal sovereign immunity by way of § 106(a), the Krystal decision binds this court, and the court therefore concludes the Tribe has no sovereign immunity defense to the

trustee's action.

Finally, the Bank contends the trustee's claim for recovery of the Jamestown Tribe Transfers fails because the trustee has not alleged the Bank actually received any portion of those transfers, let alone how much or when. The trustee responds that (1) the Bank is properly joined as a defendant in the action to avoid the transfers "regardless of whether any corresponding section 550 recovery claim to recover the value of those avoidable transfers is maintained at the same time" (Trustee's Opp., DN 100, at 33:18-20); and (2) the trustee will be able to ascertain the amounts and dates of any subsequent transfers by the Tribe to the Bank in discovery.

The court is not convinced. The trustee's joinder argument fails because she does not purport to allege any facts against the Bank that would support an avoidance cause of action. And before a complaint may open the door to discovery, it must include allegations sufficient to state a plausible claim to relief. Because the trustee has not alleged the Bank received any portion of the funds from the Jamestown Tribe Transfers, the court intends to grant the motion as to those transfers with leave to amend.

The court will hear the matter.

13.	14-25820-D-11 16-2090 MCFARLAND V. CALIFORNIA BANK & TRUST ET AL	INTERNATIONAL MANUFACTURING GROUP, INC.	CONTINUED MOTION TO DISMISS WT-2ADVERSARY PROCEEDING/NOTICE OF REMOVAL AND/OR MOTION TO TRANSFER CASE/PROCEEDING TO ANOTHER DISTRICT 10-5-16 [104]

Tentative ruling:

This is the motion of defendant Jamestown S'Klallam Tribe (the "Tribe") to dismiss the first amended complaint ("Amended Complaint") of the plaintiff, Beverly McFarland, who is also the trustee in the chapter 11 case in which this adversary proceeding is pending (the "trustee"), for a variety of reasons.[1] The trustee has filed opposition and the Tribe has filed a reply. For the following reasons, the court intends to grant the motion in part and to continue the hearing to allow further briefing as to one or two particular issues.

I. Sufficiency of Service of Process

The Tribe seeks to dismiss the Amended Complaint on the ground neither it nor the original complaint was properly served on the Tribe. The Tribe's arguments on this issue, taken together, strongly suggest a plaintiff cannot effect proper service of process on an Indian tribe unless the Tribe has authorized a particular person to accept service on its behalf in the particular action, even, apparently, if the Tribe never designates anyone to accept service. The Tribe offers no authority for such a proposition, only for the various pieces that make up the overall proposition, and the court does not accept it.

The trustee served her original summons and complaint only on "James B. Rediger" at the law firm of Williams Kastner & Gibbs, LLC, in Seattle. The firm had represented the Tribe and Jamestown Health and Medical Supply Company, LLC as

defendants and third-party plaintiffs in pre-petition state court litigation among those two parties; Bank of America; the debtor in the present chapter 11 case, International Manufacturing Group, Inc. ("IMG"); and IMG's principal, Deepal Wannakuwatte. It is relatively clear the reference to "James" was a simple mistake. There is no James B. Rediger at the firm; there is, however, a Shawn B. Rediger, who had signed the Tribe's proof of claim filed in the underlying chapter 11 case. The trustee appears to concede that service on an attorney at the firm, even if it had been addressed to Shawn B. Rediger, was not sufficient. The trustee later filed the Amended Complaint, obtained an alias summons, and served both on W. Ron Allen, who is the Tribe's Tribal Council Chairman and Chief Executive Officer. According to the Tribe's constitution, the tribal council is the Tribe's representative governing body. The title Chief Executive Officer appears in the Tribe's government organizational chart, filed as an exhibit by the trustee, immediately below the tribal council and above all other officers.

Nevertheless, the Tribe takes the position it has not been properly served because it has never authorized Mr. Allen to accept service of process on its behalf. The Tribe has submitted the declaration of Diane Gange, its Chief Financial Officer, who testifies "Mr. Allen has not been authorized by the Tribe to accept service of the Trustee's adversary complaints in this matter." Gange Decl., DN 107, at 3:27-4:2. She adds, "It is up to the Tribe to decide who can accept legal process on its behalf, not the Trustee simply by mailing pleadings to whomever it wants." Id. at 4:2-3.

