

Case No.: 17-024

IN THE YUMA INDIAN NATION SUPREME COURT

Thomas Smith & Carol Smith,
Petitioners,

v.

Yuma Indian Nation,
Respondent.

**On Writ of Certiorari to the Supreme Court
of the Yuma Indian Nation**

BRIEF FOR THE PETITIONER

Team Number 296

Counsel for Petitioner

Table of Contents

TABLE OF AUTHORITIES.....II

QUESTIONS PRESENTED 1

STATEMENT OF CASE.....2

 STATEMENT OF PROCEEDINGS2

 STATEMENT OF FACTS3

SUMMARY OF ARGUMENT.....6

ARGUMENT8

 I. THE YUMA INDIAN NATION DOES NOT HAVE PERSONAL AND SUBJECT MATTER JURISDICTION OVER THOMAS SMITH AND CAROL SMITH.....8

 i. *A contract signed off a reservation with a nonmember is strong evidence that the Yuma Indian Nation lacks personal jurisdiction over Carol Smith.....9*

 ii. *Nonmember activity that does not affect the political integrity, economic security, health or welfare of the tribe is strong evidence that the Yuma Indian Nation lacks subject matter jurisdiction over both Thomas Smith and Carol Smith. 12*

 II. SOVEREIGN IMMUNITY DOES NOT PROTECT THE YUMA INDIAN NATION, THE YUMA INDIAN NATION ECONOMIC DEVELOPMENT CORPORATION, FRED CAPTAIN, OR MOLLY BLUEJACKET FROM THE SMITHS’ CLAIMS.14

 i. *Yuma Indian Nation14*

 ii. *Yuma Indian Nation Economic Development Corporation.....15*

 iii. *Chief Executive Officer Fred Captain.....16*

 iv. *Accountant Molly Bluejacket17*

CONCLUSION18

TABLE OF AUTHORITIES

United States Supreme Court

C & L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 532 U.S. 411 (2001).

Montana v. United States, 450 U.S. 544, 565 (1981).

Int'l Shoe Co. v. Wash., 326 U.S. 310, 316 (1945).

Iowa Mutual Ins. Co. v. LaPlante, 480 U.S. 9, 18.

Kiowa Tribe of Oklahoma v. Manufacturing Technologies Inc., 523 U.S. 751, 754 (1998).

Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians, 471 U.S. 845, 856 (1985).

Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58 (1978).

Strate v. A-1 Contrs., 520 U.S. 438, 451 (1997).

Court of Appeals

A-1 Contractors v. Strate, 76 F. 3d 930 (1996).

Allen v. Gold Country Casino, 464 F.3d 1044, 1046 (9th Cir. 2006)

Cook v. AVI Casino Enterprises, Inc., 548 F.3d 718, 725 (9th Cir. 2008)

Nord v. Kelly, 520 F.3d 848, 853 (2008).

United States v. Oregon, 657 F.2d 1009, 1013 n. 8 (9th Cir.1981)

District Courts

Fine Consulting, Inc. v. Rivera, 915 F.Supp.2d 1212, 1230

Sprint Communs. Co. L.P. v. Wynne, 121 F.Supp3d 893, 899 (2015).

Statutes

21 U.S.C. § 811

QUESTIONS PRESENTED

1. Under Federal and Tribal law, does the Yuma Indian Nation courts have personal and subject matter jurisdiction over Thomas Smith and Carol Smith, or in the alternative, should the trial court stay this suit while the Smiths seek a ruling in the Arizona federal district court?
2. Does sovereign immunity, or any other form of immunity, protects the Yuma Indian Nation, the YIN Economic Development Corporation, and/or the EDC CEO and accountant from the Smiths' claims?

STATEMENT OF CASE

STATEMENT OF PROCEEDINGS

The Yuma Indian Nation filed suit against Petitioners in tribal court for breach of contract, violation of fiduciary duties, and violation of their duties of confidentiality. The Yuma Indian Nation sought recovery of the liquidated damages amount set out in the contracts.

