NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 22 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NUMA CORPORATION; CEDARVILLE RANCHERIA OF NORTHERN PAIUTE INDIANS, Appellants, v. JASON DIVEN, Appellee.	No. 22-15298 D.C. Nos. 2:20-bk-24311 2:21-cv-01242-KJM MEMORANDUM[*]

Appeal from the United States Bankruptcy Court
for the Eastern District of California
Ronald H. Sargis, Bankruptcy Judge, Presiding

Submitted November 18, 2022[**]
San Francisco, California

Before: S.R. THOMAS and BENNETT, Circuit Judges, and DORSEY,[***] District Judge.

---

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

[***] The Honorable Jennifer A. Dorsey, United States District Judge for the District of Nevada, sitting by designation.

NUMA Corporation and Cedarville Rancheria of Northern Paiute Indians ("Tribe"), a federally recognized Indian tribe, appeal the bankruptcy court's order imposing sanctions under 11 U.S.C. § 362(k)(1) for violation of the automatic stay in the chapter 13 bankruptcy proceedings of debtor Jason Diven. The parties jointly certified the appeal for direct review from the district court. We have jurisdiction pursuant to 28 U.S.C. § 158(d)(2)(A).

We review de novo whether a Native American tribe possesses sovereign immunity, *Deschutes River All. v. Portland Gen. Elec. Co.*, 1 F.4th 1153, 1158 (9th Cir. 2021), and whether Congress has abrogated a tribe's sovereign immunity, *Krystal Energy Co. v. Navajo Nation*, 357 F.3d 1055, 1056 (9th Cir. 2004). We also review de novo the bankruptcy court's conclusions of law. *See In re Brace*, 979 F.3d 1228, 1232 (9th Cir. 2020). We affirm.[1] Because the parties are familiar with the factual and procedural history of the case, we need not recount it here.

Indian tribes are "separate sovereigns pre-existing the Constitution" and possess common-law sovereign immunity. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56–58 (1978). "[A]n Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity." *Kiowa Tribe of Okla.*

[1] We grant the National Consumer Bankruptcy Rights Center and National Association of Consumer Bankruptcy Attorneys' motion for leave to file an amicus brief in support of appellee (Docket No. 19).

v. Mfg. Techs., Inc., 523 U.S. 751, 754 (1998). Congressional abrogation must be "unequivocally expressed." *Santa Clara Pueblo*, 436 U.S. at 58 (citation omitted).

Section 106(a) of the Bankruptcy Code abrogates the sovereign immunity of a "governmental unit" with respect to, as relevant here, the Code's automatic stay provision. 11 U.S.C. § 106(a). The statute's definition of "governmental unit" includes any "foreign or domestic government." 11 U.S.C. § 101(27). In *Krystal Energy*, we held squarely that the definition of "governmental unit" includes tribes and that section 106(a) of the Bankruptcy Code unequivocally abrogates tribal sovereign immunity. 357 F.3d at 1057–58.

Krystal Energy controls here. Because Congress abrogated tribal sovereign immunity with respect to the automatic stay provision, the Tribe cannot assert sovereign immunity to avoid sanctions for violation of the automatic stay.

We need not and do not decide whether the Tribe waived its sovereign immunity by filing a proof of claim in this instance.

AFFIRMED.