Ms. Gange's use of the words "to accept service of the trustee's complaints in this matter" suggest the Tribe decides on a case-by-case basis whom, if anyone, to authorize to accept service of process, which in turn, suggests an intent to avoid service when desirable. The suggestion is reinforced by the Tribe's observation that Rule 7004 "does not specify in what manner service of an Indian tribe is permitted or even allowed." Tribe's Memo., DN 106, at 6:8. (Nor does Fed. R. Civ. P. 4 refer to Indian tribes.) The Tribe contends the only subdivision of Rule 7004 that might apply is subdivision (b)(8), which provides for service on any defendant by mail to "an agent of such defendant authorized by appointment or by law to receive service of process . . . and, if the authorization so requires, by mailing also a copy of the summons and complaint to the defendant as provided in this subdivision." Rule 7004(b)(8). The Tribe contends the rule does not work for the trustee because Mr. Allen is not an agent authorized by appointment or by law to accept service of process for the Tribe.

If the Tribe's position were correct, an Indian tribe could avoid service of process simply by never authorizing any individual to accept service on its behalf (which may be the case here – the Tribe does not say) or by authorizing someone with no other authority over tribal affairs, such that he or she would not be readily identifiable by a plaintiff as someone authorized to accept service of process. Given that the various subdivisions of Rule 7004 (and of Fed. R. Civ. P. 4) governing service on entities focus on serving an officer or managing agent of a corporation, for example, or the chief executive officer of a governmental unit, the court does not accept the proposition that an Indian tribe may exempt itself from effective service of process by pursuing such a strategy. In this case, the trustee served the individual having the most authority over the Tribe and tribal affairs; that is, more authority than anyone else. The court finds that to be sufficient for the purpose of effective service of process.[2]

The Tribe also appears to contend the trustee should also have served the Tribe itself separately and that service should have been made by personal delivery and

not by mail. As to the latter, the Tribe offers no authority. As to the former, the Tribe highlights the language in Rule 7004(b)(8) (regarding service on any defendant) where the rule requires service on an agent authorized by appointment or by law to receive service "and, if the authorization so requires, by mailing also a copy of the summons and complaint to the defendant as provided in this subdivision." Tribe's Memo. at 6:23-24, quoting Rule 7004(b)(8). In this case, such additional service would have been essentially a meaningless act. By the time the alias summons and Amended Complaint were served, the Tribe's attorney had signed a stipulation in which she not only agreed with the trustee's counsel on an extension of time to respond to the complaint but also agreed to meet and confer at a discovery conference, to exchange initial disclosures, and to file a discovery plan, all by dates specified in the stipulation and all without mentioning the service of process issue. As the court has already determined service on Mr. Allen constituted effective service on the Tribe, the court need not determine whether this stipulation operated as a waiver of the right to formal service of process. The stipulation is, however, evidence the Tribe was aware of the action against it, had retained counsel, and was prepared to take substantive steps in defense of the action.

Although actual notice by itself is not sufficient to allow a plaintiff to dispense with service of process (Direct Mail Specialists, 840 F.2d at 688), it will suffice where there has been "substantial compliance with Rule 4." Id. Thus, in Direct Mail Specialists, the Ninth Circuit found service on the receptionist of a small corporation, where her role was "commensurately large in the structure of the company," to be sufficient to effect service on the corporation when coupled with actual notice. Id. at 689. This court has no hesitation in concluding that service on Mr. Allen was sufficient, coupled with the Tribe's actual notice of the action, as evidenced by its counsel's signing of the stipulation, to constitute service on the Tribe, even where the Tribe was not itself separately served.

Finally, as regards the service issue, the Tribe has raised two new arguments in its reply. First, the Tribe contends the trustee's service of the Amended Complaint more than 90 days from the filing of the original complaint puts that service outside what the Tribe characterizes as the mandatory limit of Fed. R. Civ. P. 4(m) (incorporated by Rule 7004(a)(1)) and the complaint must therefore be dismissed. The Tribe goes on to argue that, although a dismissal under Rule 4(m) is without prejudice, here, because the original complaint was not properly served on the Tribe, the Amended Complaint cannot "relate back" to the original for purposes of § 108(a)(2) of the Bankruptcy Code, and because the Amended Complaint was filed after the expiration of the trustee's two-year period in which to bring suit under that section, it must be dismissed with prejudice as untimely. As these issues were raised for the first time in the Tribe's reply, the court will give the trustee an opportunity to brief them.