The Petitioners filed special appearances and motions to dismiss the Yuma Indian Nation's suit based on lack of personal jurisdiction and lack of subject matter jurisdiction over them and this suit, and in the alternative, for the trial court to stay the suit while the Petitioners pursue a ruling in Arizona federal district court as to whether the tribal court has jurisdiction over them. The trial court denied both motions.

Continuing under their special appearances, the Petitioners filed answers denying the Yuma Indian Nation's claims and counterclaimed for monies due under their contracts and for defamation for impugning their professional skills.

The Petitioners also impleaded the Yuma Indian Nation Economic Development Corporation, and its CEO Fred Captain and accountant Molly Bluejacket in their official and individual capacities. The Petitioners made the same claims against the third-party defendants as they had made against the YIN.

The trial court dismissed the Petitioners' counterclaims on the grounds of sovereign immunity. The Petitioners filed an interlocutory appeal in the Yuma Indian Nation Supreme Court requesting that the Court decide these issues and issue a writ of mandamus ordering the trial court to stay the suit.

STATEMENT OF FACTS

In 2007, the Yuma Indian Nation (“YIN”), located in southwest Arizona, signed a contract with Thomas Smith, a certified financial planner and accountant. Thomas agreed to provide the Nation with financial advice on an as-needed basis regarding economic development issues. The contract provided for any and all disputes arising from the contract to be litigated in a court of competent jurisdiction. The contract also required Thomas to maintain absolute confidentiality regarding any and all tribal communications and economic development plans.

From 2007 to 2017, Thomas provided the Nation with financial advice on a wide range of economic development issues. He exchanged emails and telephone calls on a nearly daily basis with various tribal chairs and Tribal Council members. Thomas also prepared and submitted to the YIN Tribal Council written reports on a quarterly basis and presented these reports in person at Council meetings on the reservation.

The Nation created the Economic Development Corporation (“EDC”) under a 2009 tribal commercial code to promote the prosperity of the Nation and its citizen. The Tribal Council funded the EDC with a one-time \$10 million loan from the Nation’s general fund. The Tribal Council created the EDC via a corporate charter as a wholly owned subsidiary of the Nation and as an “arm-of-the-tribe,” with the stated purpose: “to create and assist in the development of successful economic endeavors, of any legal type or business, on the reservation and in southwestern Arizona.” The commercial code authorizes the Nation, pursuant to its inherent sovereign powers, to create and charter public and private corporations to operate businesses on and off the reservation. The Tribal Council selected the initial board of five directors to serve staggered terms with one director’s term expiring and being re-elected or replaced each year. At all times, three of the directors have to be tribal

citizens. The Tribal Council retained the authority to remove any director for cause, or for no cause, at any time, by a 75% vote.

The EDC is authorized to buy and sell real property in fee simple title on or off the reservation, to buy any other types of property in whatever form of ownership, and to sue and be sued. The EDC is required to keep detailed corporate and financial records and submit them on a quarterly basis to the Tribal Council for review and approval. Finally, fifty percent of all EDC net profits are to be paid to the YIN general fund on an annual basis.

The charter requires the EDC to apply tribal preference in hiring employees and contracting with outside entities. The EDC has employed an average of 25 tribal citizens full-time every year since its creation in 2009. The Tribal Council also mandated in the charter that the EDC, its board, and all employees are protected by tribal sovereign immunity to the fullest extent of the law. The Council included this provision, as it states in the charter, to protect the entity and the Nation from unconsented litigation and to assist in the success of the EDC's endeavors.

In 2010, with written permission from the Nation's Tribal Council, Thomas signed a contract with his sister Carol Smith that was identical to the one Thomas signed with the Nation in 2007. Carol is a licensed stockbroker and was retained to give her brother, the EDC, and the YIN advice regarding stocks, bonds, and securities issues.