II. Abrogation of Sovereign Immunity

The Tribe contends it has not waived its sovereign immunity and Congress has not abrogated it. As a necessary component to the argument, the Tribe urges the court to depart from the Ninth Circuit's holding in Krystal Energy Co. v. Navajo Nation, 357 F.3d 1055, 1061 (9th Cir. 2004). This the court is not prepared to do. First and foremost, this court is not free to disregard Krystal, even if it believed Krystal got it wrong. Deitz v. Ford (In re Deitz), 760 F.3d 1038, 1049 (9th Cir. 2014) ["The Panel, like all courts of this circuit, must adhere to the holdings in published opinions of the Court of Appeals unless those opinions are overturned by the Supreme Court."]. Further, even if it were free to rule contrary to the Ninth

Circuit, this court finds it significant that the Krystal court itself appears to have thoughtfully considered the arguments raised by the Tribe in the present case. Finally, the decision is quite clear; there is no room at all for distinguishing it from the present case. Although this court's opinion on the issue is not really relevant, the court is not persuaded the Ninth Circuit got it wrong.[3]

The court's holding in Krystal was that Congress abrogated the sovereign immunity of Indian tribes in § 106(a) of the Bankruptcy Code. 357 F.3d at 1056, 1059, 1061. The Tribe contends, however, the decision is not binding on this court because the Krystal court did not consider the constitutionality of § 106(a), and therefore, this court is free to declare it unconstitutional. The Tribe relies on this language in Krystal: "The Navajo Nation does not argue that, even had Congress abrogated Indian tribal sovereign immunity, such abrogation would be unconstitutional. In fact, the Navajo Nation states in its brief to this Court that Congress 'clearly' had power 'to abrogate tribal sovereign immunity in the Bankruptcy courts.'" 357 F.3d 1055, as amended, 2004 U.S. App. LEXIS 6488, *2, n.1 (April 6, 2004).

However, although the Krystal court did not specifically determine the constitutionality of § 106(a) as applied to Indian tribes, courts always have a duty to examine their own jurisdiction. Rosson v. Fitzgerald (In re Rosson), 545 F.3d 764, 769, n.5 (9th Cir. 2008) ["we have an independent obligation to assure ourselves of our own jurisdiction . . ., even if the parties are prepared to concede it."]. It is difficult to see how the Krystal court could have ruled as it did had it determined the bankruptcy court lacked jurisdiction as a constitutional matter. "It is fundamental to our system of government that a court of the United States may not grant relief absent a constitutional or valid statutory grant of jurisdiction." United States v. Bravo-Diaz, 312 F.3d 995, 997 (9th Cir. 2002).

In its reply, the Tribe cites Mitchell v. Franchise Tax Bd. (In re Mitchell), 209 F.3d 1111 (9th Cir. 2000), in which the Ninth Circuit stated, "Congress has clearly expressed its intent to abrogate state sovereign immunity in § 106(a)" (209 F.3d at 1118), but held that "Congress did not act within the scope of its abrogation power in enacting § 106(a)." Id. at 1121. In other words, the Mitchell court found § 106(a) unconstitutional, and thus, it affirmed the bankruptcy court's dismissal of the debtor's adversary proceeding against the Franchise Tax Board "for lack of jurisdiction on the basis of state sovereign immunity under the Eleventh Amendment of the United States Constitution." Id. at 1114. Based on Mitchell, the Tribe asks this court to find § 106(a) unconstitutional notwithstanding Krystal.

The Mitchell decision actually encompassed two holdings. First, the court cited Seminole Tribe v. Florida, 517 U.S. 44, as holding that "Congress may not abrogate state sovereign immunity under its Article I powers." Mitchell, 209 F.3d at 1118, citing Seminole Tribe, 517 at 72-73. The Mitchell court added, "Section 106(a) has been viewed by most courts addressing the issue as having been passed pursuant to the Bankruptcy Clause of Article I [of the United States Constitution]." Mitchell, 209 F.3d at 1119. The court then addressed whether § 106(a) was "an appropriate exercise" of Congress's powers under the Fourteenth Amendment (the due process clause), and concluded it was not. Id. Based on both holdings – the holdings concerning the Bankruptcy Clause and the Fourteenth Amendment, the Mitchell court concluded that "Congress did not act within the scope of its abrogation power in enacting § 106(a)." Id. at 1121.

The Mitchell court's analysis of the issue as regards the Fourteenth Amendment was held by the Ninth Circuit less than two years later to have been superseded by a

Supreme Court case decided at about the same time. See Hibbs v. HDM Dep't of Human Res., 273 F.3d 844, 853, n.6 (9th Cir. 2001). More important for present purposes, less than six years after Mitchell was decided, the Supreme Court stated, "We acknowledge that statements in both the majority and the dissenting opinions in Seminole Tribe of Fla. v. Florida reflected an assumption that the holding in that case would apply to the Bankruptcy Clause. Careful study and reflection have convinced us, however, that that assumption was erroneous." Katz, 546 U.S. at 363 (citations omitted). Katz does not govern the outcome of the present case as it dealt with state sovereign immunity, not tribal sovereign immunity. But it is significant here for another reason. The Mitchell court based its first holding – that § 106(a) is unconstitutional because Congress purported to abrogate sovereign immunity on the basis of the Bankruptcy Clause, which is in Article I – almost exclusively on Seminole Tribe. See Mitchell, 209 F.3d at 1118-19, 1121. The Supreme Court's holding in Katz that Seminole Tribe does not apply to the Bankruptcy Clause (Katz, 546 U.S. at 363) casts significant doubt on the continuing validity of Mitchell.

Finally, the Ninth Circuit was aware of Mitchell when it decided Krystal. The Krystal court stated, "In re Mitchell, 209 F.3d 1111 (9th Cir. 2000), invalidated § 106 insofar as it attempts to abrogate the sovereign immunity of States. No question has been raised in this case concerning the constitutionality of § 106 as it applies to Indian tribes." Krystal, 357 F.3d at 1057, n.1. Had the court believed Mitchell deprived § 106(a) of its constitutional validity in the case then before it, the court would surely have said so.

Because the court concludes Krystal governs this motion, the court holds the Tribe does not have sovereign immunity as against the trustee's claims in this adversary proceeding. For purposes of this motion, the court need not resolve the alternative issues raised by the Tribe – whether the Tribe has waived sovereign immunity by its governing documents or by agreement and whether Tribe's filing of a proof of claim in the parent case operated as a waiver of sovereign immunity for purposes of the adversary proceeding.

The Tribe next contends that even if Congress abrogated its sovereign immunity in § 106(a), and even if that abrogation is constitutional, § 106(a) does not abrogate sovereign immunity with respect to claims for affirmative money damages against the Tribe. The Tribe initially cited United States v. Germaine (In re Germaine), 152 B.R. 619 (9th Cir. BAP 1993), for this so-called "limited immunity" argument – the proposition that a governmental unit can be sued without its consent where (1) it has filed a proof of claim; (2) the estate's claim arose out of the same transaction or occurrence as the claim of the governmental unit; and (3) the estate's claim is for property of the estate.

That three-part test was in former § 106(a), which was renumbered in 1994 as § 106(b). In re Microage Corp., 288 B.R. 842, 853, n.15 (Bankr. D. Ariz. 2003). Also in 1994, however, a year after Germaine was decided, Congress replaced § 106(c) with a new subsection (a), thereby overruling earlier decisions that had held that § 106(c) did not abrogate sovereign immunity with respect to a bankruptcy trustee's claims for monetary relief. "Congress overruled the holdings of Nordic and Hoffman with the 1994 amendments to § 106, in particular with the replacement of former subsection (c) with the new subsection (a)." Id. In United States v. Nordic Village, Inc., 503 U.S. 30 (1992) and Hoffman v. Connecticut Dep't of Income Maintenance, 492 U.S. 96 (1989), the Supreme Court had held that § 106(c) did not abrogate sovereign immunity with respect to a bankruptcy trustee's claims for monetary relief. Nordic Village, 503 U.S. at 39; Hoffman, 492 U.S. at 102.

"In response to [Nordic Village] and [Hoffman], Congress amended 11 U.S.C. § 106 in 1994 to make the wording of the statute a clear expression of abrogation." Mitchell, 209 F.3d at 1120, n.7, citing legislative history. In particular, as indicated, Congress replaced subsection (c) with a new subsection (a). Microage, 288 B.R. at 853, n.15. The new subsection (a) included a new subdivision, (a)(3), which provides that "[t]he court may issue against a governmental unit an order, process, or judgment under such sections or the Federal Rules of Bankruptcy Procedure, including an order or judgment awarding a money recovery, but not including an award of punitive damages." § 106(a)(3). Thus, "the 1994 amendment to § 106 . . . made express that the abrogation of sovereign immunity included 'an order or judgment awarding a money recovery.'" Russell v. Fort McDowell Yavapai Nation (In re Russell), 293 B.R. 34, 41 (Bankr. D. Ariz. 2003). In short, the Tribe's "limited immunity" argument was rendered moot by the 1994 amendments to § 106.