In 2016, the EDC began investigating the possibility of engaging in marijuana cultivation and sales. The EDC conferred with the YIN Tribal Council and convinced the Council to enact a tribal ordinance making marijuana cultivation and use on the reservation legal for any purposes. Thomas and Carol are personally opposed to being involved in the marijuana business. Ultimately, Thomas informed the Arizona Attorney General of the

(5)

Nation's plans. Subsequently, the A.G. wrote the Nation and the EDC a cease and desist letter regarding the development of recreational marijuana operations. The Tribal Council filed suit versus the Smiths in tribal court for breach of contract, violation of fiduciary duties, and violation of their duties of confidentiality.

SUMMARY OF ARGUMENT

1. The Yuma Indian Nation court does not have personal and subject matter jurisdiction over Thomas Smith and Carol Smith.
2. Neither sovereign immunity nor any other form of immunity protects the Yuma Indian Nation, the YIN Economic Development Corporation, and/or the EDC CEO and accountant from the Smiths' claims.

The trial court should stay this suit to allow the Smiths to seek relief in the Arizona federal district court because the YIN court does not have personal and subject matter jurisdiction over the Smiths.

First, the contract signed between the Yuma Indian Nation and Thomas Smith was signed at Thomas' office in Phoenix, Arizona. The contract was signed off the reservation and stated that all disputes arising from the contract to be litigated in a court of competent jurisdiction. The contract between Carol and the Yuma Indian Nation was also not signed on the reservation. Carol's contact with the YIN is minimal and is not continuous or systematic to enable the tribal court to assert personal jurisdiction over her claim.

Also, it is not necessary for the Smiths to exhaust tribal court remedies before seeking suit in federal district court because tribal jurisdiction is motivated by bad faith, because instead of conferring with the Smiths about their economic endeavors, the EDC began quietly investigating and pursuing the development of a marijuana operation. Tribal exhaustion in this case is also futile because minimum contacts between the Smiths and the tribe are not continuous and systematic to enable the tribal court to assert personal jurisdiction over their claims. In Strate, the Supreme Court recognized that when "it is plain that [tribal jurisdiction does not exist], the otherwise applicable exhaustion requirement must give way, for it would serve no purpose other than delay." Strate v. A-1 Contrs., 520 U.S. 438, 451 (1997).

The purpose of the EDC specifically states that it was created for the development of any type of legal business. However, the economic endeavors that the EDC wanted to partake in are not legal under federal law (21 U.S.C. § 811) and are only legal for medical use under Arizona state law. The Smiths lack of confidentiality with the EDC's plans of making marijuana cultivation and use on the reservation legal for any and all purposes did not substantially affect the political integrity, economic security, health, or welfare of the tribe.

The court should allow the Smiths' claims against the Yuma Indian Nation, YIN Economic Development, Fred Captain, and Molly Bluejacket because sovereign immunity does not protect against the claims. Sovereign immunity does not apply in this case because the contracts in issue have a provision that expressly waives sovereign immunity by agreeing to litigation. The contracts are between the tribe and the Smiths and were made through proper channels. When the tribe waives sovereign immunity for all issues in a domain, all individuals and entities that derive immunity from suit from the tribe cannot exercise the right within that same domain.

ARGUMENT**I. The Yuma Indian Nation does not have personal and subject matter jurisdiction over Thomas Smith and Carol Smith.**

Indian tribes will lack civil authority over the conduct of nonmembers within a reservation unless: [1] the nonmember enters a consensual relationship with the tribe members; or [2] the nonmember activity directly affects the political integrity, economic security, health or welfare of Indians or tribes themselves. Montana v. United States, 450 U.S. 544, 565 (1981).