In its reply, the Tribe cites the district court's decision in Krystal Energy Co. v. Navajo Nation (In re Krystal Energy Co.), 308 B.R. 48 (D. Ariz. 2002) – the decision overruled by the Ninth Circuit – in which "[the plaintiff] conceded the Nation does possess sovereign immunity regarding claims for damages." 308 B.R. at 50. That circumstance is irrelevant; it does not suggest the Krystal court would not have applied § 106(a)(3) to the Navajo Nation if the plaintiff had pressed its claims for monetary relief. In short, the Tribe has cited no authority from the time after the 1994 amendments that supports its conclusion that, in order to assert claims for affirmative relief against the Tribe, the trustee must satisfy the elements of § 106(b). Instead, the trustee may proceed under § 106(a) which, as indicated, abrogates sovereign immunity with respect to §§ 544 and 550 (the latter governing the recovery of fraudulent transfers) and allows the court to enter a judgment or order awarding a monetary recovery.

III. The Absence of an Actual Creditor

The Tribe next contends that even if its sovereign immunity has been abrogated by § 106(a), the trustee's claims fail because there is no actual unsecured creditor who could avoid the transfers, as required by § 544(b) of the Code. The argument is that (1) the trustee stands in the shoes of an actual unsecured creditor subject to all defenses that could be asserted against the creditor under state law, and (2) "there is no 'actual creditor' who could bring a colorable fraudulent transfer claim against the Tribe under Washington state law, because such a creditor's claims would be barred by sovereign immunity." Tribe's Memo. at 32:3-5. Therefore, the Tribe concludes, because there is no actual unsecured creditor who could proceed under § 544(b), the trustee cannot proceed under that subsection either.

The Tribe relies on In re Equip. Acquisition Res., Inc., 742 F.3d 743 (7th Cir. 2014), and subsequent cases that have cited it. In Equip. Acquisition, the court held that "§ 106(a)(1) does not displace the actual-creditor requirement in § 544(b)(1). Ordinarily, a creditor cannot bring an Illinois fraudulent-transfer claim against the IRS; therefore, under § 544(b)(1), neither can the debtor in possession." 742 F.3d at 744. "We find that Congress [in § 106(a)] did not alter § 544(b)'s substantive requirements merely by stating that the federal government's immunity was abrogated 'with respect to' this provision." Id. at 747. Noting that it was "diverg[ing] from all of the bankruptcy and district courts to consider the issue in the context of the federal government" (id. at 748), the court rejected the debtor's contention that the "plain language" of § 106(a) required the opposite outcome; instead, the Seventh Circuit relied on the "plain language" of § 544(b). The court made a number of other points this court has carefully considered.

The court does not agree with Equip. Acquisition but with the many other cases that had earlier ruled the other way and those that have since disagreed with Equip. Acquisition, including Zazzali v. United States (In re DBSI, Inc.), 554 B.R. 234, 238-40 (D. Idaho 2015). First, Equip. Acquisition depends on the conclusion that § 106(a) abrogates sovereign immunity with respect to § 544(a) but not § 544(b) (see Equip. Acquisition, 742 F.3d at 749), whereas § 106(a) makes no such distinction. Second, § 544(b) predates § 106(a) by over a decade and "Congress is presumed to be aware of existing laws when it enacts later legislation." Zazzali, 554 B.R. at 239 (citation omitted). "Sections 106 and 544, together, lead to the inescapable conclusion that Congress intended to waive sovereign immunity for any action that may be brought under section 544." Furr v. United States Dep't of Treasury (In re Pharm. Distrib. Services), 455 B.R. 817, 821 (Bankr. S.D. Fla. 2011).

Third, the Tribe's argument ignores the simple fact that § 106(a) abrogates sovereign immunity. "Notwithstanding an assertion of sovereign immunity, sovereign immunity is abrogated as to a governmental unit to the extent set forth in this section with respect to . . . [§ 544]." § 106(a)(1).

> Wayne County's insistence that no actual creditor could prevail against it under MUFTA outside of bankruptcy is true, but it is true for only one reason . . . sovereign immunity. But that's where Wayne County's argument becomes circular. Sovereign immunity is the very defense that is abrogated by § 106(a)(1). With § 106(a)(1)'s removal of sovereign immunity as an obstacle, an actual unsecured creditor of the Debtor could have an avenue for relief against Wayne County under MUFTA. In other words, the only deficiency that Wayne County points to . . . is the deficiency that exists solely by reason of its invocation of sovereign immunity. The trouble with Wayne County's argument is that § 106(a)(1) has removed that impediment.

Kohut v. Wayne Cnty. Treasurer (In re Lewiston), 528 B.R. 387, 396 (Bankr. E.D. Mich. 2015).

Finally, the court rejects the Tribe's argument that this interpretation is contrary to § 106(a)(5). That subdivision provides that "[n]othing in this section shall create any substantive claim for relief or cause of action not otherwise existing under this title, the Federal Rules of Bankruptcy Procedure, or nonbankruptcy law." This court's interpretation does not create a substantive claim for relief that does not otherwise exist; it simply recognizes that, with respect to existing causes of action, sovereign immunity is abrogated. "[T]he cause of action is under § 544(b)(1), with MUFTA supplying the substantive law. Wayne County is not faced with defending a cause of action that does not already exist. The Trustee must still prove the elements of MUFTA in order to prevail. Reading § 106(a)(1) this way does not create any substantive cause of action not already existing under title 11 or nonbankruptcy law." Lewiston, 528 B.R. at 395, n.5.

IV. Collateral Attack on State Court Judgment

The trustee seeks to avoid and recover, among others, certain transfers made by IMG, alleged to total over $6 million, into the registry of the Superior Court of Washington for Kings County following the issuance of a preliminary injunction by that court. Those funds were later paid out of the court's registry to the Tribe and/or Jamestown Health and Medical Supply Company, LLC pursuant to orders of the Superior Court. The Tribe alleges the trustee's causes of action to avoid and recover those transfers constitute an impermissible collateral attack on the orders

of the Superior Court. The Tribe relies on Batlan v. Bledsoe (In re Bledsoe), 569 F.3d 1106 (9th Cir. 2009), in which a bankruptcy trustee sought to recover as constructive fraudulent transfers, under both § 548 of the Bankruptcy Code and Oregon fraudulent transfer law, certain pre-petition transfers made by the debtor to his former spouse pursuant to an Oregon state court dissolution judgment.

Citing Oregon case law, the Ninth Circuit held that under Oregon law, "a party must allege extrinsic fraud to bring a successful collateral challenge to a regularly obtained court judgment" (Bledsoe, 569 F.3d at 1110-11), and that, again under Oregon law, the rule applies to fraudulent transfer claims under the UFTA." Id. at 1111. The Tribe cites a Washington Supreme Court case holding that a party may collaterally attack a court order only where the order is "absolutely void, not merely erroneous" (Bresolin v. Morris, 86 Wn.2d 241, 245 (1975)), and that "[a] judgment is void only where the court lacks jurisdiction of the parties or the subject matter or lacks the inherent power to enter the particular order involved." Id. Thus, whereas the test under Oregon law is extrinsic fraud, under Washington law, it is whether the court lacked personal or subject matter jurisdiction or lacked the inherent power to enter the order. The trustee's claim against the Tribe based on the court registry transfers, Count 3, purports to seek avoidance under "applicable state law, including Cal. Civ. Code § 3439.04 and Rev. Code Wash. § 19.40.041." Amended Complaint, DN 54, ¶ 355. At least so far as Washington law is concerned, the Amended Complaint misses the mark because it does not allege the Washington Superior Court did not have jurisdiction or did not have the power to enter the orders it did.

The trustee's attempt to distinguish Bledsoe is unpersuasive. First, she claims it is distinguishable because in the underlying state court case in Bledsoe, the trustee had alleged only constructive fraudulent transfers and "did not argue that the dissolution judgment was obtained in order to thwart Debtor's creditors." Trustee's Opp. at 30:14-16. But the trustee in the present case does not allege the Washington Superior Court orders were anything other than regularly obtained court orders following contested proceedings. The trustee next contends she "does not expressly or implicitly challenge[] the validity of any Superior Court orders" (Trustee's Reply at 30:8-9); she seeks only to avoid "transfers of money that Wannakuwatte unilaterally caused IMG to make in direct furtherance of his Ponzi scheme and other fraudulent activity." Id. She adds the Tribe's authorities do not involve transfers motivated in part by the fear of being held in contempt of court. However, as the Tribe replies, the trustee's allegations themselves in the Amended Complaint "make plain that the transfers would not have been made but for the Superior Court's order." Tribe's Reply at 33:22-23.