Courts have previously stated that "[t]ribal authority over the activities of non-Indians on reservation lands is an important part of tribal sovereignty and [c]ivil jurisdiction over such activities presumptively lies in the tribal courts unless affirmatively limited by a specific treaty provision or federal statute." Iowa Mutual Ins. Co. v. LaPlante, 480 U.S. 9, 18.

The Yuma Indian Nation code of civil procedure states that "[t]he Tribal Court may exercise jurisdiction over any person or subject matter on any basis consistent with the Constitution of the Tribe, the Indian Civil Rights Act of 1968, as amended, any specific restrictions or prohibitions contained in federal law." Tribal Courts shall have general civil jurisdiction over all civil actions arising under the Constitution, laws, or treaties of the Tribe, including the Tribal common law, over all general civil claims which arise within the Tribal jurisdiction, and over all transitory claims in which the defendant may be served within the Tribal jurisdiction. [TCR 96-22].

The trial court should stay this suit to allow the Smiths to seek relief in the Arizona federal district court because the YIN court does not have personal and subject matter jurisdiction over the Smiths.

- i. A contract signed off a reservation with a nonmember is strong evidence that the Yuma Indian Nation lacks personal jurisdiction over Carol Smith.

Personal jurisdiction shall exist over all defendants served within territorial jurisdiction of the Courts, or served anywhere in cases arising within the territorial jurisdiction of the Tribe, and all persons consenting to such jurisdiction. The act of entry within the territorial jurisdiction of the Courts shall be considered consent to the jurisdiction of the Courts with respect to any civil action arising out of such entry. The act of entry upon the territorial jurisdiction by an extraterritorial seller, merchant, or their agent(s) shall be considered consent by the seller or merchant or their agent(s) to the jurisdiction of the Courts for any dispute arising out of any sale or commercial transaction regardless of where the sale or transaction was entered into or took place. [TCR 96-22].

Nonmembers of a tribe who choose to affiliate with Indians or their tribes in consensual relationships occurring on Indian land may anticipate tribal jurisdiction when their contracts affect the tribe or its members. Fine Consulting, Inc. v. Rivera, 915 F.Supp.2d 1212, 1230. Jurisdiction may reasonably be said to result as a consequence of the deliberate actions of those who enter tribal lands to engage in commerce with Indians. Id. Tribal courts shall have jurisdiction over any person who transacts, conducts, or performs any business or activity within the reservation, either in person or by an agent or representative, for any civil cause of action or contract or in quasi contract or by promissory estoppel or alleging fraud. Yuma Indian Nation Tribal Code 1-107.

In accordance with International Shoe Co. v. Washington, in order to have jurisdiction over someone outside the “state”, the person must have “certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” Int’l Shoe Co. v. Wash., 326 U.S. 310, 316 (1945). The

minimum contacts required are not just “continuous and systematic, but also give rise to the liabilities sued on, even though no consent to be sued or authorization to an agent to accept service of process has been given.” Id. at 317.

To determine whether a consensual relationship exists between nonmembers and tribes, courts look at the activities surrounding the conduct. Tribal courts have jurisdiction over nonmembers based on "the activities of nonmembers who enter into consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements." Montana, 450 U.S. at 565. When a nonmember enters into a commercial transaction with a tribal member or engages in reservation-based tribal business and consents in a written contract to tribal jurisdiction, “that nonmember has engaged in the sort of consensual relationship with the tribe or its members, through commercial dealing that would subject the nonmember to tribal jurisdiction.” Id.

In the present case, the Yuma Indian Nation signed a contract with Thomas Smith, the contract was signed by the parties at Thomas’ office in Phoenix, Arizona. Thomas was to provide the Nation with financial advice on a wide range of economic development issues. Unlike in Montana, the contract in the present case stated that all disputes arising from the contract to be litigated in a court of competent jurisdiction.

The contract between Carol and the Yuma Indian Nation was not signed on the reservation. The Yuma Indian Nation gave Thomas Smith a written permission allowing Thomas to sign a contract with his sister, Carol, who lives and works in Portland, Oregon. The contract she and Thomas signed is identical to the contract Thomas signed with the Nation in 2007. Both contracts provided for any and all disputes arising from the contract to be litigated in a court of competent jurisdiction. Carol has only visited the YIN reservation on

two occasions with her brother Thomas, all her other communications with the tribe have been through her brother via email, telephone, and postal and delivery services. Carol has had very few direct contacts with the YIN tribe. Therefore, Carol has not had enough minimum contacts on the reservation to constitute a presence to enable the tribal court to assert personal jurisdiction over her claim.

The trial court should stay this suit to allow the Smiths to seek relief in the Arizona federal district court because the YIN court does not have personal and subject matter jurisdiction over the Smiths. Tribal exhaustion is required as a matter of comity, not as a jurisdictional prerequisite. Iowa Mutual Ins., 480 U.S. 9, 20.

There are three exceptions to the tribal exhaustion doctrine that can apply to prove that the YIN tribe does not have jurisdiction over the Smiths and to allow the Smith to proceed in the Arizona federal district court: (1) where “tribal jurisdiction is motivated by a desire to harass or is conducted in bad faith; (2) where the case is patently violative of express jurisdictional prohibitions; and (3) where exhaustion would be futile because of the lack of an adequate opportunity to challenge the court’s jurisdiction. Nat’l Farmers Union Ins. Cos. V. Crow Tribe of Indians, 471 U.S. 845, 856 (1985). In this case, tribal jurisdiction is motivated by bad faith because the YIN Council enacted a tribal ordinance that was contrary to an Arizona state-wide referendum. The ordinance was to make marijuana cultivation and use on the reservation legal for any and all purposes. Within the contract, the Smiths were to provide the Nation with financial advice on a wide range of economic development issues. Instead of conferring with the Smiths about their economic endeavors, the EDC began quietly investigating and pursuing the development of a marijuana operation. Tribal exhaustion in this case is also futile because minimum contacts between the Smiths

and the tribe is not continuous and systematic to enable the tribal court to assert personal jurisdiction over their claims. In Strate, the Supreme Court recognized that when “it is plain that [tribal jurisdiction does not exist], the otherwise applicable exhaustion requirement must give way, for it would serve no purpose other than delay.” Strate v. A-1 Contrs., 520 U.S. 438, 451 (1997). Exhaustion is only excused under Strate’s exception when the exercise of tribal jurisdiction is frivolous or obviously invalid under clearly established law.” Sprint Communs. Co. L.P. v. Wynne, 121 F.Supp3d 893, 899 (2015).

ii. Nonmember activity that does not affect the political integrity, economic security, health or welfare of the tribe is strong evidence that the Yuma Indian Nation lacks subject matter jurisdiction over both Thomas Smith and Carol Smith.

Tribes do not have inherent regulatory powers over the activities of nonmembers “beyond what is necessary to protect tribal self-government or to control internal relations.” Montana, 450 U.S. 544, 564. A tribe may retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. Id. at 566. In A-1 Contractors v. Strate, the Supreme Court postulated that Indian tribal courts can only exercise civil jurisdiction over a non-Indian or nonmember if a valid tribal interest is at issue before a tribal court. Strate, 76 F. 3d 930 (1996). Once the tribal interest is established, a presumption arises that tribal courts have jurisdiction over the non-Indian or nonmember unless that jurisdiction is affirmatively limited by federal law. Id. at 938-39.

In this case, the YIN Tribe sought out the advice of the Smiths regarding economic development issues. The Nation created the YIN Economic Development Corporation with the purpose of creating and assisting in the development of successful economic endeavors,

of any legal type or business, on the reservation and in southwestern Arizona. The key concept in applying Montana is that tribal authority to regulate nonmember activities exists where it is “necessary to protect tribal self-government or to control internal relations.” Nord v. Kelly, 520 F.3d 848, 853 (2008). The purpose of the EDC specifically states that it was created for the development of any type of legal business. However, the economic endeavors that the EDC wanted to partake in are not legal under federal law (21 U.S.C. § 811) and are only legal for medical use under Arizona state law.