The trustee next asserts that in Bledsoe, "the dissolution judgment itself effectuated the transfer at issue" (Opp. at 30:17-18), whereas here, the Superior Court's orders did not themselves "effectuate the transfer." While the Bledsoe decision did refer to "the state-court judgment grant[ing] Defendant items valued at $93,737 (569 F.3d at 1108), it also referred to the transfers as having been "made pursuant to the dissolution judgment." Id. The court also referred to "transfers that have received a judicial imprimatur" and "transfers under a regularly obtained dissolution judgment following a contested proceeding." Id. at 1110. Even if the underlying state court judgment in the Bledsoe case itself "effectuated the transfers," as opposed to the debtor having made them "pursuant to the judgment," the court does not see any policy basis for distinguishing the two.

Finally, the trustee purports to distinguish Bledsoe on the basis that, whereas the state court ordered IMG to deposit into its registry the funds IMG claimed it

expected to receive from a government contract, IMG instead deposited funds that "originated from IMG's investors." Amended Complaint, ¶ 156. Again, this appears to be a distinction without a difference. As the Tribe points out, the trustee is nonetheless asking this court to "second-guess" the Superior Court's orders and to "unwind the[ir] effects." Tribe's Reply at 34:15-17.

The court sees one issue that has not been sufficiently addressed by the parties. The Bledsoe court engaged in a two-step analysis. First, it cited an Oregon Supreme Court case, Johnson v. Johnson, 302 Ore. 382, 384 (1986), for its holding that "a party may attack a judgment collaterally only by alleging and proving 'extrinsic fraud.'" Bledsoe, 569 F.3d at 1109. In introducing the second step in the analysis, the court "[began] by observing that nothing in Johnson suggests that its rule is not one of general applicability; that is, nothing suggests that the rule would not apply to all collateral attacks on judgments. Additionally, Trustee has failed to explain persuasively why UFTA fraudulent transfer claims would be subject to a different rule." Bledsoe, 569 F.3d at 1109-10. The court went on, however: "But we need not rest there, because we have guidance from the Oregon Court of Appeals." Id. at 1110.

The Bledsoe court then cited an Oregon appellate court case, Greeninger v. Cromwell, 140 Ore. App. 241, 246-47 (1996), which applied Johnson to a collateral attack in the form of a fraudulent transfer claim. Bledsoe characterized Greeninger as holding that the extrinsic fraud requirement of Johnson applies to collateral attacks in the form of state fraudulent transfer claims. Bledsoe, 569 F.3d at 1110. Thus, "[w]ith respect to the class of cases like this one, involving transfers under a regularly obtained dissolution judgment following a contested proceeding, we think that the Oregon Supreme Court would hold, as did Greeninger, that allegations of extrinsic fraud are required." Id.

Here, the Tribe has taken the first step in the Bledsoe analysis: as discussed above, it has cited a Washington Supreme Court case, Bresolin, holding that a party may collaterally attack a court order only where the order is absolutely void, not merely erroneous, and that a judgment is void where the court lacked personal or subject matter jurisdiction or otherwise lacked the power to enter the order. However, the Tribe did not undertake the second step in the analysis: it did not cite Washington case authority for the proposition that Bresolin governs collateral attacks in the form of fraudulent transfer claims. And the trustee has cited no case law to the contrary. As the Bledsoe court did with Johnson, this court finds nothing in Bresolin to suggest its rule does not apply to collateral attacks in the form of fraudulent transfer claims. Nor can the court discern any policy reason why fraudulent transfers should be subject to a different rule. In other words, it seems reasonable to this court that a collateral attack in the form of a fraudulent transfer claim can stand only if the plaintiff alleges and proves the judgment or order was void for lack of jurisdiction or power to enter it. Nevertheless, given that the issue is likely to be dispositive as to a large dollar portion of the trustee's claims, the court will give the parties the opportunity to brief that specific issue, limited to four pages each.

To conclude, Bledsoe is, like Krystal, a Ninth Circuit decision binding on this court, and unless the further briefing just described provides a compelling basis on which to distinguish it, the court intends to grant the Tribe's motion as to the court registry transfers.

V. Remaining Arguments

The Tribe contends the four-year statute of limitations under either the California or Washington fraudulent transfer statute bars the trustee's action as to the November 2009 transfers. The trustee, in turn, relies on the one-year discovery rule, which applies under both states' statutes. The Tribe, in its turn, claims the trustee did not plead facts to support the delayed discovery exception.