The Tribal Council created the EDC via a corporate charter as a wholly owned subsidiary of the Nation and as an “arm-of-the-tribe.” The EDC is to be operated by its own board of five directors two of which have to be non-Indians or citizens of other tribes. The EDC can sue and be sued, it does not represent the Nation, it is only an “arm-of-the-tribe.” No debts of the EDC could encumber, or implicate in any way, the assets of the Nation. Under Montana, the tribe would not have jurisdiction over the Smiths because the Smiths lack of confidentiality with the EDC’s plans of making marijuana cultivation and use on the reservation legal for any and all purposes did not substantially affect the political integrity, economic security, health, or welfare of the tribe. To the contrary, it prevented the legalization of recreational marijuana on the reservation to prevent addiction that may have afflicted tribal members if the intervention would not have happened. The EDC was aware of the Smiths opposition to the development of marijuana operation. The EDC quietly pursued the development of a marijuana operations despite the opposition. The breach of confidentiality also did not affect the economic security of the tribe because the marijuana endeavor would violate federal law.

II. Sovereign Immunity does not protect the Yuma Indian Nation, the Yuma Indian Nation Economic Development Corporation, Fred Captain, or Molly Bluejacket from the Smiths' claims.

i. Yuma Indian Nation

If the Court determines that the Yuma Indian Nation has jurisdiction over this case, the Petitioners claims against Respondents should withstand a sovereign immunity claim. “Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers.” Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58 (1978). The Yuma Indian Nation “is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity.” Kiowa Tribe of Oklahoma v. Manufacturing Technologies Inc., 523 U.S. 751, 754 (1998). Congress has not expressly abrogating the Respondent’s sovereign immunity in this action, but the contract’s litigation provision serves as a “waiver of sovereign immunity [which] ‘cannot be implied but must be unequivocally expressed.’” Santa Clara Pueblo (quoting United States v. Testan, 424 U.S. 392, 399 (1976)).

The Petitioners signed identical contracts which contain a provision that “any and all disputes arising from the contract to be litigated in a court of competent jurisdiction.” The litigation provision is an express waiver of sovereign immunity comparable to the arbitration provision in C & L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 532 U.S. 411 (2001). In Citizen Band, the commercial contract contained a provision which stated

All claims or disputes between the Contractor [C & L] and the Owner [the Tribe] arising out of or relating to the Contract, or the breach thereof, shall be decided by arbitration . . . [t]he award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.
id. at 415.

The Court reasoned that the Tribe waived immunity by agreeing to the arbitration provision and the enforcement of the arbitration judgement. Id. at 420. The Court further stated that an express waiver does not need to specifically state that sovereign immunity has been waived. Id. at 420-21 (quoting Sokaogon Gaming Enterprise Corp. v. Tushie-Montgomery Associates, Inc., 86 F.3d 656 (1996)). The Court reasoned that the agreement to the enforcement mechanism requires a waiver of immunity, therefore the Tribe waived sovereign immunity.

Citizen Band resolves the dispute of sovereign immunity from suit in state courts, but the reasoning should hold fast in the current case. The Yuma Indian Nation agreed to an enforcement mechanism in a court of competent jurisdiction just like Citizen Band Potawatomi Indian Tribe. The Yuma Indian Nation court system is of competent jurisdiction, therefore the Yuma Indian Nation agreed to possibly litigate any and all disputes arising from the contract in the tribal court system.