The Tribe's argument is devoted almost entirely to a discussion of factual issues that are not appropriate for determination on a motion to dismiss. Specifically, the Tribe goes into significant detail in attempting to assess what a creditor reasonably should have discovered and when. Those are highly subjective issues that should not be decided on a motion to dismiss, where the court is to consider only the sufficiency of the pleadings. The court does find that the trustee might have been more explicit in paragraph 330 of the Amended Complaint. In that paragraph, she alleges the true nature of the transfers was never made known to or discovered by the creditors in whose shoes the trustee stands prior to the time the Amended Complaint was filed. The trustee might have added an allegation that those creditors could not reasonably have discovered the true nature of the transfers earlier. If the parties request further amendment of the complaint in that regard, the court will consider it, but at this juncture, it appears that would only delay the process.

The Tribe also contends the trustee has failed to allege sufficient facts to support an actual fraudulent transfer claim and failed to plead fraud with sufficient particularity. The court disagrees, finding instead that the Amended Complaint contains ample detail to support the causes of action it purports to state. The complaint includes allegations as to who made the transfers, when they were made, the amounts of each, and the source of the funds transferred. These allegations are sufficiently specific to give the Tribe notice of the particular conduct alleged "so that [it] can defend against the charge and not just deny that [it has] done anything wrong." Kearns v. Ford Motor Co., 567 F.3d 1120, 1124 (9th Cir. 2009).

Finally, the court addressed the Tribe's request to transfer venue in its ruling on the Tribe's motion to dismiss the trustee's original complaint. See civil minutes for Sept. 21, 2016, DN 99. The court finds nothing in the new motion to cause it to change its decision.

The court will hear the matter.

---

1 Unless otherwise indicated, all rule references are to the Federal Rules of Bankruptcy Procedure.

2 "[Fed. R. Civ. P. 4(d)(3) (now 4(h)(1)(B)] does not require that service be made solely on a restricted class of formally titled officials, but rather permits it to be made 'upon a representative so integrated with the organization that he will know what to do with the papers. Generally, service is sufficient when made upon an individual who stands in such a position as to render it fair, reasonable and just to imply the authority on his part to receive service.'" Direct Mail Specialists, Inc. v. Eclat Computerized Technologies, Inc., 840 F.2d 685, 688 (9th Cir. 1988) (citation omitted).

3 In urging the court to rule contrary to Krystal, the Tribe cites a recent Supreme Court case as "confirming exactly" this proposition: "Tribes are not domestic governments, but rather 'domestic dependent nations.'" Tribe's Reply

at 11:1-4, citing Puerto Rico v. Sanchez Valle, 136 S. Ct. 1863, 1872 (June 9, 2016). The court has carefully reviewed the Sanchez Valle decision, including the paragraph in which the Court referred to Indian tribes as "domestic dependent nations." The Court did not even suggest, let alone "confirm exactly," that "tribes are not domestic governments." Nor did it "explain (and reconfirm) that Indian Tribes are something entirely different: 'domestic dependent nations.'" Tribe's Memo. at 12:21-22. Although it referred to Indian tribes as "domestic dependent nations," it in no way described them as "something completely different" from domestic governments or states. In short, Sanchez Valle does not give this court any pause about following Krystal.

The Tribe also went out on a limb in citing Cent. Va. Cmty. College v. Katz, 546 U.S. 356 (2006) as "not[ing] [that] unlike the sovereign immunity of the states, tribal sovereign immunity is of a 'special brand.' See Katz, 546 U.S. 356 at 359." Tribe's Memo. at 20:19-20. The term "special brand" does not appear in the decision, and the decision in fact said nothing at all about tribal sovereign immunity. Thus, it did not suggest in any way, as the Tribe would have the court believe, that "[t]he two [state and tribal sovereign immunity] are not coextensive and cannot be treated the same." Tribe's Memo. at 20:21-22.

Finally, Michigan v. Bay Mills Indian Cmty., 134 S. Ct. 2024 (2014) does not stand for the proposition for which the Tribe cites it – that "no waiver of sovereign immunity can be connected to the Bankruptcy Clause in the Constitution." Tribe's Memo. at 22:10-11, citing Bay Mills, 134 S. Ct. at 2029. The word "bankruptcy" does not appear in the decision at all.