ii. Yuma Indian Nation Economic Development Corporation

The Yuma Indian Nation Economic Development Corporation is not protected from the Petitioners' suit, because the Tribe has waived sovereign immunity and cannot extend to the corporation. The Yuma Indian Nation Economic Development Corporation is an arm of the Yuma Indian Nation, which extends its sovereign immunity from suit to the corporation. Cook v. AVI Casino Enterprises, Inc., 548 F.3d 718, 725 (9th Cir. 2008); Allen v. Gold Country Casino, 464 F.3d 1044, 1046 (9th Cir. 2006). Therefore, the immunity enjoyed by the corporation is derivative from the Yuma Indian Nation's immunity. The Yuma Indian Nation Code Title 11 Article 10 Section 11-1003 reinforces this notion by stating that "sovereign immunity of the Tribe is hereby conferred on all Tribal corporations." The

Economic Development Corporation draws sovereign immunity for any and all disputes arising from the contracts from the Yuma Indian Nation's sovereign immunity over the same issues, therefore when the tribe waived its right, the corporation lost its source of immunity from contract disputes.

iii. Chief Executive Officer Fred Captain

Yuma Indian Nation Economic Development Corporation Chief Financial Officer Fred Captain is not protected from suit by sovereign immunity in his official or individual capacity. When acting in an official capacity, tribal officials are within tribal sovereign immunity, but individual members are not generally within the umbrella of protection. United States v. Oregon, 657 F.2d 1009, 1013 n. 8 (9th Cir.1981). Regardless of tribal membership, Fred Captain is not covered by sovereign immunity as an individual. The responsibilities of Chief Financial Officers of a corporation in the Yuma Indian Nation Code include "general active management of the business of the corporation" which is broad enough to include all activities regarding the contracts. Fred Captain is therefore within his official capacity.

Though Captain was within his official capacity, he cannot use sovereign immunity to avoid suit from the Petitioners. Suits "against [tribal officials] in their official capacities is a suit against the tribe, it is barred by tribal sovereign immunity unless that immunity has been abrogated or waived." Linneen v. Gila River Indian Community, 276 F.3d 489, 492 (9th Cir. 2002). In Linneen, the officials worked directly for the tribe, in the present case, Captain is in the same class because he is an official working for an arm of the tribe, which is a part of the tribal structure. Therefore, Captain's immunity is derivative of a waived right to immunity and is in turn waived by the contracts' litigation provisions.

iv. Accountant Molly Bluejacket

Yuma Indian Nation Economic Development Corporation Accountant Molly Bluejacket is not protected from suit by sovereign immunity in her official or individual capacity. When acting in an official capacity, tribal officials are within tribal sovereign immunity, but individual members are not generally within the umbrella of protection. United States v. Oregon, 657 F.2d 1009, 1013 n. 8 (9th Cir.1981). Regardless of tribal membership, Molly Bluejacket is not covered by sovereign immunity as an individual. The responsibilities of Accountant of a corporation are not defined in the Yuma Indian Nation Code, but there is no indication that Molly Bluejacket has acted outside her official capacity.

Though Bluejacket was within her official capacity, she cannot use sovereign immunity to avoid suit from the Petitioners. Suits “against [tribal officials] in their official capacities is a suit against the tribe, it is barred by tribal sovereign immunity unless that immunity has been abrogated or waived.” Linneen v. Gila River Indian Community, 276 F.3d 489, 492 (9th Cir. 2002). In Linneen, the officials worked directly for the tribe, but Bluejacket is in the same class because she is an official working for an arm of the tribe, which is a part of the tribal structure. Therefore, Bluejacket’s immunity is derivative from a waived right to immunity and is in turn waived by the contracts’ litigation provisions.

CONCLUSION

For the foregoing reasons, Petitioners ask this Honorable Court to allow them to seek relief in the Arizona Federal District Court because the Yuma Indian Nation does not have personal and subject matter jurisdiction over them. Additionally, Petitioners ask this Honorable Court to allow the claims against the Yuma Indian Nation, YIN Economic Development Corporation, Fred Captain, and Molly Bluejacket because the Yuma Indian Nation has waived the protection of sovereign immunity